VIRGINIA REGISTER OF REGULATIONS

VOL. 27 ISS. 24 | PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION | AUGUST 1, 2011

TABLE OF CONTENTS

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.

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).

August 2011 through August 2012

Volume: Issue	Material Submitted By Noon*	Will Be Published On
27:24	July 13, 2011	August 1, 2011
27:25	July 27, 2011	August 15, 2011
27:26	August 10, 2011	August 29, 2011
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
28:8	November 30, 2011	December 19, 2011
28:9	December 13, 2011 **(Tuesday)**	January 2, 2012
28:10	December 27, 2011 **(Tuesday)**	January 16, 2012
28:11	January 11, 2012	January 30, 2012
28:12	January 25, 2012	February 13, 2012
28:13	February 8, 2012	February 27, 2012
28:14	February 22, 2012	March 12, 2012
28:15	March 7, 2012	March 26, 2012
28:16	March 21, 2012	April 9, 2012
28:17	April 4, 2012	April 23, 2012
28:18	April 18, 2012	May 7, 2012
28:19	May 2, 2012	May 21, 2012
28:20	May 16, 2012	June 4, 2012
28:21	May 30, 2012	June 18, 2012
28:22	June 13, 2012	July 2, 2012
28:23	June 27, 2012	July 16, 2012
28:24	July 11, 2012	July 30, 2012
28:25	July 25, 2012	August 13, 2012
28:26	August 8, 2012	August 27, 2012

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-71, Regulations Governing Virginia Newborn Screening Services.** The purpose of the proposed action is to make corrections to outdated citations and to update the current list of conditions for which newborns are screened. The proposed amendments to this regulation are a result of a completed periodic review.

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

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

Public Comment Deadline: September 1, 2011.

Agency Contact: Susan Tlusty, Division of Child and Adolescent Health, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7686, FAX (804) 864-7647, or email susan.tlusty@vdh.virginia.gov.

VA.R. Doc. No. R11-2916; Filed July 6, 2011, 12:20 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care and Services; 12VAC30-60, Standards Established and Methods Used to Assure High Quality Care;** and **12VAC30-130, Amount, Duration, and Scope of Selected Services.** The purpose of the proposed action is to comply with Item 297 YY of the 2011 Appropriation Act, which implements the requirement to review intensive in-home services and community mental health services to ensure appropriate utilization, cost efficiency, and provider qualifications.

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

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

Public Comment Deadline: September 14, 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. R11-2790; Filed July 18, 2011, 4:53 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending **18VAC110-20, Regulations Governing the Practice of Pharmacy.** The purpose of the proposed action is to specify the elements of a continuous quality improvement program in a pharmacy as mandated by Chapter 124 of the 2011 Acts of Assembly.

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

Statutory Authority: § 54.1-2400 and Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of the Code of Virginia.

Public Comment Deadline: August 31, 2011.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R11-2888; Filed July 7, 2011, 8:37 a.m.

BOARD OF COUNSELING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Counseling intends to consider amending **18VAC115-20, Regulations Governing the Practice of Professional Counseling.** The board conducted a comprehensive review of current regulations governing the practice of professional counseling and determined that it is essential to continue the regulation of licensed professional counselors, but that there are modifications necessary to clarify and update requirements. The board will address the education and experience necessary for clinical licensure by examination or endorsement to provide assurance of minimal competency in clinical counseling. Additionally, the board found some gaps in its standards of practice and grounds for unprofessional conduct that it intends to close with proposed amendments.

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

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

Public Comment Deadline: August 31, 2011.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4488, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

VA.R. Doc. No. R11-2870; Filed June 30, 2011, 11:24 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-601, Supplemental Nutrition Assistance Program.** The purpose of the proposed action is to require local departments of social services' eligibility workers to use all of the income of ineligible immigrants to determine Supplemental Nutrition Assistance Program (SNAP) eligibility of the remaining eligible household members. This action will alter current processes by using the full amount of ineligible immigrants' income instead of a pro rata share of the income. Income will be considered uniformly for all citizen and immigrant households by counting all income available to household members.

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

Statutory Authority: § 63.2-217 Code of Virginia.

Public Comment Deadline: August 31, 2011.

Agency Contact: Celestine Jackson, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7376, FAX (804) 726-7357, TTY (800) 828-1120, or email celestine.jackson@dss.virginia.gov.

VA.R. Doc. No. R11-2893; Filed July 12, 2011, 2:51 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-880, Child Support Enforcement Program.** The purpose of the proposed action is to conduct a comprehensive review of the child support regulation. Statutory and program changes over time require a complete review of all portions of the regulation to reflect current federal and state legislative and program requirements.

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

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

Public Comment Deadline: August 31, 2011.

Agency Contact: Alice Burlinson, Senior Assistant Attorney General, Department of Social Services, 4504 Starkey Road, Suite 103, Roanoke, VA 24018, telephone (540) 776-2779, FAX (540) 776-2797, or email alice.burlinson@dss.virginia.gov.

VA.R. Doc. No. R11-2892; Filed July 12, 2011, 2:49 p.m.

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

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.

Final Regulation

Title of Regulation: **1VAC20-40. Voter Registration (adding 1VAC20-40-80).**

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 the Registrar of Regulations or September 1, 2011, whichever is later.

Agency Contact: Martha Brissette, Policy Analyst, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, FAX (804) 786-0760, or email martha.brissette@sbe.virginia.gov.

Summary:

The regulation provides that absent military and overseas citizens who apply to register to vote or request an absentee ballot by emailing or faxing a signed Federal Post Card Application (FPCA) to the local voting official do not also have to mail the FPCA to the local voting official.

1VAC20-40-80. Application for registration on Federal Post Card Application (FPCA).

An applicant eligible for registration who applies for registration simultaneously with a request for an absentee ballot on a Federal Post Card Application (FPCA) as authorized by § 24.2-703 of the Code of Virginia may apply for registration as well as request an absentee ballot by facsimile transmission or scanned email attachment. An electronically submitted FPCA shall be sufficient to apply for registration and request an absentee ballot if signed and otherwise complete.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access the form. The form is also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (1VAC20-40)

Federal Post Card Application, Standard Form 76A (rev. 10/05).

VA.R. Doc. No. R11-2620; Filed July 7, 2011, 10:32 a.m.

Withdrawal of Final Regulation

Title of Regulation: **1VAC20-70. Absentee Voting (adding 1VAC20-70-20).**

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

Notice is hereby given that the State Board of Elections has WITHDRAWN the final regulation entitled 1VAC20-70, Absentee Voting, which was published in 27:8 VA.R. 733-734 December 20, 2010. This regulation did not become effective, and on July 6, 2011, the board approved proposing for public comment different language for a regulation to replace board policy 2008-006, Substantial Compliance. This regulation details what errors or omissions on Envelope B, required by § 24.2-706 of the Code of Virginia, must render an absentee ballot invalid.

Agency Contact: Justin Riemer, Confidential Policy Advisor, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8904, FAX (804) 786-0760, or email justin.riemer@sbe.virginia.gov.

VA.R. Doc. No. R11-2443; Filed July 12, 2011, 12:24 p.m.

Proposed Regulation

Title of Regulation: **1VAC20-70. Absentee Voting (adding 1VAC20-70-20).**

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

Public Hearing Information: August 16, 2011 - 10 a.m. - State Capitol, House Room 2, Richmond, VA

Public Comment Deadline: August 12, 2011.

Agency Contact: Justin Riemer, Confidential Policy Advisor, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8904, or email justin.riemer@sbe.virginia.gov.

Background: On December 20, 2010 (27:8 VA.R. 733-734), the State Board of Elections published a regulation defining material omissions from absentee ballots with an effective date contingent upon preclearance approval by the U.S. Attorney General. This regulation did not become effective

and a Notice of Withdrawal of that action is published in this issue of the Virginia Register. On July 6, 2011, the board approved proposing for public comment different language for a regulation defining material omissions from absentee ballots to replace board policy 2008-006, Substantial Compliance.

Summary:

This regulation details standards to assist local election officials in determining whether an absentee ballot may be counted by distinguishing what errors or omissions are always material and render the ballot invalid from those that are not material.

1VAC20-70-20. Material omissions from absentee ballots.

A. Pursuant to the requirements of § 24.2-706 of the Code of Virginia, a timely received absentee ballot contained in an Envelope B 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 Envelope B containing such omissions should be rendered invalid if any of the following exists:

1. The voter did not include his full name in any order;

2. The voter did not include a first name;

3. The voter did not include his last name;

4. The voter did not provide his house number, street name or rural route address, city of residence, or zip code;

5. The voter did not sign Envelope B;

6. The voter's witness did not sign Envelope B; or

7. The ballot is not sealed in Envelope B.

C. The ballot should not be rendered invalid if on Envelope B:

1. The voter included his full name in an order other than "last, first, middle";

2. The voter used his middle initial instead of his full middle name;

3. The voter used a derivative of his legal name as a first name (e.g., "Bob" instead of "Robert");

4. The voter did not provide his residential street identifier (Street, Drive, etc.); or

5. The voter omitted the year in the date.

VA.R. Doc. No. R11-2923; Filed July 12, 2011, 2:20 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Final Regulation

Title of Regulation: **4VAC20-430. Pertaining to the Marking and Minimum Mesh Size of Gill Nets (amending 4VAC20-430-60).**

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

Effective Date: January 1, 2012.

Agency Contact: Jane Warren, Agency 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.

Summary:

The amendment removes the provision allowing for the use of small mesh gill nets for the harvest of river herring.

4VAC20-430-60. Minimum mesh size.

A. It shall be unlawful for any person to place, set, or fish any gill net with a stretched mesh of less than 2-7/8 inches, except as provided in ~~subsections~~ subsection C ~~and D~~ of this section.

B. Mesh measurement is defined as the inside stretched distance between two knots on opposite sides of the same mesh.

C. As provided in § 28.2-305 of the Code of Virginia, mullet gill nets less than 200 yards long shall consist of a stretched mesh not less than two inches stretched measure after having been tarred. Any person utilizing a mullet gill net may not take or possess quantities of species other than mullet which comprise more than 15% of their total daily catch, in pounds.

~~D. From February 1 through May 31 it shall be lawful for any person to place, set and fish any drift gill net with a stretched mesh size not less than two inches, only for the harvest of river herring in the areas described in 4VAC20-430-50.~~

VA.R. Doc. No. R11-2894; Filed June 30, 2011, 10:13 a.m.

Final Regulation

Title of Regulation: **4VAC20-1260. Pertaining to River Herring (adding 4VAC20-1260-10 through 4VAC20-1260-40).**

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

Effective Date: January 1, 2012.

Agency Contact: Jane Warren, Agency 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.

Summary:

This regulatory action establishes a moratorium on the possession of any river herring (Alosa aestivalis or Alosa pseudoharengus) in the Commonwealth of the Virginia.

CHAPTER 1260
PERTAINING TO RIVER HERRING

4VAC20-1260-10. Purpose.

The purposes of this chapter are to rebuild the Virginia stocks of river herring and to comply with the requirements of the Interstate Fishery Management Plan for Shad and River Herring.

4VAC20-1260-20. Definition.

The following term when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"River herring" means any fish of the species Alosa aestivalis or Alosa pseudoharengus.

4VAC20-1260-30. Moratorium.

It shall be unlawful for any person to possess any river herring in the Commonwealth of Virginia.

4VAC20-1260-40. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

VA.R. Doc. No. R11-2885; Filed June 30, 2011, 10:17 a.m.

◆

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF JUVENILE JUSTICE

Final Regulation

Title of Regulation: **6VAC35-60. Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs (amending 6VAC35-60-10, 6VAC35-60-40, 6VAC35-60-50, 6VAC35-60-71, 6VAC35-60-170, 6VAC35-60-190, 6VAC35-60-215, 6VAC35-60-225, 6VAC35-60-236, 6VAC35-60-290, 6VAC35-60-320, 6VAC35-60-330, 6VAC35-60-380, 6VAC35-60-415, 6VAC35-60-450, 6VAC35-60-500, 6VAC35-60-575, 6VAC35-60-580, 6VAC35-60-600; repealing 6VAC35-60-180, 6VAC35-60-237).**

Statutory Authority: §§ 66-10 and 66-28 of the Code of Virginia.

Effective Date: October 1, 2011.

Agency Contact: Janet P. Van Cuyk, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre, 700 East Franklin Street, 4th Floor, Richmond, VA 23219, telephone (804) 371-4097, FAX (804) 371-0773, or email janet.vancuyk@djj.virginia.gov.

Summary:

The amendments (i) change the requirement for an Annual Plan to a Biennial Comprehensive Plan to coincide with other planning required by localities; (ii) define and require "annual grant programs update" as provided in the Code of Virginia; (iii) remove the requirement for a full-time director of the Office on Youth; (iv) require a background check if the volunteer or staff will provide services directly to a juvenile on a regular basis and will be alone with the juvenile while performing these duties; and (v) amend the needs assessment to require two of the four components be updated every two years, with all four components updated over a four-year cycle, and the resulting updated information incorporated into the Biennial Comprehensive Plan.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part I
General Provisions

6VAC35-60-10. Definitions.

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

"Alternative day treatment" or "structured day programs" means nonresidential programs that provide services, which

may include counseling, supervision, recreation, and education to referred juveniles at a central facility.

"Annual ~~Plan~~ grant programs update" means a written plan~~, covering a single fiscal year, setting forth measurable goals and objectives for developing, coordinating, and evaluating youth services. The Annual Plan is to be based on an assessment of the community's needs~~ submitted annually to the director of the department by recipients of grant funding requesting renewal of the grant funding and detailing the status of youth services provided in accordance with the Biennial Comprehensive Plan. The annual grant programs update shall include an inventory of youth and parenting related services and programs available in the locality and shall incorporate revisions or modifications of the locality's comprehensive plan as deemed necessary by the youth needs assessment.

"Background check" means steps taken to ascertain whether various records on a person include criminal acts or other circumstances that would be detrimental to juveniles or their families or to the integrity of a program, in addition to a driving record check where applicable to job function.

"Biennial Comprehensive Plan" means a written plan covering two fiscal years and coinciding with the Commonwealth's biennial budget cycle and appropriations plan that sets forth measurable goals and objectives for developing, coordinating, and evaluating youth services. The biennial plan shall be based on an assessment of the community's needs and resources and updated annually, as needed.

"Counseling" means the planned use of interpersonal relationships to promote behavioral change or social adjustment.

"Department" means the Department of Juvenile Justice.

"Direct service programs or services" means programs or services in which Office on Youth staff, assigned Youth Services Citizen Board members, or Office on Youth volunteers, are the primary providers of a service involving ongoing person-to-person contact with youth or families.

"Individual service or contact plan" means a written plan of action developed, updated as needed, and modified at intervals to meet the needs of ~~each~~ a juvenile or adult. It specifies measurable short-term and long-term goals, the ~~methods~~ objectives, strategies, and time frames for reaching the goals, and the individuals responsible for carrying out the plan.

"Local governing body" means a city board, commission, or council or other body by whatever name it may be known, in which the general legislative powers of the city or town are vested or a county board of supervisors.

"Locality" means the city, county, town, or combination thereof served by an Office on Youth.

"Monitoring review" means the written report completed by designated department personnel based on an on-site review of the progress made toward goals and objectives identified in the Office on Youth's ~~Annual~~ Biennial Comprehensive Plan.

"Office on Youth" means the staff and the place of business of the staff of the local entity funded by the authority of the Delinquency Prevention and Youth Development Act (Chapter 3 (§ 66-26 et seq.) of Title 66 of the Code of Virginia).

"Sponsoring locality" means the locality that is the fiscal agent or administrator of the grant.

"Supervision" means visiting or making other contact with or about, or providing treatment, rehabilitation, or services to~~,~~ a juvenile as required by the court, ~~court service unit staff~~ by an intake officer, for parole purposes, or by a designated referral source.

"Time-out" means a systematic behavior management technique designed to reduce or eliminate inappropriate behavior by temporarily removing a juvenile from contact with people or other reinforcing stimuli.

"Volunteer" or "intern" means any individual or group who of their own free will and without any financial gain provides goods or services ~~to the program~~ without compensation.

"Youth needs assessment" means an objective assessment of the community's youth development and delinquency prevention needs and resources.

"Youth Services Citizen Board" means the board appointed by the ~~county or city~~ locality's governing body ~~or combination thereof~~ in accordance with § 66-34 of the Code of Virginia.

Part II
Youth Services Citizen Board

6VAC35-60-40. Terms.

Youth Services Citizen Board members shall be appointed by the local governing body, for a term of no less than three years and not more than five years and may be reappointed; appointments shall be staggered for continuity. At least one Youth Services Citizen Board member shall be below the age of 18 years at the time of appointment. ~~Youth~~ Any members who are below the age of 18 at the time of appointment shall serve one-year terms and may be reappointed as eligible.

6VAC35-60-50. Restrictions.

No title, position, or agency shall be appointed to the Youth Services Citizen Board.

6VAC35-60-71. Youth Services Citizen Board responsibilities.

The responsibilities of the Youth Services Citizen Board shall be delineated in writing in a form approved by the local

governing body. These responsibilities shall include making recommendations, at least annually, to the local governing body regarding the contents of the Biennial Comprehensive Plan and its implementation.

Part III
Office on Youth Administration

Article 1
General Requirements ~~of Direct Service~~ for Programs and Services

6VAC35-60-170. Implementation of strategies.

The Office on Youth shall implement the strategies to accomplish the goals and objectives as established and authorized in the ~~Annual~~ Biennial Comprehensive Plan.

~~Article 2~~
~~Personnel and Operations~~

6VAC35-60-180. ~~Director.~~ (Repealed.)

~~The Office on Youth shall have one paid full-time director.~~

Article 2
Personnel and Operations

6VAC35-60-190. Support services.

The Office on Youth shall have access to clerical and other support services, as needed.

6VAC35-60-215. Staffing requirements.

The Youth Services Citizen Board, if a policy making board, or the city manager or county administrator, with the advice of the Youth Services Citizen Board if an advisory board, shall establish (i) the number of staff; (ii) a written job description for each position; and (iii) the minimum knowledge, skills, and abilities required for each position.

6VAC35-60-225. Staff and volunteer qualifications and training.

A. Staff and volunteers shall be qualified and trained for the positions and duties to which they are assigned.

B. Staff and volunteers who provide professional services shall be appropriately licensed, certified, or qualified, as required by law.

6VAC35-60-236. ~~Volunteer background check~~ Background checks.

[~~Where available, Offices on Youth shall follow the sponsoring locality's policies and procedures to secure background checks for volunteers and staff. In the absence of such local policies, Offices on Youth shall develop a policy to ascertain, for all volunteers and staff who provide one-on-one services directly to youth outside a group setting a juvenile on a regular basis and will be alone with the juvenile in the performance of their duties, whether there are criminal acts or other circumstances that would be detrimental to the safety of the youth or families with whom they come in contact.~~ A. Except as provided in subsection B, all persons who (i) accept a position of employment at an Office on Youth, (ii) volunteer on a regular basis and will be alone with a juvenile in the performance of their duties, or (iii) provide contractual services directly to a juvenile on a regular basis and will be alone with a juvenile in the performance of their duties shall undergo the following background checks to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of juveniles:

1. A reference check;

2. A criminal history check;

3. A fingerprint check with the Virginia State Police and Federal Bureau of Investigation (FBI);

4. A central registry check with Child Protective Services; and

5. A driving record check if applicable to the individual's job duties.

B. To minimize vacancy time when the fingerprint checks required by subdivision A 3 of this section have been requested, employees may be hired, pending the results of the fingerprint checks, provided:

1. All of the other applicable components of subsection A of this section have been completed;

2. The applicant is given written notice that continued employment is contingent on the fingerprint check results as required by subdivision A 3 of this section; and

3. Employees hired under this exception shall not be allowed to be alone with juveniles and may work with juveniles only when under the direct supervision of staff whose background checks have been completed until such time as all background checks are completed.

C. Documentation of compliance with this section shall be retained in the individual's personnel record.

D. Written procedures shall provide for the supervision of nonemployee persons who are not subject to the provisions of subsection A of this section and who have contact with juveniles.]

6VAC35-60-237. ~~Employee background check.~~ (Repealed.)

~~Offices on Youth shall follow the sponsoring locality's policies and procedures in securing background checks for full-time Office on Youth staff. In the absence of such sponsoring locality's policy covering background checks for employees, the Office on Youth shall develop a policy to ascertain whether there are any criminal acts or other circumstances that would be detrimental to the safety of the youth or families with whom they come in contact or that would compromise the integrity of the program.~~

Article 3
Staff Training and Development

6VAC35-60-290. Training program.

A program of training with defined objectives relating to the job description ~~and the Annual Plan~~ shall be written biennially with the Biennial Comprehensive Plan and shall be updated annually, as needed, for each full-time position established for the Office on Youth.

Article 4
Fiscal Management

6VAC35-60-320. Budget review.

The Youth Services Citizen Board shall review and comment on the proposed ~~annual~~ operating budget of the Office on Youth.

6VAC35-60-330. Budget submission.

The sponsoring locality shall submit ~~annually~~ every two years, in accordance with the state's biennial budget process, to the ~~Department of Juvenile Justice~~ department the approved operating budget for the Office on Youth showing appropriated revenue and projected expenses for the coming year.

6VAC35-60-380. Purchasing procedures.

The sponsoring locality's purchasing policies and procedures shall govern purchasing of supplies, materials, equipment, and services.

6VAC35-60-415. Evaluation.

The Office on Youth shall provide for an evaluation of program effectiveness in the ~~Annual~~ Biennial Comprehensive Plan.

Part IV
Programs and Services

6VAC35-60-450. Needs assessment contents.

The ~~assessment of the community's youth development and delinquency prevention needs and resources~~ youth needs assessment shall include but not be limited to:

1. A detailed compilation of the problems, needs, opportunities, and conditions of youth in the community that is based on:

a. Youth-service agencies' opinions;

b. An analysis of public opinion;

c. An analysis of youth attitudes and behaviors; and

d. An analysis of available current archival data.

At least ~~one~~ two of the above components shall be updated ~~each year~~, at a minimum, every two years with the resulting updated information being incorporated into the ~~Annual~~ Biennial Comprehensive Plan. All four components shall be updated over a four-year cycle.

2. A comprehensive inventory of current programs and resources affecting youth, including:

a. Identifying information;

b. Program descriptions;

c. Clientele served; and

d. Fee requirements.

6VAC35-60-500. Annual reports.

Annually, the Youth Services Citizen Board shall submit ~~a written report~~ the annual grant programs update to the local governing body and send copies to the designated personnel at the ~~Virginia Department of Juvenile Justice~~ department regarding progress toward meeting the goals and objectives identified in the ~~Annual~~ Biennial Comprehensive Plan.

Part V
Standards for Direct Service Programs

~~Article 3~~
~~General Requirements of Direct Service Programs and Services~~

6VAC35-60-575. Applicability of nonresidential standards.

Direct service programs operated by Offices on Youth shall comply with the following Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts, as applicable to the direct service program:

6VAC35-150-450 (limitation of contact with juveniles);

6VAC35-150-460 ~~(qualifications of program personnel)~~ (personnel qualifications);

6VAC35-150-470 (medical emergencies) ~~affecting youth in a program)~~;

6VAC35-150-490 (juveniles' rights);

6VAC35-150-500 (juvenile participation in research);

6VAC35-150-510 (case management requirements);

6VAC35-150-520 (confidentiality of records);

6VAC35-150-530 ~~(documentation~~ (incident documentation and reporting) ~~of certain incidents)~~;

6VAC35-150-540 ~~(reporting of suspected~~ (child abuse and neglect);

6VAC35-150-550 (physical setting ~~in which the program is conducted)~~);

6VAC35-150-560 (individual service or contact plan);

6VAC35-150-580 (emergencies and safety in juveniles' homes);

6VAC35-150-620 (supervision of juveniles in alternative day treatment and structured day programs);

6VAC35-150-630 (meals in alternative day treatment ~~program)~~ and structured day programs);

6VAC35-150-640 (fire safety);

6VAC35-150-650 (first-aid kits in alternative day programs);

6VAC35-150-660 (delivery of medication);

6VAC35-150-680 (physical and mechanical restraint); and

6VAC35-150-690 ~~(uses of~~ (procedural requirements for time-out).

6VAC35-60-580. Documented need required.

The need for the Office on Youth to operate a direct service program shall be documented and ~~be~~ included in the ~~Annual~~ Biennial Comprehensive Plan. If there is a documented need for the Office on Youth to operate a direct service program, the ~~Annual~~ Biennial Comprehensive Plan shall specify the description of services to be provided including target populations and an evaluation plan.

The department shall be notified in writing of any plan to change a direct service program or service included in an Office on Youth's ~~Annual~~ Biennial Comprehensive Plan.

6VAC35-60-600. Records management.

If an Office on Youth provides direct services, written policy and procedure shall, at a minimum, ensure that:

1. Juveniles' records are kept confidential; and

2. Records are destroyed as prescribed in regulations issued by the Virginia ~~State~~ Library Board~~; and~~

~~3. All services are provided by individuals who are appropriately licensed or certified (when appropriate to the level of service delivered), or are otherwise qualified to provide the service~~.

VA.R. Doc. No. R08-1228; Filed June 30, 2011, 1:51 p.m.

◆ ◆

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

REGISTRAR'S NOTICE: The State Board of Education is claiming 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 where no agency discretion is involved. The State Board of Education will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **8VAC20-131. Regulations Establishing Standards for Accrediting Public Schools in Virginia (amending 8VAC20-131-50, 8VAC20-131-60, 8VAC20-131-100, 8VAC20-131-110, 8VAC20-131-140, 8VAC20-131-240, 8VAC20-131-270, 8VAC20-131-280, 8VAC20-131-300, 8VAC20-131-325, 8VAC20-131-360).**

Statutory Authority: §§ 22-19 and 22.1-253.13:3 of the Code of Virginia.

Effective Date: August 31, 2011.

Agency Contact: Anne Wescott, Assistant Superintendent, Policy and Communications, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2403, FAX (804) 225-2524, or email anne.wescott@doe.virginia.gov.

Summary:

The amendments conform the regulations to legislation enacted in the 2010 and 2011 Sessions of the General Assembly by:

1. Delaying the effective date of (i) the establishment of two technical diplomas and an academic and career plan, and (ii) increases in accreditation benchmarks (Chapter 391 of the 2011 Acts of Assembly (House Bill 1554)).

2. Changing the credit requirements for the Advanced Studies Diploma and the Standard Diploma beginning in the 2011-2012 school year, to include, among other changes, a graduation requirement related to economics and personal finance (Chapter 391 of the 2011 Acts of Assembly (House Bill 1554)).

3. Providing that students who earn a Modified Standard Diploma could be eligible to receive the Virginia Board of Education's Seal for Excellence in Civics Education (Chapter 209 of the 2011 Acts of Assembly (House Bill 1793)).

4. Permitting the Virginia Board of Education to approve alternative accreditation plans for any public school (Chapter 666 of the 2011 Acts of Assembly (House Bill 2494)).

5. Recognizing achievement in science, technology, engineering, and mathematics (STEM) by permitting school divisions to be rewarded for increases in enrollments and elective course offerings in STEM (Chapter 119 of the 2011 Acts of Assembly (House Bill 2172)).

6. Requiring that local school boards report annually to the Virginia Board of Education the number of board-approved Virginia workplace readiness skills

assessments and national occupational competency assessments passed, in addition to the current related reporting requirements of the number of approved industry certifications obtained, state licensure examinations passed, and career and technical education completers who graduated (Chapter 89 of the 2010 Acts of Assembly (House Bill 566)).

8VAC20-131-50. Requirements for graduation.

A. The requirements for a student to earn a diploma and graduate from a Virginia high school shall be those in effect when that student enters the ninth grade for the first time. Students shall be awarded a diploma upon graduation from a Virginia high school.

When students below the ninth grade successfully complete courses offered for credit in grades 9 through 12, credit shall be counted toward meeting the standard units required for graduation provided the courses are equivalent in content and academic rigor as those courses offered at the secondary level. To earn a verified unit of credit for these courses, students must meet the requirements of 8VAC20-131-110.

The following requirements shall be the only requirements for a diploma, unless a local school board has prescribed additional requirements that have been approved by the Board of Education. All additional requirements prescribed by local school boards that have been approved by the Board of Education remain in effect until such time as the local school board submits a request to the board to amend or discontinue them.

B. Requirements for a Standard Diploma.

1. Beginning with the ninth-grade class of ~~2010-2011~~ 2011-2012 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2. Credits required for graduation with a Standard Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics[1]	3	1
Laboratory Science[2,6]	3	1
History and Social Sciences[3,6]	3	1
Health and Physical Education	2	
Foreign Language, Fine Arts or Career and Technical Education [7]	2	
Economics and Personal Finance	1	
Electives[4]	4	
Student Selected Test[5]		1
Total	22	6

[1]Courses completed to satisfy this requirement shall include at least two different course selections from among: Algebra I, Geometry, Algebra, Functions, and Data Analysis, Algebra II, or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement.

[2]Courses completed to satisfy this requirement shall include course selections from at least two different science disciplines: earth sciences, biology, chemistry, or physics, or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve courses to satisfy this requirement.

[3]Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and one course in either world history or geography or both. The board shall approve courses to satisfy this requirement.

[4]Courses to satisfy this requirement shall include at least two sequential electives as required by the Standards of Quality.

[5]A student may utilize additional tests for earning verified credit in computer science, technology, career and technical education, economics or other areas as prescribed by the board in 8VAC20-131-110.

[6]Students who complete a career and technical education program sequence and pass an examination or occupational competency assessment in a career and technical education field that confers certification or an occupational competency credential from a recognized industry, or trade or professional association, or acquires a professional license in a career and technical education field from the Commonwealth of Virginia may substitute the certification, competency credential, or license for (i) the student-selected verified credit and (ii) either a science or history and social science verified credit when the certification, license, or credential confers more than one verified credit. The examination or occupational competency assessment must be

approved by the Board of Education as an additional test to verify student achievement.

[7]Pursuant to § 22.1-253.13:4 of the Code of Virginia, credits earned for this requirement shall include one credit in fine or performing arts or career and technical education.

Students completing the requirements for the Standard Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection K of this section.

C. Requirements for a Standard Technical Diploma.

1. Beginning with the ninth-grade class of ~~2010-2011~~ 2012-2013 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2. Credits required for graduation with a Standard Technical Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics[1]	3	1
Laboratory Science[2,5]	3	1
History and Social Sciences[3,5]	3	1
Health and Physical Education	2	
Fine Arts or Foreign Language	1	
Economics and Personal Finance	1	
Career and Technical Education[4]	4	
Electives	1	
Student Selected[6]		1
Total	22	6

[1]Courses completed to satisfy this requirement shall include at least three different course selections from among: Algebra I, Geometry, Algebra Functions and Data Analysis, or Algebra II or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement.

[2]Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics, or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve courses to satisfy this requirement.

[3]Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and one course in either world history or geography or both. The board shall approve courses to satisfy this requirement.

[4]Courses completed to satisfy this requirement must include a career concentration as approved by the board. If a career concentration includes a specific assessment approved by the board and the student is eligible to take the assessment, then the student must take this assessment.

[5]Students who complete a career and technical education program sequence and pass an examination or occupational competency assessment in a career and technical education field that confers certification or an occupational competency credential from a recognized industry or trade or professional association or acquires a professional license in a career and technical education field from the Commonwealth of Virginia may substitute the certification competency credential or license for (i) the student selected verified credit and (ii) either a science or history and social science verified credit when the certification license or credential confers more than one verified credit. The examination or occupational competency assessment must be approved by the board as an additional test to verify student achievement.

[6]A student may utilize additional tests for earning verified credit in computer science, technology, career and technical education, economics or other areas as prescribed by the board in 8VAC20-131-110.

Students completing the requirements for the Standard Technical Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection K of this section.

D. Requirements for an Advanced Studies Diploma. Any student who meets the requirements for both the Advanced Studies and the Advanced Technical diploma may choose between these two diplomas.)

1. Beginning with the ninth-grade class of ~~2010-2011~~ 2011-2012 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2. Credits required for graduation with an Advanced Studies Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics[1]	4	2
Laboratory Science[2]	4	2
History and Social Sciences[3]	4	2
Foreign Language[4]	3	
Health and Physical Education	2	
Fine Arts or Career and Technical Education	1	
Economics and Personal Finance	1	
Electives	3	
Student Selected Test[5]		1
Total	26	9

[1]Courses completed to satisfy this requirement shall include at least three different course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement.

[2]Courses completed to satisfy this requirement shall include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve additional courses to satisfy this requirement.

[3]Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and two courses in either world history or geography or both. The board shall approve additional courses to satisfy this requirement.

[4]Courses completed to satisfy this requirement shall include three years of one language or two years of two languages.

[5]A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education, economics or other areas as prescribed by the board in 8VAC20-131-110.

Students completing the requirements for the Advanced Studies Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection K of this section.

E. Requirements for an Advanced Technical Diploma. Any student who meets the requirements for both the Advanced Studies and the Advanced Technical diploma may choose between these two diplomas.

1. Beginning with the ninth-grade class of ~~2010-2011~~ 2012-2013 and beyond, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

2. Credits required for graduation with an Advanced Technical Diploma.

Discipline Area	Standard Units of Credit Required	Verified Credits Required
English	4	2
Mathematics[1]	4	2
Laboratory Science[2]	4	2
History and Social Sciences[3]	4	2
Foreign Language[4]	3	
Health and Physical Education	2	
Economics and Personal Finance	1	
Fine Arts or Career and Technical Education	1	
Career and Technical Education[5]	3	
Student Selected Test[6]		1
Total	26	9

[1]Courses completed to satisfy this requirement shall include at least three different course selections from among: Algebra I, Geometry, Algebra II, or other mathematics courses above the level of Algebra II. The board shall approve courses to satisfy this requirement.

[2]Courses completed to satisfy this requirement shall

include course selections from at least three different science disciplines from among: earth sciences, biology, chemistry, or physics or completion of the sequence of science courses required for the International Baccalaureate Diploma. The board shall approve courses to satisfy this requirement.

[3]Courses completed to satisfy this requirement shall include U.S. and Virginia History, U.S. and Virginia Government, and two courses in either world history or geography or both. The board shall approve courses to satisfy this requirement.

[4]Courses completed to satisfy this requirement shall include three years of one language or two years of two languages.

[5]Courses completed to satisfy this requirement must include a career concentration as approved by the board. If a career concentration includes a specific assessment approved by the board, and the student is eligible to take the assessment, then the student must take this assessment.

[6]A student may utilize additional tests for earning verified credit in computer science, technology, career or technical education, economics, or other areas as prescribed by the board in 8VAC20-131-110.

Students completing the requirements for the Advanced Technical Diploma may be eligible to receive an honor deemed appropriate by the local school board as described in subsection K of this section.

F. Requirements for the Modified Standard Diploma.

1. Every student shall be expected to pursue a Standard Diploma, Standard Technical Diploma, Advanced Studies Diploma, or Advanced Technical Diploma. The Modified Standard Diploma program is intended for certain students at the secondary level who have a disability and are unlikely to meet the credit requirements for a Standard Diploma. Eligibility and participation in the Modified Standard Diploma program shall be determined by the student's Individualized Education Program (IEP) team including the student, where appropriate, at any point after the student's eighth grade year.

2. The school must secure the informed written consent of the parent/guardian and the student to choose this diploma program after review of the student's academic history and the full disclosure of the student's options.

3. The student who has chosen to pursue a Modified Standard Diploma shall also be allowed to pursue the Standard Diploma, Standard Technical Diploma, Advanced Studies Diploma, or Advanced Technical Diploma at any time throughout that student's high school career, and the student must not be excluded from courses and tests required to earn ~~a Standard or Advanced Studies Diploma~~ these diplomas.

4. Students pursuing the Modified Standard Diploma shall pass literacy and numeracy competency assessments prescribed by the board.

5. Credits required for graduation with a Modified Standard Diploma.

Discipline Area	Standard Units of Credit Required
English	4
Mathematics[1]	3
Science[2]	2
History and Social Sciences[3]	2
Health and Physical Education	2
Fine Arts or Career and Technical Education	1
Electives[4]	6
Total	20

[1]Courses completed to satisfy this requirement shall include content from among applications of algebra, geometry, personal finance, and probability and statistics in courses that have been approved by the board.

[2]Courses completed shall include content from at least two of the following: applications of earth science, biology, chemistry, or physics in courses approved by the board.

[3]Courses completed to satisfy this requirement shall include one unit of credit in U.S. and Virginia History and one unit of credit in U.S. and Virginia Government in courses approved by the board.

[4]Courses to satisfy this requirement shall include at least two sequential electives in the same manner required for the Standard Diploma.

6. The student must meet any additional criteria established by the Board of Education.

G. In accordance with the requirements of the Standards of Quality, students with disabilities who complete the requirements of their Individualized Education Program (IEP) and do not meet the requirements for other diplomas shall be awarded Special Diplomas.

H. In accordance with the requirements of the Standards of Quality, students who complete prescribed programs of

studies defined by the local school board but do not qualify for Standard, Standard Technical, Advanced Studies, Advanced Technical, Modified Standard, Special, or General Achievement diplomas shall be awarded Certificates of Program Completion. The requirements for Certificates of Program Completion are developed by local school boards in accordance with the Standards of Quality. Students receiving a general achievement diploma shall comply with 8VAC20-680, Regulations Governing the General Achievement Diploma.

I. In accordance with the provisions of the compulsory attendance law and 8VAC20-360, Regulations Governing General Educational Development Certificates, students who do not qualify for diplomas may earn a high school equivalency credential.

J. At a student's request, the local school board shall communicate or otherwise make known to institutions of higher education, potential employers, or other applicable third parties, in a manner that the local school board deems appropriate, that a student has attained the state's academic expectations by earning a Virginia diploma and that the value of such a diploma is not affected in any way by the accreditation status of the student's school.

K. Awards for exemplary student performance. Students who demonstrate academic excellence and/or outstanding achievement may be eligible for one or more of the following awards:

1. Students who complete the requirements for an Advanced Studies Diploma or Advanced Technical Diploma with an average grade of "B" or better, and successfully complete college-level coursework that will earn the student at least nine transferable college credits in Advanced Placement (AP), International Baccalaureate (IB), Cambridge, or dual enrollment courses shall receive the Governor's Seal on the diploma.

2. Students who complete the requirements for a Standard Diploma, Standard Technical Diploma, Advanced Studies Diploma or Advanced Technical Diploma with an average grade of "A" shall receive a Board of Education Seal on the diploma.

3. The Board of Education's Career and Technical Education Seal will be awarded to students who earn a Standard Diploma, Standard Technical Diploma, Advanced Studies Diploma or Advanced Technical Diploma and complete a prescribed sequence of courses in a career and technical education concentration or specialization that they choose and maintain a "B" or better average in those courses; or (i) pass an examination or an occupational competency assessment in a career and technical education concentration or specialization that confers certification or occupational competency credential from a recognized industry, trade or professional association or (ii) acquire a professional license in that career and technical education field from the Commonwealth of Virginia. The Board of Education shall approve all professional licenses and examinations used to satisfy these requirements.

4. The Board of Education's Seal of Advanced Mathematics and Technology will be awarded to students who earn either a Standard Diploma, Standard Technical Diploma, Advanced Studies Diploma or Advanced Technical Diploma and (i) satisfy all of the mathematics requirements for the Advanced Studies Diploma or Advanced Technical Diploma (four units of credit including Algebra II; two verified units of credit) with a "B" average or better; and (ii) either (a) pass an examination in a career and technical education field that confers certification from a recognized industry, or trade or professional association; (b) acquire a professional license in a career and technical education field from the Commonwealth of Virginia; or (c) pass an examination approved by the board that confers college-level credit in a technology or computer science area. The Board of Education shall approve all professional licenses and examinations used to satisfy these requirements.

5. The Board of Education's Seal for Excellence in Civics Education will be awarded to students who earn either a Modified Standard Diploma, Standard Diploma, Standard Technical Diploma, Advanced Studies Diploma, or Advanced Technical Diploma and (i) complete Virginia and United States History and Virginia and United States Government courses with a grade of "B" or higher; (ii) have good attendance and no disciplinary infractions as determined by local school board policies; and (iii) complete 50 hours of voluntary participation in community service or extracurricular activities. Activities that would satisfy the requirements of clause (iii) of this subdivision include: (a) volunteering for a charitable or religious organization that provides services to the poor, sick or less fortunate; (b) participating in Boy Scouts, Girl Scouts, or similar youth organizations; (c) participating in JROTC; (d) participating in political campaigns or government internships, or Boys State, Girls State, or Model General Assembly; or (e) participating in school-sponsored extracurricular activities that have a civics focus. Any student who enlists in the United States military prior to graduation will be deemed to have met this community service requirement.

6. Students may receive other seals or awards for exceptional academic, career and technical, citizenship, or other exemplary performance in accordance with criteria defined by the local school board.

L. Students completing graduation requirements in a summer school program shall be eligible for a diploma. The last school attended by the student during the regular session

shall award the diploma unless otherwise agreed upon by the principals of the two schools.

M. Students who complete Advanced Placement courses, college-level courses, or courses required for an International Baccalaureate Diploma shall be deemed to have completed the requirements for graduation under these standards provided they have earned the standard units of credit and earned verified units of credit in accordance with the requirements of subsections B and C of this section.

N. Students shall be counseled annually regarding the opportunities for using additional tests for earning verified credits as provided in accordance with the provisions of 8VAC20-131-110, and the consequences of failing to fulfill the obligations to complete the requirements for verified units of credit.

8VAC20-131-60. Transfer students.

A. The provisions of this section pertain generally to students who transfer into Virginia high schools. Students transferring in grades K-8 from Virginia public schools or nonpublic schools accredited by one of the approved accrediting constituent members of the Virginia Council for Private Education shall be given recognition for all grade-level work completed. The academic record of students transferring from all other schools shall be evaluated to determine appropriate grade placement in accordance with policies adopted by the local school board. The State Testing Identifier (STI) for students who transfer into a Virginia public school from another Virginia public school shall be retained by the receiving school.

B. For the purposes of this section, the term "beginning" means within the first 20 hours of instruction per course. The term "during" means after the first 20 hours of instruction per course.

C. Standard or verified units of credit earned by a student in a Virginia public school shall be transferable without limitation regardless of the accreditation status of the Virginia public school in which the credits were earned. Virginia public schools shall accept standard and verified units of credit from other Virginia public schools, Virginia's virtual learning program, Virtual Virginia, and state-operated programs. Standard units of credit also shall be accepted for courses satisfactorily completed in accredited colleges and universities when prior written approval of the principal has been granted or the student has been given credit by the previous school attended.

D. A secondary school shall accept credits toward graduation received from Virginia nonpublic schools accredited by one of the approved accrediting constituent members of the Virginia Council for Private Education (VCPE). The Board of Education will maintain contact with the VCPE and may periodically review its accrediting procedures and policies as part of its policies under this section.

Nothing in these standards shall prohibit a public school from accepting standard units of credit toward graduation awarded to students who transfer from all other schools when the courses for which the student receives credit generally match the description of or can be substituted for courses for which the receiving school gives standard credit, and the school from which the child transfers certifies that the courses for which credit is given meet the requirements of 8VAC20-131-110 A.

Students transferring into a Virginia public school shall be required to meet the requirements prescribed in 8VAC20-131-50 to receive a Standard, Standard Technical, Advanced Studies, Advanced Technical or Modified Standard Diploma, except as provided by subsection G of this section. To receive a Special Diploma or Certificate of Program Completion, a student must meet the requirements prescribed by the Standards of Quality.

E. The academic record of a student transferring from other Virginia public schools shall be sent directly to the school receiving the student upon request of the receiving school in accordance with the provisions of the 8VAC20-150, Management of the Student's Scholastic Record in the Public Schools of Virginia. The State Testing Identifier (STI) for students who transfer into a Virginia public school from another Virginia public school shall be retained by the receiving school.

F. The academic record of a student transferring into Virginia public schools from other than a Virginia public school shall be evaluated to determine the number of standard units of credit that have been earned, including credit from schools outside the United States, and the number of verified units of credit needed to graduate in accordance with subsection G of this section. Standard units of credit also shall be accepted for courses satisfactorily completed in accredited colleges and universities when the student has been given credit by the previous school attended.

Students transferring above the tenth grade from schools or other education programs that do not require or give credit for health and physical education shall not be required to take these courses to meet graduation requirements.

G. Students entering a Virginia public high school for the first time after the tenth grade shall earn as many credits as possible toward the graduation requirements prescribed in 8VAC20-131-50. However, schools may substitute courses required in other states in the same content area if the student is unable to meet the specific content requirements of 8VAC20-131-50 without taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when he otherwise would have graduated. In any event, no such student shall earn fewer than

the following number of verified units, nor shall such students be required to take SOL tests or additional tests as defined in 8VAC20-131-110 for verified units of credit in courses previously completed at another school or program of study, unless necessary to meet the requirements listed in subdivisions 1 and 2 of this subsection:

1. For a Standard Diploma or Standard Technical Diploma:

a. Students entering a Virginia high school for the first time during the ninth grade or at the beginning of the tenth grade shall earn credit as prescribed in 8VAC20-131-50;

b. Students entering a Virginia high school for the first time during the tenth grade or at the beginning of the eleventh grade shall earn a minimum of four verified units of credit: one each in English, mathematics, history, and science. Students who complete a career and technical education program sequence may substitute a certificate, occupational competency credential or license for either a science or history and social science verified credit pursuant to 8VAC20-131-50; and

c. Students entering a Virginia high school for the first time during the eleventh grade or at the beginning of the twelfth grade shall earn a minimum of two verified units of credit: one in English and one of the student's own choosing.

2. For an Advanced Studies Diploma or Advanced Technical Diploma:

a. Students entering a Virginia high school for the first time during the ninth grade or at the beginning of the tenth grade shall earn credit as prescribed in 8VAC20-131-50;

b. Students entering a Virginia high school for the first time during the tenth grade or at the beginning of the eleventh grade shall earn a minimum of six verified units of credit: two in English and one each in mathematics, history, and science and one of the student's own choosing; and

c. Students entering a Virginia high school for the first time during the eleventh grade or at the beginning of the twelfth grade shall earn a minimum of four verified units of credit: one in English and three of the student's own choosing.

H. Students entering a Virginia high school for the first time after the first semester of their eleventh grade year must meet the requirements of subdivision G 1 c or G 2 c of this section. Students transferring after 20 instructional hours per course of their senior or twelfth grade year shall be given every opportunity to earn a Standard, Standard Technical, Advanced Studies, Advanced Technical, or Modified Standard Diploma. If it is not possible for the student to meet the requirements for a diploma, arrangements should be made for the student's previous school to award the diploma. If these arrangements cannot be made, a waiver of the verified unit of credit requirements may be available to the student. The Department of Education may grant such waivers upon request by the local school board in accordance with guidelines prescribed by the Board of Education.

I. Any local school division receiving approval to increase its course credit requirements for a diploma may not deny either the Standard, Standard Technical, Advanced Studies, Advanced Technical, or Modified Standard Diploma to any transfer student who has otherwise met the requirements contained in these standards if the transfer student can only meet the division's additional requirements by taking a heavier than normal course load in any semester, by taking summer school, or by taking courses after the time when he otherwise would have graduated.

J. The transcript of a student who graduates or transfers from a Virginia secondary school shall conform to the requirements of 8VAC20-160, Regulations Governing Secondary School Transcripts.

K. The accreditation status of a high school shall not be included on the student transcript provided to colleges, universities, or employers. The board expressly states that any student who has met the graduation requirements established in 8VAC20-131-50 and has received a Virginia diploma holds a diploma that should be recognized as equal to any other Virginia diploma of the same type, regardless of the accreditation status of the student's high school. It is the express policy of the board that no student shall be affected by the accreditation status of the student's school. The board shall take appropriate action, from time to time, to ensure that no student is affected by the accreditation status of the student's school.

8VAC20-131-100. Instructional program in secondary schools.

A. The secondary school shall provide each student a program of instruction in the academic areas of English, mathematics, science, and history/social science that enables each student to meet the graduation requirements described in 8VAC20-131-50 and shall offer opportunities for students to pursue a program of studies in foreign languages, fine arts, and career and technical areas including:

1. Career and technical education choices that prepare the student as a career and technical education program completer in one of three or more occupational areas and that prepare the student for technical or preprofessional postsecondary programs;

2. Coursework and experiences that prepare the student for college-level studies including access to at least three Advanced Placement (AP) courses, college-level courses for degree credit, International Baccalaureate (IB) courses, Cambridge courses, or any combination thereof;

3. Preparation for college admissions tests; and

4. Opportunities to study and explore the fine arts and foreign languages.

B. Minimum course offerings for each secondary school shall provide opportunities for students to meet the graduation requirements stated in 8VAC20-131-50 and must include:

English	4
Mathematics	4
Science (Laboratory)	4
History and Social Sciences	4
Foreign Language	3
Electives	~~3~~ 4
Career and Technical Education	11
Fine Arts	2
Health and Physical Education	2
Economics and Personal Finance	1
Total Units	~~38~~ 39

C. Classroom driver education may count for 36 class periods of health education. Students shall not be removed from classes other than health and physical education for the in-car phase of driver education.

D. Each school shall ensure that students who are unable to read with comprehension the materials used for instruction receive additional instruction in reading, which may include summer school.

8VAC20-131-110. Standard and verified units of credit.

A. The standard unit of credit for graduation shall be based on a minimum of 140 clock hours of instruction and successful completion of the requirements of the course. When credit is awarded in less than whole units, the increment awarded must be no greater than the fractional part of the 140 hours of instruction provided. If a school division elects to award credit on a basis other than the 140 clock hours of instruction required for a standard unit of credit defined in this subsection, the local school division shall develop a written policy approved by the superintendent and school board which ensures:

1. That the content of the course for which credit is awarded is comparable to 140 clock hours of instruction; and

2. That upon completion, the student will have met the aims and objectives of the course.

B. A verified unit of credit for graduation shall be based on a minimum of 140 clock hours of instruction, successful completion of the requirements of the course, and the achievement by the student of a passing score on the end-of-course SOL test for that course or additional tests as described in this subsection. A student may also earn a verified unit of credit by the following methods:

1. In accordance with the provisions of the Standards of Quality, students may earn a standard and verified unit of credit for any elective course in which the core academic SOL course content has been integrated and the student passes the related end-of-course SOL test. Such course and test combinations must be approved by the Board of Education.

2. Upon the recommendation of the division superintendent and demonstration of mastery of course content and objectives, qualified students may receive a standard unit of credit and be permitted to sit for the relevant SOL test to earn a verified credit without having to meet the 140-clock-hour requirement.

3. ~~Beginning with the ninth grade class of 2003-2004 and beyond students~~ Students who do not pass Standards of Learning tests in science or history and social science may receive locally awarded verified credits from the local school board in accordance with criteria established in guidelines adopted by the Board of Education.

C. The Board of Education may from time to time approve additional tests for the purpose of awarding verified credit. Such additional tests, which enable students to earn verified units of credit, must, at a minimum, meet the following criteria:

1. The test must be standardized and graded independently of the school or school division in which the test is given;

2. The test must be knowledge based;

3. The test must be administered on a multistate or international basis, or administered as part of another state's accountability assessment program; and

4. To be counted in a specific academic area, the test must measure content that incorporates or exceeds the SOL content in the course for which verified credit is given.

The Board of Education will set the score that must be achieved to earn a verified unit of credit on the additional test options.

D. With such funds as are appropriated by the General Assembly, the Board of Education will provide opportunities for students who meet criteria adopted by the board to have an expedited retake of a SOL test to earn verified credit or to meet literacy and numeracy requirements for the Modified Standard Diploma.

8VAC20-131-140. College and career preparation programs and opportunities for postsecondary credit.

Each middle and secondary school shall provide for the early identification and enrollment of students in a college preparation program with a range of educational and academic experiences in and outside the classroom, including an emphasis on experiences that will motivate disadvantaged and minority students to attend college.

Beginning in the middle school years, students shall be counseled on opportunities for beginning postsecondary education and opportunities for obtaining industry certifications, occupational competency credentials, or professional licenses in a career and technical education field prior to high school graduation. Such opportunities shall include access to at least three Advanced Placement courses or three college-level courses for degree credit pursuant to 8VAC20-131-100. Students taking advantage of such opportunities shall not be denied participation in school activities for which they are otherwise eligible. Wherever possible, students shall be encouraged and afforded opportunities to take college courses simultaneously for high school graduation and college degree credit (dual enrollment), under the following conditions:

1. Written approval of the high school principal prior to participation in dual enrollment must be obtained;

2. The college must accept the student for admission to the course or courses; and

3. The course or courses must be given by the college for degree credits (no remedial courses will be accepted).

Schools that comply with this standard shall not be penalized in receiving state appropriations.

Beginning with the ~~2010-2011~~ 2012-2013 academic year, all schools shall begin development of a personal Academic and Career Plan for each seventh-grade student with completion by the fall of the student's eighth-grade year. Students who transfer from other than a Virginia public school into the eighth grade shall have the Plan developed as soon as practicable following enrollment. Beginning with the ~~2011-2012~~ 2013-2014 academic year, students who transfer into a Virginia public school after their eighth-grade year shall have an Academic and Career Plan developed upon enrollment. The components of the Plan shall include, but not be limited to, the student's program of study for high school graduation and a postsecondary career pathway based on the student's academic and career interests. The Academic and Career Plan shall be developed in accordance with guidelines established by the Board of Education and signed by the student, student's parent or guardian, and school official(s) designated by the principal. The Plan shall be included in the student's record and shall be reviewed and updated, if necessary, before the student enters the ninth and eleventh grades. The school shall have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the Plan. Any personal academic and career plans prescribed by local school boards for students in grades 7 through 12 and in effect as of June 30, 2009, are approved to continue without further action by the board.

8VAC20-131-240. Administrative and support staff; staffing requirements.

A. Each school shall have at a minimum the staff as specified in the Standards of Quality with proper licenses and endorsements for the positions they hold.

B. The principal of each middle and secondary school shall be employed on a 12-month basis.

C. Each secondary school with 350 or more students and each middle school with 400 or more students shall employ at least one member of the guidance staff for 11 months. Guidance counseling shall be provided for students to ensure that a program of studies contributing to the student's academic achievement and meeting the graduation requirements specified in 8VAC20-131-50 is being followed.

D. The counseling program for elementary, middle, and secondary schools shall provide a minimum of 60% of the time for each member of the guidance staff devoted to counseling of students.

E. The middle school classroom teacher's standard load shall be based on teaching no more than 5/6 of the instructional day with no more than 150 student periods per day or 30 class periods per week. ~~Beginning with the academic year 2008-2009, a~~ A middle school classroom teacher's standard load shall be based on teaching no more than 5/6 of the instructional day with no more than 150 student periods per day or 25 class periods per week.

F. The secondary classroom teacher's standard load shall be based on teaching no more than 5/6 of the instructional day with no more than 150 student periods per day or 25 class periods per week. Teachers of block programs that encompass more than one class period with no more than 120 student periods per day may teach 30 class periods per week. Teachers who teach very small classes may teach 30 class periods per week, provided the teaching load does not exceed 75 student periods per day. If a classroom teacher teaches 30 class periods per week with more than 75 student periods per day, an appropriate contractual arrangement and compensation shall be provided.

G. Middle or secondary school teachers shall teach no more than 750 student periods per week; however, physical education and music teachers may teach 1,000 student periods per week.

H. Notwithstanding the provisions of subsections E, F, and G, each full-time middle and secondary classroom teacher shall be provided one planning period per day or the

equivalent, unencumbered of any teaching or supervisory duties.

I. Staff-student ratios in special and career and technical education classrooms shall comply with regulations of the Board of Education.

J. Student services personnel as defined in the Standards of Quality shall be available as necessary to promote academic achievement and to provide support services to the school.

Part VII
School and Community Communications

8VAC20-131-270. School and community communications.

A. Each school shall promote communication and foster mutual understanding with parents and the community. Each school shall:

1. Involve parents, citizens, community agencies, and representatives from business and industry in developing, disseminating, and explaining the biennial school plan; on advisory committees; in curriculum studies; and in evaluating the educational program.

2. Provide annually to the parents and the community the School Performance Report Card in a manner prescribed by the board. The information contained therein will be for the most recent three-year period. Such information shall include but not be limited to:

a. Virginia assessment program results by percentage of participation and proficiency and disaggregated by student subgroups.

b. The accreditation rating earned by the school.

c. Attendance rates for students.

d. Information related to school safety to include, but not limited to, incidents of crime and violence.

e. Information related to qualifications and educational attainment of the teaching staff.

f. In addition, secondary schools' School Performance Report Cards shall include the following:

(1) Advanced Placement (AP) information to include percentage of students who take AP courses and percentage of students who take AP tests;

(2) International Baccalaureate (IB) and Cambridge course information to include percentage of students who are enrolled in IB or Cambridge programs and percentage of students who receive IB or Cambridge Diplomas;

(3) College-level course information to include percentage of students who take college-level courses including dual enrollment courses;

(4) Number and percentage of (i) graduates by diploma type as prescribed by the Board of Education, (ii) certificates awarded to the senior class including GED credentials, and (iii) students who do not complete high school;

(5) ~~The~~ As a separate category on the school report card, the number of students obtaining board-approved industry certifications, and passing state licensure examinations, ~~and~~ national occupational competency assessments and Virginia workplace readiness skills assessments while still in high school and the number of career and technical education completers who graduated; and

(6) Number and percentage of drop-outs.

3. Cooperate with business and industry in formulating career and technical educational programs and conducting joint enterprises involving personnel, facilities, training programs, and other resources.

4. Encourage and support the establishment and/or continuation of a parent-teacher association or other organization and work cooperatively with it.

B. At the beginning of each school year, each school shall provide to its students' parents or guardians information on the availability of and source for receiving:

1. The learning objectives developed in accordance with the provisions of 8VAC20-131-70 to be achieved at their child's grade level or, in high school, a copy of the syllabus for each of their child's courses, and a copy of the school division promotion, retention, and remediation policies;

2. The Standards of Learning applicable to the child's grade or course requirements and the approximate date and potential impact of the child's next SOL testing; and

3. An annual notice to students in all grade levels of all requirements for Standard, Standard Technical, Advanced Studies, Advanced Technical and Modified Standard Diplomas, and the board's policies on promotion and retention as outlined in 8VAC20-131-30.

The division superintendent shall report to the department compliance with this subsection through the preaccreditation eligibility procedures in 8VAC20-131-290.

Part VIII
School Accreditation

8VAC20-131-280. Expectations for school accountability.

A. Schools will be accredited annually based on compliance with preaccreditation eligibility requirements and achievement of the school accountability requirements of 8VAC20-131-300 C.

B. Each school shall be accredited based, primarily, on achievement of the criteria established in 8VAC20-131-30 and in 8VAC20-131-50 as specified below:

1. The percentage of students passing the Virginia assessment program tests in the four core academic areas administered in the school with the accreditation rating calculated on a trailing three-year average that includes the current year scores and the scores from the two most recent years in each applicable academic area, or on the current year's scores, whichever is higher.

2. The percentage of students graduating from or completing high school based on a graduation and completion index prescribed by the Board of Education. The accreditation rating of any school with a twelfth grade shall be determined based on achievement of required SOL pass rates and percentage points on the board's graduation and completion index. School accreditation shall be determined by the school's current year index points or a trailing three-year average of index points that includes the current year and the two most recent years, whichever is higher. The Board of Education's graduation and completion index shall include weighted points for diploma graduates (100 points), GED recipients (75 points), students not graduating but still in school (70 points), and students earning certificates of program completion (25 points). The Board of Education's graduation and completion index shall account for all students in the graduating class's ninth-grade cohort, plus students transferring in, minus students transferring out and deceased students. Those students who are not included in one of the preceding categories will also be included in the index.

3. The number of students who successfully complete a remediation recovery program.

4. Schools, with grade configurations that do not house a grade or offer courses for which SOL tests or additional tests approved by the Board of Education as outlined in 8VAC20-131-110 are administered, will be paired with another school in the division housing one or more of the grades in which SOL tests are administered. The pairing of such schools will be made upon the recommendation of the local superintendent. The schools should have a "feeder" relationship and the grades should be contiguous.

C. Subject to the provisions of 8VAC20-131-350, the governing school board of special purpose schools such as those provided for in § 22.1-26 of the Code of Virginia, Governor's schools, special education schools, alternative schools, or career and technical schools that serve as the student's school of principal enrollment may seek approval of an alternative accreditation plan from the Board of Education. Schools offering alternative education programs and schools with a graduation cohort of 50 or fewer students as defined by the graduation rate formula adopted by the board may request that the board approve an alternative accreditation plan to meet the graduation and completion index benchmark. Special purpose schools with alternative accreditation plans shall be evaluated on standards appropriate to the programs offered in the school and approved by the board prior to August 1 of the school year for which approval is requested. Any student graduating from a special purpose school with a Standard, Standard Technical, Advanced Studies, Advanced Technical, or Modified Standard Diploma must meet the requirements prescribed in 8VAC20-131-50.

In addition, pursuant to § 22.1-253.13:3 of the Code of Virginia, any school board, on behalf of one or more of its schools, may request the Board of Education for approval of an Individual School Accreditation Plan for the evaluation of the performance of one or more of its schools as authorized for special purpose schools.

D. When calculating the passing rates on Virginia assessment program tests for the purpose of school accreditation, the following tolerances for limited English proficient (LEP) and transfer students will apply:

1. The scores of LEP students enrolled in Virginia public schools fewer than 11 semesters may be removed from the calculation used for the purpose of school accreditation required by 8VAC20-131-280 B and 8VAC20-131-300 C. Completion of a semester shall be based on school membership days. Membership days are defined as the days the student is officially enrolled in a Virginia public school, regardless of days absent or present. For a semester to count as a completed semester, a student must have been in membership for a majority of the membership days of the semester. These semesters need not be consecutive.

2. In accordance with the provisions of 8VAC20-131-30, all students who transfer into Virginia public schools are expected to take and pass all applicable SOL tests in the content areas in which they receive instruction.

3. All students who transfer within a school division shall have their scores counted in the calculation of the school's accreditation rating. Students who transfer into a Virginia school from home instruction, or from another Virginia school division, another state, or another country, in grades kindergarten through 8 shall be expected to take all applicable SOL tests or additional tests approved by the board as outlined in 8VAC20-131-110. If the transfer takes place after the 20th instructional day following the opening of school, the scores on these tests may be used in calculating school accreditation ratings.

4. Students who transfer into a Virginia middle or high school from home instruction, or from another state or country, and enroll in a course for which there is an end-of-course SOL test, shall be expected to take the test or additional tests for that course approved by the board as outlined in 8VAC20-131-110. If the transfer takes place

after 20 instructional hours per course have elapsed following the opening of school or beginning of the semester, if applicable, the scores on those tests may be used in calculating school accreditation ratings in the year the transfer occurs.

5. Students who enroll on the first day of school and subsequently transfer to a school outside of the division for a total amount of instructional time equal to or exceeding 50% of a current school year or semester, whether the transfer was a singular or multiple occurrence, and return during the same school year shall be expected to take any applicable SOL test. The scores of those tests may be used in calculating the school accreditation rating in the year in which the transfers occur.

E. The Board of Education may adopt special provisions related to the administration and use of any Virginia assessment program test in a content area. The Board of Education may adopt special provisions related to the administration and use of the graduation and completion index, as prescribed by the board. The Board of Education may also alter the inclusions and exclusions from the accreditation calculations by providing adequate notice to local school boards. The board may add new tests or discontinue the use of existing tests in the Virginia Assessment Program by providing adequate notice to local school boards.

F. As a prerequisite to the awarding of an accreditation rating as defined in 8VAC20-131-300, each new or existing school shall document, in a manner prescribed by the board, the following: (i) the division's promotion/retention policies developed in accordance with the requirements of 8VAC20-131-30, (ii) compliance with the requirements to offer courses that will allow students to complete the graduation requirements in 8VAC20-131-50, (iii) the ability to offer the instructional program prescribed in 8VAC20-131-70 through 8VAC20-131-100, (iv) the leadership and staffing requirements of 8VAC20-131-210 through 8VAC20-131-240, and (v) the facilities and safety provisions of 8VAC20-131-260. The division superintendent shall report to the department compliance with this subsection through the preaccreditation eligibility procedures in 8VAC20-131-290.

8VAC20-131-300. Application of the standards.

A. Schools that meet the preaccreditation eligibility requirements prescribed in 8VAC20-131-280 F shall be assigned one of the following ratings as described in this section:

1. Fully Accredited;

2. Accredited with Warning in (specified academic area or areas and/or in achievement of the minimum threshold for the graduation and completion index);

3. Accreditation Denied;

4. Conditionally Accredited;

5. Provisionally Accredited-Graduation Rate.

B. Compliance with the student academic achievement expectations shall be documented to the board directly through the reporting of the results of student performance on SOL tests and other alternative means of assessing student academic achievement as outlined in 8VAC20-131-110. To facilitate accurate reporting of the graduation and completion index, the State Testing Identifier (STI) for students who transfer into a Virginia public school from another Virginia public school shall be retained by the receiving school. Compliance with other provisions of these regulations will be documented in accordance with procedures prescribed by the Board of Education.

C. Accreditation ratings defined. Accreditation ratings awarded in an academic year are based upon Virginia assessment program scores from the academic year immediately prior to the year to which the accreditation rating applies. Accreditation ratings are defined as follows:

1. Fully accredited.

a. With tests administered in the academic years ~~2006-2007, 2007-2008, 2008-2009, and 2009-2010~~ 2010-2011 and 2011-2012 for the accreditation ratings awarded for academic years ~~2007-2008, 2008-2009, 2009-2010, and 2010-2011~~ 2011-2012 and 2012-2013 respectively, a school will be rated Fully Accredited when its eligible students meet the pass rate of 70% in each of the four core academic areas except, the pass rates required shall be 75% in third-grade through fifth-grade English and 50% in third-grade science and history/social science.

b. For schools housing grade configurations where multiple pass rates apply, the results of the tests may be combined in each of the four core academic areas for the purpose of calculating the school's accreditation rating provided the school chooses to meet the higher pass rate.

c. With tests administered beginning in the academic year ~~2010-2011~~ 2012-2013 for the accreditation ratings awarded for school year ~~2011-2012~~ 2013-2014 and beyond, a school will be rated Fully Accredited when its eligible students meet the pass rate of 75% in English and the pass rate of 70% in mathematics, science, and history and social science. Additionally, each school with a graduating class shall achieve a minimum of 85 percentage points on the Board of Education's graduation and completion index, as described in 8VAC20-131-280 B 2, to be rated Fully Accredited.

d. For accreditation purposes, the pass rate will be calculated as single rates for each of the four core academic areas by combining all scores of all tests administered in each subject area.

2. Accredited with Warning (in specific academic areas and/or in achievement of the minimum threshold for the graduation and completion index). A school will be Accredited with Warning (in specific academic areas and/or in achievement of the minimum threshold for the graduation and completion index) if it has failed to achieve Fully Accredited status. Such a school may remain in the Accredited with Warning status for no more than three consecutive years.

3. Accreditation Denied. Based on a school's academic performance and/or achievement of the minimum threshold for the graduation and completion index, a school shall be rated Accreditation Denied if it fails to meet the requirements to be rated Fully Accredited or Provisionally Accredited-Graduation Rate, for the preceding three consecutive years or for three consecutive years anytime thereafter.

In any school division in which one-third or more of the schools have been rated Accreditation Denied, the superintendent shall be evaluated by the local school board with a copy of such evaluation submitted to the Board of Education no later than December 1 of each year in which such condition exists. In addition, the Board of Education may take action against the local school board as permitted by the Standards of Quality due to the failure of the local board to maintain accredited schools.

4. Conditionally Accredited. New schools that are comprised of students from one or more existing schools in the division will be awarded a Conditionally Accredited-New status for one year pending an evaluation of the school's eligible students' performance on SOL tests or additional tests approved by the Board of Education to be rated Fully Accredited. A Conditionally Accredited-Reconstituted rating may be awarded to a school that is being reconstituted in accordance with the provisions of 8VAC20-131-340 upon approval by the Board of Education. A school awarded this rating under those circumstances will revert to a status of Accreditation Denied if it fails to meet the requirements to be rated Fully Accredited by the end of the agreed upon term or if it fails to have its annual application for such rating renewed.

5. Provisionally Accredited-Graduation Rate. With tests administered in the academic years 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015 for the accreditation ratings awarded for academic years 2011-2012, 2012-2013, 2013-2014, 2014-2015, and 2015-2016 respectively, a school will be rated Provisionally Accredited -Graduation Rate when its eligible students meet SOL pass rates to be rated Fully Accredited but fails to achieve a minimum of 85 percentage index points on the Board of Education's graduation and completion index, but achieve the following minimum benchmarks for each year:

Graduation and Completion Index Benchmarks for Provisionally Accredited Ratings		
Academic Year	Accreditation Year	Index Percentage Points
2010-2011	2011-2012	80
2011-2012	2012-2013	81
2012-2013	2013-2014	82
2013-2014	2014-2015	83
2014-2015	2015-2016	84

The last year in which this rating shall be awarded is the 2015-2016 accreditation year, based on tests administered in the 2014-2015 academic year.

8VAC20-131-325. Recognitions and rewards for school and division accountability performance.

A. Schools and divisions may be recognized by the Board of Education in accordance with guidelines it shall establish for the Virginia Index of Performance (VIP) incentive program. In order to encourage school divisions to promote student achievement in science, technology, engineering, and mathematics (STEM), the board shall take into account in its guidelines a school division's increase in enrollments and elective course offerings in these STEM areas. Such recognition may include:

1. Public announcements recognizing individual schools and divisions;

2. Tangible rewards;

3. Waivers of certain board regulations;

4. Exemptions from certain reporting requirements; or

5. Other commendations deemed appropriate to recognize high achievement.

In addition to board recognition, local school boards shall adopt policies to recognize individual schools through public announcements, media releases, participation in community activities for input purposes when setting policy relating to schools and budget development, as well as other appropriate recognition.

B. A school that maintains a passing rate on Virginia assessment program tests or additional tests approved by the board as outlined in 8VAC20-131-110 of 95% or above in each of the four core academic areas for two consecutive years may, upon application to the Department of Education, receive a waiver from annual accreditation. A school receiving such a waiver shall be Fully Accredited for a three-year period. However, such school shall continue to annually submit documentation in compliance with the

preaccreditation eligibility requirements described in 8VAC20-131-280 F.

C. Schools may be eligible to receive the Governor's Award for Outstanding Achievement. This award will be given to schools rated Fully Accredited that significantly increase the achievement of students within student subgroups in accordance with guidelines prescribed by the Board of Education.

8VAC20-131-360. Effective date.

A. The provisions in 8VAC20-131-30 B relating to double testing and the provisions in 8VAC20-131-60 C relating to Virtual Virginia shall become effective July 31, 2009.

B. Graduation requirements prescribed in 8VAC20-131-50 B and D shall become effective with the ninth-grade class of 2011-2012.

C. Graduation requirements prescribed in 8VAC20-131-50 C and E shall become effective with the ninth grade class of 2012-2013.

D. Schools with a graduating class shall meet prescribed thresholds on a graduation and completion rate index as prescribed in 8VAC20-131-280 and 8VAC20-131-300 for accreditation ratings earned in 2010-2011 and awarded in 2011-2012.

E. Accreditation ratings prescribed in 8VAC20-131-300 C 1 a shall become effective with tests administered in 2010-2011 and 2011-2012 for ratings awarded in 2011-2012 and 2012-2013.

F. Accreditation ratings prescribed in 8VAC20-121-300 C 1 c shall become effective with tests administered in 2012-2013 for ratings awarded in 2013-2014 and beyond.

G. The Academic and Career Plan prescribed in 8VAC20-131-140 shall become effective in 2012-2013.

H. Unless otherwise specified, the remainder of these regulations shall be effective beginning with the 2011-2012 academic year.

VA.R. Doc. No. R11-2910; Filed July 6, 2011, 10:44 a.m.

◆ ◆

TITLE 9. ENVIRONMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

Final Regulation

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

Title of Regulation: **9VAC15-30. Regulations for the Certification of Recycling Machinery and Equipment for Local Tax Exemption Purposes (amending 9VAC15-30-10).**

Statutory Authority: § 58.1-3661 of the Code of Virginia.

Effective Date: August 31, 2011.

Agency Contact: Debra Miller, Planning and Policy Specialist, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4206, FAX (804) 698-4346, or email debra.miller@deq.virginia.gov.

Summary:

The amendment updates the reference to the Solid Waste Management Regulations from 9VAC20-80 to 9VAC20-81.

9VAC15-30-10. Definition incorporated by reference.

The definitions set out in Part I (9VAC20-81-10 et seq.) of the ~~Virginia~~ Solid Waste Management Regulations ~~(9VAC20-80-10 et seq.)~~ are incorporated by reference.

VA.R. Doc. No. R11-2835; Filed July 12, 2011, 2:15 p.m.

◆ ◆

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Proposed 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 10VAC5-200-90).**

Statutory Authority: §§ 6.2-1814 and 12.1-13 of the Code of Virginia.

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comment Deadline: August 15, 2011.

Agency Contact: Gerald Fallen, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone

(804) 371-9699, FAX (804) 371-9416, or email gerald.fallen@scc.virginia.gov.

Summary:

The State Corporation Commission is proposing amendments to 10VAC5-200-90, which prescribes the schedule of annual fees to be paid by payday lenders licensed under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia. The amendments increase the annual fee to $500 per office plus $0.47 per payday loan made by each licensee. The amendments also update references to the Code of Virginia.

AT RICHMOND, JULY 12, 2011

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. BFI-2011-00085

Ex Parte: In re: annual fees paid
by licensed payday lenders

ORDER TO TAKE NOTICE

Section 6.2-1814 of the Code of Virginia authorizes the State Corporation Commission ("Commission") to adopt a schedule of annual fees to be paid by licensed payday lenders ("licensees") to defray the costs of their examination, supervision, and regulation. The schedule is required to bear a reasonable relationship to the business volume of licensees, the actual costs of their examinations, and to other factors relating to their supervision and regulation. The Commission's schedule of annual fees is prescribed in 10 VAC 5-200-90 of the Virginia Administrative Code.

Over the past few years, there have been significant declines in the total number of licensees, the total number of offices maintained by licensees, and the total number of payday loans made by licensees. According to the most recent annual report published by the Bureau of Financial Institutions ("Bureau"), 31 licensees operated 288 offices and made 435,273 payday loans in 2010. By comparison, 84 licensees operated 832 offices and made 3,537,395 payday loans in 2007. While the Bureau's direct examination expenses have consequently decreased in part, such expenses represent only a portion of the total costs incurred by the Bureau in examining, supervising, and regulating licensees. A large percentage of the Bureau's costs are fixed overhead expenses as well as salaries and benefits for supervisors and support staff, which are unaffected by the contraction of the industry but must nevertheless be recovered through the annual assessment. Moreover, examinations of licensees have become more complex and time consuming as a result of the extensive statutory and regulatory amendments that went into effect on January 1, 2009. Since the annual assessment calculation is based on the number of offices operated by licensees and the number of loans made by licensees, both of which have markedly declined in recent years, the total assessment generated by 10 VAC 5-200-90 has become inadequate. Therefore, the Bureau has now submitted to the Commission proposed amendments to 10 VAC 5-200-90 in order to better recover the sums necessary to examine, supervise, and regulate licensees.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulation should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation is appended hereto and made a part of the record herein.

(2) Comments or requests for a hearing on the proposed regulation must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before August 15, 2011. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2011-00085. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/case.

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

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

AN ATTESTED COPY hereof, together with a copy of the proposed 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 proposed regulation, to all licensed payday lenders as well as other interested parties designated by the Bureau.

10VAC5-200-90. Schedule of annual fees for the examination, supervision, and regulation of payday lenders.

Pursuant to § ~~6.1-457~~ 6.2-1814 of the Code of Virginia, the commission sets the following schedule of annual fees to be paid by payday lenders ~~required to be~~ licensed under Chapter 18 ~~(§ 6.1-444 et seq.) of Title 6.1~~ (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia. Such fees are to defray the costs of the examination, supervision, and regulation of ~~such lenders~~ licensees by the ~~Bureau of Financial Institutions~~ bureau. The fees are related to the actual costs of the bureau, to the number of offices operated by ~~the lenders~~ licensees, to

the volume of business of ~~the lenders~~ licensees, and to other factors relating to their supervision and regulation.

The annual fee shall be ~~$300~~ $500 per office~~, authorized and opened, as of December 31,~~ plus ~~$.18~~ $.47 per payday loan made by each licensee. The annual fee ~~for each payday lender~~ shall be computed on the basis of (i) the number of offices ~~operated~~ authorized and opened as of December 31 of the year preceding the year of the assessment, and (ii) the number of payday loans ~~as defined in § 6.1-444 of the Code of Virginia~~ made under Chapter 18 (§ 62.1-1800 et seq.) of Title 6.2 of the Code of Virginia during the calendar year preceding the year of the assessment.

Fees shall be assessed on or before September 15 for the current calendar year. ~~By law the fee must~~ The assessment shall be paid by licensees on or before October 15.

The annual report, due March 25 each year, of each licensee provides the basis for its assessment~~,~~ (i.e., the number of offices and payday loans made). In cases where a license has been granted between January 1 and September 15 of the year of the assessment, the licensee shall pay ~~$150~~ $250 per office, authorized and opened, as of September 15 of that year.

Fees prescribed and assessed ~~by~~ pursuant to this schedule are apart from, and do not include, the reimbursement for expenses ~~permitted~~ authorized by subsection B of § ~~6.1-457~~ 6.2-1814 of the Code of Virginia.

VA.R. Doc. No. R11-2918; Filed July 12, 2011, 10:37 a.m.

◆

TITLE 12. HEALTH

STATE BOARD OF HEALTH

REGISTRAR'S NOTICE: The State Board of Health is claiming 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 where no agency discretion is involved. The State Board of Health will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Final Regulation

Title of Regulation: **12VAC5-220. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (amending 12VAC5-220-110, 12VAC5-220-200).**

Statutory Authority: §§ 32.1-12 and 32.1-102.2 of the Code of Virginia.

Effective Date: September 1, 2011.

Agency Contact: Carrie Eddy, Senior Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, or email carrie.eddy@vdh.virginia.gov.

Summary:

The amendments increase the capital expenditure threshold for projects requiring a certificate of public need in accordance with § 32.1-102.1 of the Code of Virginia, which requires an annual revision to reflect inflation. Using the Consumer Price Index published by the U.S. Department of Labor, the capital expenditure threshold for projects requiring registration increased to $5,698,607, and those projects requiring the filing of an application increased to $17,095,823.

12VAC5-220-110. Requirements for registration of certain capital expenditures.

At least 30 days before any person contracts to make or is otherwise legally obligated to make a capital expenditure by or on behalf of a medical care facility that is ~~$5,548,790~~ $5,698,607 or more but is less than ~~$16,646,371~~ $17,095,823 and has not been previously authorized by the commissioner, the owner of any medical care facility as defined in this chapter shall register in writing such expenditure with the commissioner. The format for registration shall include information concerning the purpose of such expenditure and projected impact that the expenditure will have upon the charges for services. For purposes of registration, the owner shall include any person making the affected capital expenditure. See definition of "project."

12VAC5-220-200. One hundred ninety-day review cycle.

The department shall review the following groups of completed applications in accordance with the following 190-day scheduled review cycles and the following descriptions of projects within each group, except as provided for in 12VAC5-220-220.

BATCH GROUP	GENERAL DESCRIPTION	REVIEW CYCLE Begins	REVIEW CYCLE Ends
A	General Hospitals/Obstetrical Services/Neonatal Special Care Services	Feb. 10 Aug. 10	Aug. 18 Feb. 16
B	Open Heart Surgery/Cardiac Catheterization/ Ambulatory Surgery Centers/Operating Room Additions/Transplant Services	Mar. 10 Sep. 10	Sep. 16 Mar. 19

C	Psychiatric Facilities/Substance Abuse Treatment/Mental Retardation Facilities	Apr. 10 Oct. 10	Oct. 17 Apr. 18
D/F	Diagnostic Imaging Facilities/Services Selected Therapeutic Facilities/Services	May 10 Nov. 10	Nov. 16 May 19
E	Medical Rehabilitation Beds/Services	June 10 Dec. 10	Dec. 17 Jun. 18
D/F	Selected Therapeutic Facilities/Services Diagnostic Imaging Facilities/Services	July 10 Jan. 10	Jan. 16 Jul. 18
G	Nursing Home Beds at Retirement Communities/Bed Relocations/ Miscellaneous Expenditures by Nursing Homes	Jan. 10 Mar. 10 May 10 July 10 Sep. 10 Nov. 10	Jul. 18 Sep. 16 Nov. 16 Jan. 16 Mar. 19 May 19

Batch Group A includes:

1. The establishment of a general hospital.

2. An increase in the total number of general acute care beds in an existing or authorized general hospital.

3. The relocation at the same site of 10 general hospital beds or 10% of the general hospital beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period if such relocation involves a capital expenditure of ~~$16,646,371~~ $17,095,823 or more (see 12VAC5-220-280).

4. The introduction into an existing medical care facility of any new neonatal special care or obstetrical services that the facility has not provided in the previous 12 months.

5. Any capital expenditure of ~~$16,646,371~~ $17,095,823 or more, not defined as a project category included in Batch Groups B through G, by or in behalf of a general hospital.

Batch Group B includes:

1. The establishment of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.

2. An increase in the total number of operating rooms in an existing medical care facility or establishment of operating rooms in a new facility.

3. The introduction into an existing medical care facility of any new cardiac catheterization, open heart surgery, or organ or tissue transplant services that the facility has not provided in the previous 12 months.

4. The addition by an existing medical care facility of any medical equipment for the provision of cardiac catheterization.

5. Any capital expenditure of ~~$16,646,371~~ $17,095,823 or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.

6. Any capital expenditure of ~~$16,646,371~~ $17,095,823 or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a medical care facility, that is primarily related to the provision of surgery, cardiac catheterization, open heart surgery, or organ or tissue transplant services.

Batch Group C includes:

1. The establishment of a mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.

2. An increase in the total number of beds in an existing or authorized mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.

3. An increase in the total number of mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds in an existing or authorized medical care facility which is not a dedicated mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facility.

4. The relocation at the same site of 10 mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds or 10% of the mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period if such relocation involves a capital expenditure of ~~$16,646,371~~ $17,095,823 or more (see 12VAC5-220-280).

5. The introduction into an existing medical care facility of any new psychiatric or substance abuse treatment service that the facility has not provided in the previous 12 months.

6. Any capital expenditure of ~~$16,646,371~~ $17,095,823 or more, not defined as a project category in Batch Groups A and B or Batch Groups D/F through G, by or in behalf of a mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facilities.

7. Any capital expenditure of ~~$16,646,371~~ $17,095,823 or more, not defined as a project category in Batch Groups A through B or Batch Groups D/F through G, by or in behalf of a medical care facility, which is primarily related to the provision of mental health, psychiatric, substance abuse treatment or rehabilitation, or mental retardation services.

Batch Group D/F includes:

1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging, except for the purpose of nuclear cardiac imaging.

2. The introduction into an existing medical care facility of any new computed tomography (CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging services, except for the purpose of nuclear cardiac imaging that the facility has not provided in the previous 12 months.

3. The addition by an existing medical care facility of any equipment for the provision of computed tomography (CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning.

4. Any capital expenditure of ~~$16,646,371~~ $17,095,823 or more, not defined as a project category in Batch Groups A B, C, E, and G, by or in behalf of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging, except that portion of a physician's office dedicated to providing nuclear cardiac imaging.

5. Any capital expenditure of ~~$16,646,371~~ $17,095,823 or more, not defined as a project category in Batch Groups A B, C, E, and G, by or in behalf of a medical care facility, which is primarily related to the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging, except for the purpose of nuclear cardiac imaging.

Batch Group E includes:

1. The establishment of a medical rehabilitation hospital.

2. An increase in the total number of beds in an existing or authorized medical rehabilitation hospital.

3. An increase in the total number of medical rehabilitation beds in an existing or authorized medical care facility that is not a dedicated medical rehabilitation hospital.

4. The relocation at the same site of 10 medical rehabilitation beds or 10% of the medical rehabilitation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period, if such relocation involves a capital expenditure of ~~$16,646,371~~ $17,095,823 or more (see 12VAC220-280).

5. The introduction into an existing medical care facility of any new medical rehabilitation service that the facility has not provided in the previous 12 months.

6. Any capital expenditure of ~~$16,646,371~~ $17,095,823 or more, not defined as a project category in Batch Groups A B, C, D/F, and G, by or in behalf of a medical rehabilitation hospital.

7. Any capital expenditure of ~~$16,646,371~~ $17,095,823 or more, not defined as a project category in Batch Groups A B, C, D/F, and G, by or in behalf of a medical care facility, that is primarily related to the provision of medical rehabilitation services.

Batch Group D/F includes:

1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radiation therapy.

2. Introduction into an existing medical care facility of any new gamma knife surgery, lithotripsy, or radiation therapy services that the facility has not provided in the previous 12 months.

3. The addition by an existing medical care facility of any medical equipment for the provision of gamma knife surgery, lithotripsy, or radiation therapy.

4. Any capital expenditure of ~~$16,646,371~~ $17,095,823 or more, not defined as a project in Batch Groups A B, C, E, and G, by or in behalf of a specialized center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radiation therapy.

5. Any capital expenditure of ~~$16,646,371~~ $17,095,823 or more, not defined as a project in Batch Groups A B, C, E, and G, by or in behalf of a medical care facility, which is

primarily related to the provision of gamma knife surgery, lithotripsy, or radiation therapy.

Batch Group G includes:

1. The establishment of a nursing home, intermediate care facility, or extended care facility of a continuing care retirement community by a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.

2. The establishment of a nursing home, intermediate care facility, or extended care facility that does not involve an increase in the number of nursing home facility beds within a planning district.

3. An increase in the total number of beds in an existing or authorized nursing home, intermediate care facility, or extended care facility of a continuing care retirement community by a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.

4. An increase in the total number of beds in an existing or authorized nursing home, intermediate care facility, or extended care facility that does not involve an increase in the number of nursing home facility beds within a planning district.

5. The relocation at the same site of 10 nursing home, intermediate care facility, or extended care facility beds or 10% of the nursing home, intermediate care facility, or extended care facility beds of a medical care facility, whichever is less, from one physical facility to another in any two-year period, if such relocation involves a capital expenditure of ~~$16,646,371~~ $17,095,823 or more (see 12VAC5-220-280).

6. Any capital expenditure of ~~$16,646,371~~ $17,095,823 or more, not defined as a project category in Batch Groups A through D/F, by or in behalf of a nursing home, intermediate care facility, or extended care facility, which does not increase the total number of beds of the facility.

7. Any capital expenditure of ~~$16,646,371~~ $17,095,823 or more, not defined as a project category in Batch Groups A through D/F, by or in behalf of a medical care facility, that is primarily related to the provision of nursing home, intermediate care, or extended care services, and does not increase the number of beds of the facility.

VA.R. Doc. No. R11-2815; Filed July 5, 2011, 12:10 p.m.

Final Regulation

Title of Regulation: **12VAC5-371. Regulations for the Licensure of Nursing Facilities (amending 12VAC5-371-110).**

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Effective Date: September 1, 2011.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2157, FAX (804) 367-2149, or email carrie.eddy@vdh.virginia.gov.

Summary:

The amendment implements House Bill 1818 and Senate Bill 976 of the 2011 Session of the General Assembly, which require nursing facilities to send notices and information regarding family councils to the listed responsible party or contact person of the resident's choosing up to six times a year. The notices may be included in billing statements or other regular facility communication and must be posted in a designated area of the facility.

Part II
Administrative Services

12VAC5-371-110. Management and administration.

A. No person shall own, establish, conduct, maintain, manage, or operate any nursing facility, as defined in § 32.1-123 of the Code of Virginia, without having obtained a license.

B. The nursing facility must comply with:

1. These regulations (12VAC5-371);

2. Other applicable federal, state or local laws and regulations; and

3. Its own policies and procedures.

C. The nursing facility shall submit, or make available, reports and information necessary to establish compliance with these regulations and applicable statutes.

D. The nursing facility shall submit, in a timely manner as determined by the OLC, and implement a written plan of action to correct any noncompliance with these regulations identified during an inspection. The plan shall include:

1. Description of the corrective action or actions to be taken;

2. Date of completion for each action; and

3. Signature of the person responsible for the operation.

E. The nursing facility shall permit representatives from the OLC to conduct inspections to:

1. Verify application information;

2. Determine compliance with this chapter;

3. Review necessary records; and

4. Investigate complaints.

F. The current license from the department shall be posted in a place clearly visible to the general public.

G. The nursing facility shall not operate more resident beds than the number for which it is licensed.

H. The nursing facility shall fully disclose its admission policies, including any preferences given, to applicants for admission.

I. The nursing facility shall identify its operating elements and programs, the internal relationship among these elements and programs, and the management or leadership structure.

J. The facility shall provide, or arrange for, the administration to its residents of an annual influenza vaccination and a pneumonia vaccination according to the most recent recommendations for "Prevention and Control of Influenza" (www.cdc.gov/mmwr/preview/mmwrhtml/rr5306a1.htm), MMWR 53 (RR06), and "Guidelines for Preventing Health Care-Associated Pneumonia, 2003" (www.cdc.gov/mmwr/preview/mmwrhtml/rr5303a1.htm), MMWR 53 (RR03), of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, unless the vaccination is medically contraindicated or the resident declines the vaccination offer.

K. Upon request of the facility's family council, the facility shall send notices and information about the family council mutually developed by the family council and the administration of the nursing home, and provided to the facility for such purpose, to the listed responsible party or a contact person of the resident's choice up to six times a year. Such notices may be included together with a monthly billing statement or other regular communication. Notices and information shall also be posted in a designated location within the nursing facility.

VA.R. Doc. No. R11-2819; Filed June 29, 2011, 4:56 p.m.

Final Regulation

Title of Regulation: **12VAC5-371. Regulations for the Licensure of Nursing Facilities (amending 12VAC5-371-140).**

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Effective Date: September 1, 2011.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2157, FAX (804) 367-2149, or email carrie.eddy@vdh.virginia.gov.

Summary:

The amendment implements Chapter 670 of the 2011 Acts of Assembly (Senate Bill 924) by adding infection prevention and facility security to the list of required written administrative and operational policies and procedures maintained by a nursing facility.

12VAC5-371-140. Policies and procedures.

A. The nursing facility shall implement written policies and procedures approved by the governing body.

B. All policies and procedures shall be reviewed at least annually, with recommended changes submitted to the governing body for approval.

C. A written record of the annual policy review, including at least the review dates, participants, recommendations and action dates of the governing body, shall be maintained.

D. Administrative and operational policies and procedures shall include, but are not limited to:

1. Administrative records;

2. Admission, transfer and discharge;

3. Medical direction and physician services;

4. Nursing direction and nursing services;

5. Pharmaceutical services, including drugs purchased outside the nursing facility;

6. Dietary services;

7. Social services;

8. Activities services;

9. Restorative and rehabilitative resident services;

10. Contractual services;

11. Clinical records;

12. Resident rights and grievances;

13. Quality assurance and infection control and prevention;

14. Safety and emergency preparedness procedures; ~~and~~

15. Professional and clinical ethics, including:

a. Confidentiality of resident information;

b. Truthful communication with residents;

c. Observance of appropriate standards of informed consent and refusal of treatment; and

d. Preservation of resident dignity, with special attention to the needs of the aged, the cognitively impaired, and the dying; and

16. Facility security.

E. Personnel policies and procedures shall include, but are not limited to:

1. Written job descriptions that specify authority, responsibility, and qualifications for each job classification;

2. An on-going plan for employee orientation, staff development, in-service training and continuing education;

3. An accurate and complete personnel record for each employee including:

a. Verification of current professional license, registration, or certificate or completion of a required approved training course;

b. Criminal record check;

c. Verification that the employee has reviewed or received a copy of the job description;

d. Orientation to the nursing facility, its policies and to the position and duties assigned;

e. Completed continuing education program approved for the employee as determined by the outcome of the annual performance evaluation;

f. Annual employee performance evaluations; and

g. Disciplinary action taken-;and

4. Employee health-related information retained in a file separate from personnel files.

F. Financial policies and procedures shall include, but not be limited to:

1. Admission agreements;

2. Methods of billing:

a. Services not included in the basic daily or monthly rate;

b. Services delivered by contractors of the nursing facility; and

c. Third party payers;

3. Resident or designated representative notification of changes in fees and charges;

4. Correction of billing errors and refund policy;

5. Collection of delinquent resident accounts; and

6. Handling of resident funds.

G. Policies shall be made available for review, upon request, to residents and their designated representatives.

H. Policies and procedures shall be readily available for staff use at all times.

VA.R. Doc. No. R11-2821; Filed June 29, 2011, 4:55 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Emergency Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-130, 12VAC30-50-226).**

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-61, 12VAC30-60-143).

12VAC30-130. Amount, Duration, and Scope of Selected Services (adding 12VAC30-130-2000).

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

Effective Dates: July 18, 2011, through July 17, 2012.

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.

Preamble:

The department is promulgating these replacement emergency regulations to comply with Chapter 890, Item 297 YY of the 2011 Acts of Assembly, which requires changes in the provision of intensive in-home services and community mental health services to ensure appropriate utilization, cost efficiency, and provider qualifications. The services involved are skilled nursing facility services, EPSDT, and family planning; services related to the EPSDT program; community mental health services for children and adults; and mental health services utilization.

Summary:

This action implements the results of a review of mental health services for children and adults, as well as changes the name of the Department of Mental Health, Mental Retardation, and Substance Abuse Services to the Department of Behavioral Health and Developmental Services. The amendments also set forth rules and penalties related to the marketing of Medicaid mental health services.

An amendment to 12VAC30-50-130 deletes the allowance for a week of service for intensive in-home services without prior authorization to eliminate claims processing issues that delayed payments to providers. Additionally, a statement that prior authorization is required for day treatment for children and adolescents is added to reflect the current procedures.

Amendments to 12VAC30-60-61 require that specific assessment elements be included as part of the initial assessment for children's mental health services. It requires that the initial assessment for intensive in-home

services be conducted in the home and adopts caseload and supervision guidelines that were published by the Department of Behavioral Health and Developmental Services' Licensing Division. The action specifies staff ratios for day treatment for children and adolescents and requires coordination with providers of case management. The amendment to 12VAC30-50-226 establishes qualifications for qualified mental health professionals (QMHPs) and establishes the definitions of the paraprofessionals' experience levels. In 12VAC30-50-130 and 12VAC30-50-226, language is added to the definition of clinical experience to include that internships, practicums, and field experience must be supervised.

A new section, 12VAC30-130-2000, contains the agency's requirements and limits for providers' marketing plans and activities to limit the frequency and manner in which providers approach potential clients and seek to engage such clients in their services.

12VAC30-50-130. Skilled nursing facility services, EPSDT, school health services and family planning.

A. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

5. Community mental health services.

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

"Adolescent or child" means the individual receiving the services set out herein.

"Certified pre-screener" means an employee of the local Community Services Board, or its designee, who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by DBHDS.

"Clinical experience" means (for the purpose of these services: intensive in-home services, day treatment for children and adolescents, community-based residential services for children, and adolescents who are younger than 21 (Level A) and therapeutic behavioral services (Level B)) providing direct clinical services to children and adolescents who have diagnoses of mental illness and includes supervised internships, supervised practicums, and supervised field experience. Experience shall not include unsupervised internships, unsupervised practicums, and unsupervised field experience.

"DBHDS" means the Department of Behavioral Health and Developmental Services.

"DMAS" means the Department of Medical Assistance Services.

"Human services field" means (for the purpose of these services: intensive in-home, day treatment for children and adolescents, community-based residential services for children and adolescents younger than 21 (Level A) and therapeutic behavioral services (Level B)) social work, psychology, sociology, counseling, special education, human child or family development, cognitive or behavioral sciences, marriage and family therapy, art or music therapy, or health promotion.

"Independent clinical assessment" means as defined in 12VAC30-60-61.

"Individual service plan" or "ISP" means a comprehensive and regularly updated document 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 annually and as the needs and progress of the individual changes.

"Licensed mental health professional" or "LMHP" means a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, a registered psychiatric clinical nurse specialist, or a licensed psychiatric nurse practitioner. A person who has been approved by the applicable Virginia health regulatory board as a supervisee in clinical social work or a resident in clinical psychology, professional counseling, substance abuse treatment practice, or marriage and family therapy may perform the functions of the LMHP for purposes of Medicaid reimbursement provided such supervisee or resident is in continuous compliance with the applicable board's requirements for supervised practice. For purposes of Medicaid reimbursement, these persons shall use the title "Supervisee" or "Resident" in connection with the applicable profession after their signatures to indicate such status. An individual may not perform the functions of the LMHP or be considered a "Supervisee" or "Resident" until the supervision for specific clinical duties at a specific site is pre-approved in writing by the appropriate Virginia health regulatory board.

"Qualified mental health professional-child" or "QMHP-C" means, as defined in 12VAC35-105-20, a person in the human services who is trained and experienced in providing psychiatric or mental health services to children who have a mental illness. To qualify as a QMHP-C, the person must have the designated clinical experience and must either (i) be a physician licensed in Virginia; (ii) have a master's degree in psychology from an accredited college or university with at least one year of clinical experience with children and adolescents; (iii) have a social work bachelor's or master's degree from an accredited college or university with at least one year of documented clinical experience with children or adolescents; (iv) be a registered nurse with at least one year of clinical experience with children and adolescents; (v) have at least a bachelor's degree in a human services field or in special education from an accredited college with at least one year of clinical experience with children and adolescents; or (vi) be a licensed mental health professional.

"Qualified mental health professional-eligible" or "QMHP-E" means, as defined in 12VAC35-105-20, a person who has (i) at least a bachelor's degree in a human service field or special education from an accredited college without one year of clinical experience or (ii) at least a bachelor's degree in a nonrelated field and is enrolled in a master's or doctoral clinical program, taking the equivalent of at least three credit hours per semester and is employed by a provider that has a triennial license issued by DBHDS and has a DBHDS-approved and DMAS-approved supervision training program.

"Qualified paraprofessional in mental health" or "QPPMH" means, as defined in 12VAC35-105-20, a person who must, at a minimum, meet one of the following criteria: (i) be registered with the United State Psychiatric Association (USPRA) as an associate psychiatric rehabilitation provider (APRP); (ii) have an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) and at least one year of experience providing direct services to persons with a diagnosis of mental illness; or (iii) have a minimum of 90 hours of classroom training 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 experience (including the 12 weeks of supervised experience).

"Service-specific provider assessment" means the face-to-face interaction in which the provider obtains information from the child, adolescent, and parent or other family member or members, as appropriate, about health status. It includes documented history of health care problems and issues and contains the presenting issue/reason for referral, mental health history/hospitalizations, previous interventions and timeframes, medical profile, developmental history, educational/vocational status, current living situation and family history and relationships, legal status, drug and alcohol profile, resources and strengths, mental status profile, diagnosis, professional assessment summary and clinical formulation, and recommended treatment goals.

a. Intensive in-home services to children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of a child who is at risk of being moved into an out-of-home placement or who is being transitioned to home from an out-of-home placement due to a documented medical need of the child. These services provide crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response.

(1) These services shall be limited annually to 26 weeks.

(2) ~~After an initial period, prior~~ Service authorization ~~is~~ shall be required for Medicaid reimbursement.

(3) Service-specific provider assessments shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated (more than a year old) assessments and ISPs shall be denied reimbursement. Requirements for assessments and ISPs are set out in 12VAC30-60-61.

(4) These services may be rendered by a LMHP, LMHP Supervisee or Resident, QMHP-C, and QMHP-E as herein defined.

b. Therapeutic day treatment shall be provided two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication~~;~~ education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family psychotherapy.

(1) Service authorization shall be required for Medicaid reimbursement. Prior to the provision of services, an independent assessment shall be conducted by an individual who meets the licensed mental health professional definition found in this section who is employed or contracted by a community services board (CSB), a behavioral health authority (BHA), or the CSB/BHA subcontractor.

(2) Service-specific provider assessments shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated (more than a year old) assessments and ISPs shall be denied reimbursement. Requirements for assessments and ISPs are located in 12VAC30-60-61.

(3) These services may be rendered by LMHP, LMHP Supervisee or Resident, QMHP-C and QMHP-E as herein defined.

c. Community-Based Services for Children and Adolescents under 21 (Level A).

(1) Such services shall be a combination of therapeutic services rendered in a residential setting. The residential services will provide structure for daily activities, psychoeducation, therapeutic supervision and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.

(2) In addition to the residential services, the child must receive, at least weekly, individual psychotherapy that is provided by a ~~licensed mental health professional~~ LMHP or LMHP Supervisee or Resident.

(3) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

(4) Authorization ~~is~~ shall be required for Medicaid reimbursement.

(5) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(6) ~~Providers~~ These residential providers must be licensed by the Department of Social Services~~,~~ or the Department of Juvenile Justice~~, or Department of Education~~ under the Standards for ~~Interdepartmental Regulation of~~ Licensed Children's Residential Facilities (22VAC40-151) or Regulations for Children's Residential Facilities ~~(22VAC42-10)~~ 12VAC35-46).

(7) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management.

(8) The facility/group home must coordinate services with other providers.

(9) Service-specific provider assessments shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated (more than a year old) assessments and ISPs shall be denied reimbursement. Requirements for assessments and ISPs are set out in 12VAC30-60-61.

(10) These services may be rendered by LMHP, LMHP Supervisee or Resident, QMHP-C, QMHP-E and QPPMH as herein defined.

d. Therapeutic Behavioral Services (Level B).

(1) Such services must be therapeutic services rendered in a residential setting that provides structure for daily activities, psychoeducation, therapeutic supervision, and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to

mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.

(2) Authorization is required for Medicaid reimbursement.

(3) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(4) ~~Providers~~ These residential providers must be licensed by the Department of ~~Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS)~~ Behavioral Health and Developmental Services (DBHDS) under the ~~Standards~~ Regulations for ~~Interdepartmental Regulation of~~ Children's Residential Facilities ~~(22VAC42-10)~~ (12VAC35-46).

(5) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management. This service may be provided in a program setting or a community-based group home.

(6) The child must receive, at least weekly, individual psychotherapy and, at least weekly, group psychotherapy that is provided as part of the program.

(7) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

(8) Service-specific provider assessments shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services that are based upon incomplete, missing, or outdated (more than a year old) assessments and ISPs shall be denied reimbursement. Requirements for assessments and ISPs are set out in 12VAC30-60-61.

(9) These services may be rendered by LMHP, LMHP Supervisee or Resident, QMHP-C, QMHP-E, and QPPMH as defined.

(10) The facility/group home shall coordinate services with other providers.

6. Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by:

a. A psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or a psychiatric facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children or the Council on Quality and Leadership.

b. Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12VAC30-50-100, 12VAC30-50-105, and 12VAC30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of Part XIV (12VAC30-130-850 et seq.) of this chapter.

c. Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with 42 CFR Part 441 Subpart D, as contained in 42 CFR 441.151 (a) and (b) and 441.152 through 441.156. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

7. Hearing aids shall be reimbursed for individuals younger than 21 years of age according to medical necessity when provided by practitioners licensed to engage in the practice of fitting or dealing in hearing aids under the Code of Virginia.

C. School health services.

1. School health assistant services are repealed effective July 1, 2006.

2. School divisions may provide routine well-child screening services under the State Plan. Diagnostic and treatment services that are otherwise covered under early and periodic screening, diagnosis and treatment services, shall not be covered for school divisions. School divisions to receive reimbursement for the screenings shall be enrolled with DMAS as clinic providers.

a. Children enrolled in managed care organizations shall receive screenings from those organizations. School divisions shall not receive reimbursement for screenings from DMAS for these children.

b. School-based services are listed in a recipient's Individualized Education Program (IEP) and covered under one or more of the service categories described in § 1905(a) of the Social Security Act. These services are necessary to correct or ameliorate defects of physical or mental illnesses or conditions.

3. Service providers shall be licensed under the applicable state practice act or comparable licensing criteria by the Virginia Department of Education, and shall meet

applicable qualifications under 42 CFR Part 440. Identification of defects, illnesses or conditions and services necessary to correct or ameliorate them shall be performed by practitioners qualified to make those determinations within their licensed scope of practice, either as a member of the IEP team or by a qualified practitioner outside the IEP team.

a. Service providers shall be employed by the school division or under contract to the school division.

b. Supervision of services by providers recognized in subdivision 4 of this subsection shall occur as allowed under federal regulations and consistent with Virginia law, regulations, and DMAS provider manuals.

c. The services described in subdivision 4 of this subsection shall be delivered by school providers, but may also be available in the community from other providers.

d. Services in this subsection are subject to utilization control as provided under 42 CFR Parts 455 and 456.

e. The IEP shall determine whether or not the services described in subdivision 4 of this subsection are medically necessary and that the treatment prescribed is in accordance with standards of medical practice. Medical necessity is defined as services ordered by IEP providers. The IEP providers are qualified Medicaid providers to make the medical necessity determination in accordance with their scope of practice. The services must be described as to the amount, duration and scope.

4. Covered services include:

a. Physical therapy, occupational therapy and services for individuals with speech, hearing, and language disorders, performed by, or under the direction of, providers who meet the qualifications set forth at 42 CFR 440.110. This coverage includes audiology services;

b. Skilled nursing services are covered under 42 CFR 440.60. These services are to be rendered in accordance to the licensing standards and criteria of the Virginia Board of Nursing. Nursing services are to be provided by licensed registered nurses or licensed practical nurses but may be delegated by licensed registered nurses in accordance with the regulations of the Virginia Board of Nursing, especially the section on delegation of nursing tasks and procedures. the licensed practical nurse is under the supervision of a registered nurse.

(1) The coverage of skilled nursing services shall be of a level of complexity and sophistication (based on assessment, planning, implementation and evaluation) that is consistent with skilled nursing services when performed by a licensed registered nurse or a licensed practical nurse. These skilled nursing services shall include, but not necessarily be limited to dressing changes, maintaining patent airways, medication administration/monitoring and urinary catheterizations.

(2) Skilled nursing services shall be directly and specifically related to an active, written plan of care developed by a registered nurse that is based on a written order from a physician, physician assistant or nurse practitioner for skilled nursing services. This order shall be recertified on an annual basis.

c. Psychiatric and psychological services performed by licensed practitioners within the scope of practice are defined under state law or regulations and covered as physicians' services under 42 CFR 440.50 or medical or other remedial care under 42 CFR 440.60. These outpatient services include individual medical psychotherapy, group medical psychotherapy coverage, and family medical psychotherapy. Psychological and neuropsychological testing are allowed when done for purposes other than educational diagnosis, school admission, evaluation of an individual with mental retardation prior to admission to a nursing facility, or any placement issue. These services are covered in the nonschool settings also. School providers who may render these services when licensed by the state include psychiatrists, licensed clinical psychologists, school psychologists, licensed clinical social workers, professional counselors, psychiatric clinical nurse specialist, marriage and family therapists, and school social workers.

d. Personal care services are covered under 42 CFR 440.167 and performed by persons qualified under this subsection. The personal care assistant is supervised by a DMAS recognized school-based health professional who is acting within the scope of licensure. This practitioner develops a written plan for meeting the needs of the child, which is implemented by the assistant. The assistant must have qualifications comparable to those for other personal care aides recognized by the Virginia Department of Medical Assistance Services. The assistant performs services such as assisting with toileting, ambulation, and eating. The assistant may serve as an aide on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

e. Medical evaluation services are covered as physicians' services under 42 CFR 440.50 or as medical or other remedial care under 42 CFR 440.60. Persons performing these services shall be licensed physicians, physician assistants, or nurse practitioners. These practitioners shall identify the nature or extent of a child's medical or other health related condition.

f. Transportation is covered as allowed under 42 CFR 431.53 and described at State Plan Attachment 3.1-D. Transportation shall be rendered only by school division personnel or contractors. Transportation is covered for a child who requires transportation on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Transportation shall be listed in the child's IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

g. Assessments are covered as necessary to assess or reassess the need for medical services in a child's IEP and shall be performed by any of the above licensed practitioners within the scope of practice. Assessments and reassessments not tied to medical needs of the child shall not be covered.

5. DMAS will ensure through quality management review that duplication of services will be monitored. School divisions have a responsibility to ensure that if a child is receiving additional therapy outside of the school, that there will be coordination of services to avoid duplication of service.

D. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

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 DBHDS.

"Clinical experience" means (for the purpose of mental health day treatment/partial hospitalization, intensive community treatment, psychosocial rehabilitation, mental health support, crisis stabilization, and crisis intervention services) practical experience in providing direct services to individuals with diagnoses of mental illness or mental retardation/intellectual disability or the provision of direct geriatric services or special education services. Experience ~~may~~ shall include supervised internships, supervised practicums, and supervised field experience. Experience shall not include unsupervised internships, unsupervised practicums, and unsupervised 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.

"Human services field" means (for the purpose of mental health day treatment/partial hospitalization, intensive community treatment, psychosocial rehabilitation, mental health support, crisis stabilization, and crisis intervention services) social work, gerontology, psychology, psychiatric rehabilitation, special education, sociology, counseling, vocational rehabilitation, human development, behavioral sciences, marriage and family therapy, art or music therapy, health promotion, 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.~~, as defined in 12VAC35-105-20, a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, or certified psychiatric clinical nurse specialist/practitioner. A person who has completed his graduate degree and is under the direct personal supervision of a person licensed under Virginia law, who is working towards licensure, and who is in compliance with the appropriate Virginia licensing board may perform the functions of the LMHP for purposes of Medicaid reimbursement. For purposes of Medicaid reimbursement, these persons shall use LMHP-E after their signatures to indicate this status.

"Qualified mental health professional-adult" or ~~"QMHP"~~ "QMHP-A" 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:~~, as defined in 12VAC35-105-20, a person who is trained and experienced in providing psychiatric or mental health services to individuals who have a mental illness including (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) an individual with a master's degree in psychology from an accredited college or university with at least one year of clinical experience; (iv) a social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling or other degree deemed equivalent to those described) from an accredited college and with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (v) an individual with at least a bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits (or equivalent) in a human service field and who has at least three years of clinical experience; (vi) a certified psychiatric rehabilitation provider (CPRP) registered with the United States Psychiatric Rehabilitation Association (USPRA); (vii) a registered nurse licensed in Virginia with at least one year of clinical experience; or (viii) any other licensed mental health professional.

~~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 mental health professional-eligible" or "QMHP-E" means a person, as defined in 12VAC35-105-20, who has (i) at least a bachelor's degree in a human service field or special education from an accredited college without one year of clinical experience or (ii) at least a bachelor's degree in a nonrelated field and is enrolled in a master's or doctoral clinical program, taking the equivalent of at least three credit hours per semester and is employed by a provider that has a triennial license issued by the Department of Behavioral Health and Developmental Services (DBHDS) and a DBHDS-approved and DMAS-approved supervision training program.

"Qualified paraprofessional in mental health" or "QPPMH" means ~~an individual who meets at least one of the following criteria:~~, as defined in 12VAC35-105-20, a person who must, at a minimum, meet one of the following criteria: (i) registered with the United States Psychiatric Association (USPRA) as an associate psychiatric rehabilitation provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human service counseling) and at least one year of experience providing direct services to persons with a diagnosis of mental illness; or (iii) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-Adult providing services to persons with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

~~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.

e. These services may be rendered by LMHP, LMHP Supervisee or Resident, QMHP-A, QMHP-E, and QPPMH as herein defined.

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.

e. These services may be rendered by LMHP, LMHP Supervisee or Resident, QMHP-A, QPPMH, and QMHP-E as herein defined.

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.

c. These services may be rendered by LMHP, LMHP Supervisee or Resident, QMHP-A, QMHP-C, QMHP-E, and a certified pre-screener, as herein defined.

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.

c. These services may be rendered by LMHP, LMHP Supervisee or Resident, QMHP-A, QMHP-E, and QPPMH as herein defined.

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 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.

e. These services may be rendered by LMHP, LMHP Supervisee or Resident, QMHP-A, QMHP-C, QMHP-E, and a certified pre-screener as herein defined.

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.

d. These services may be rendered by LMHP, LMHP Supervisee or Resident, QMHP-A, QMHP-E, and QPPMH as herein defined.

12VAC30-60-61. Services related to the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT); community mental health services for children.

Definitions. The following words and terms shall have these meanings unless the context indicates otherwise.

"Independent assessor" means a professional who performs the independent clinical assessment.

"Independent clinical assessment" means the evaluation that is done by the CSB/BHA or its subcontractor prior to the initiation of intensive in-home services, therapeutic day treatment, Levels A and B residential treatment, and mental health support services (as defined in 12VAC30-50-226) for children under 21. The elements of the independent clinical assessment are specified in the agreements with the CSBs/BHAs.

"Individual" means the Medicaid-eligible person receiving these services and for the purpose of this section is understood to mean children and youth.

"New service" means a community mental health rehabilitation service for which the individual does not have a current service authorization in effect as of July 17, 2011.

"Service-specific provider assessment" means the evaluation that is conducted according to the DMAS assessment definition set out in 12VAC30-50-130.

A. Independent clinical assessment requirements.

1. Effective July 18, 2011, an independent clinical assessment shall be required as a part of the service authorization process, for new services beginning on or after this date for Medicaid and FAMIS intensive in-home (IIH), therapeutic day treatment (TDT), and mental health support services (MHSS) for individuals up to the age of 21. This independent clinical assessment shall be performed prior to the initiation of treatment for individuals who are not already receiving services. CSBs/BHAs shall conduct these independent clinical assessments on and after August 1, 2011, for service reauthorizations with dates of service continuing on and after September 1, 2011. The independent clinical assessment shall be completed prior to the service provider conducting an assessment or providing treatment.

a. Each individual shall have at least one independent clinical assessment either prior to the initiation of IIH, TDT, and MHSS for individuals up to the age of 21.

b. For individuals who receive services on and after July 17, 2011, the independent clinical assessment shall be required as part of the first service reauthorization process.

c. For individuals who are already receiving IIH, TDT, or MHSS services, the requirement for a completed independent clinical assessment shall be effective for service reauthorizations for dates of services on after September 1, 2011.

d. Individuals who are being discharged from residential treatment (DMAS service Levels A, B, or C) do not need an independent clinical assessment prior to receiving community IIH, TDT, or MHSS. They shall be required, however, to have an independent clinical assessment as part of any subsequent service reauthorization.

2. An independent clinical assessment shall be conducted within 30 days prior to the expiration of the current service authorization. The independent clinical assessment shall be completed and submitted to the DMAS service authorization contractor by the independent assessor prior to the service provider submitting the service reauthorization request to the DMAS service authorization contractor, or the provider's service reauthorization request will be administratively rejected. A copy of the independent clinical assessment shall be in the service provider's individual's file.

3. Levels A and B residential services will follow these same requirements effective in November 2011.

4. Service provider requirements. If a service provider receives a request from parents or legal guardians to provide IIH, TDT, or MHSS for individuals who are younger than 21 years of age, the service provider shall refer the parent/legal guardian to the local CSB/BHA to obtain the independent clinical assessment prior to providing services. When individuals are already receiving these services, then the provider of services shall inform the parent/legal guardian in writing at least 30 days prior to the current service authorization expiration date that an independent clinical assessment is needed in order for the services to continue.

a. The service provider shall be required to conduct a service-specific provider assessment as defined in 12VAC30-50-130 B.

b. If the selected service provider concurs that the child meets criteria for the service recommended by the independent assessor, the selected service provider will submit a service authorization request to the DMAS service authorization contractor. A copy of the independent clinical assessment shall be retained in the service provider's individual's file. The service-specific provider's assessment for IIH, TDT, or MHSS service shall not occur prior to the independent clinical assessment.

c. If, within 30 days after the independent clinical assessment, a service provider identifies the need for services that were not included in the independent clinical assessment, the service provider shall contact the independent assessor and request a modification. The request for a modification shall be based on a significant

change in the individual's life that occurred after the independent clinical assessment was conducted. If the independent assessment is greater than 30 days old, another independent clinical assessment must be obtained prior to the initiation of a new IIH, TDT, or MHSS service for individuals younger than 21 years of age. Examples of a significant change may include, but shall not be limited to, hospitalization; school suspension or expulsion; death of a significant other; or hospitalization or incarceration of a parent/legal guardian.

d. If the independent assessment does not recommend the requested service and the service provider agrees with the independent clinical assessment recommendation, no service authorization request will be submitted to the DMAS service authorization contractor. If the service provider documented a significant change in the child's life since the independent clinical assessment that may change the independent assessor's recommendation, the service provider must contact the independent assessor to discuss the recommendation. The CSB/BHA may modify the independent clinical assessment as deemed necessary.

e. If the independent assessor does not recommend the service and the parent/legal guardian disagrees with the recommendation, the parent/legal guardian may approach a service provider requesting the service. If, after conducting the service specific assessment, the service provider identifies additional documentation beyond the independent clinical assessment that demonstrates the service is clinically indicated, the service provider may submit a service authorization request to the DMAS service authorization contractor. The DMAS service authorization contractor will review the service authorization submission and the independent assessment, and make a determination. If the determination results in a service denial, the member and service provider will be notified of the decision and the appeals process.

5. If the individual is in immediate need of treatment, the independent assessor shall refer the individual to the appropriate currently reimbursed Medicaid emergency services in accordance with 12VAC30-50-226 and may also contact the individual's MCO to alert the MCO.

6. Requirements for community services boards/behavioral health authorities.

a. When the CSB/BHA has been contacted by the parent or legal guardian, the independent clinical assessment appointment shall be offered within five business days of a request for IIH services and within 10 business days for a request for TDT and MHSS. The appointment may be scheduled beyond the respective time frame at the documented request of the parent or legal guardian.

b. The independent assessor shall conduct the independent clinical assessment with the individual and the parent or legal guardian using a standardized format and make a recommendation for the most appropriate, medically necessary services, if indicated. Only the parent or legal guardian and individual shall be permitted in the room during the independent clinical assessment.

c. The independent clinical assessment shall be effective for a 30-day period.

d. The independent assessor shall enter the findings of the independent clinical assessment into the DMAS service authorization contractor's web portal within one business day of conducting the assessment. The independent clinical assessment form shall be completed by the independent assessor within three business days of completing the independent clinical assessment.

7. The individual or his parent or legal guardian shall have the right to freedom of choice of service providers.

~~A.~~ B. Intensive in-home services for children and adolescents.

1. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from mental, behavioral or emotional illness which 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:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or out-of-home placement because of conflicts with family or community.

b. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.

c. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

2. At admission, an appropriate service-specific provider assessment ~~is made~~ shall be conducted by the ~~LMHP or the QMHP and approved by the LMHP,~~ Licensed Mental Health Professional (LMHP), as that term is defined in 12VAC30-50-130 or an individual who is a LMHP Supervisee or Resident, under the supervision of a LMHP, documenting that service needs can best be met through intervention provided typically but not solely in the ~~client's~~ individual's residence. ~~An Individual Service Plan (ISP) must be fully completed within 30 days of initiation of services.~~ If the LMHP Supervisee or Resident performs the assessment, it must be reviewed, within 24 hours, approved, and signed/dated by the LMHP in order for Medicaid reimbursement to occur. Either a LMHP or LMHP Supervisee or Resident person shall make and

document the diagnosis. The assessment shall include all of the elements specified herein. All assessments shall contain:

a. The presenting issue or reason for the referral;

b. The individual's mental health history and related hospitalizations and previous interventions and timeframes;

c. The individual's medical profile, such as significant past and present medical problems, illnesses, injuries, known allergies, and current physical complaints as well as medications used to treat them;

d. The individual's developmental history;

e. The individual's educational or vocational status, or both;

f. The individual's current living situation and family history and relationships;

g. The individual's legal status;

h. The individual's drug and alcohol profile, including that of family members;

i. The individual's resources and strengths, including extracurricular activities and informal supports, church, and extended family (for example, anyone in the child's family or an important person who acts as a support to the child);

j. The individual's mental status profile;

k. The individual's diagnosis as set out in the Diagnostic and Statistical Manual 4th Edition (DSM-IV) (as may be amended from time to time) code and description;

l. The professional assessment summary and clinical formulation; and

m. The recommended treatment goals.

3. An individual service plan (ISP) must be fully completed within 30 days of initiation of services.

~~3.~~ 4. Services ~~must~~ shall be directed toward the treatment of the eligible child and delivered primarily in the family's residence with the child present. The service-specific provider assessment shall be conducted face-to-face in the residence. In some circumstances, such as lack of privacy or unsafe conditions, the assessment and provision of services may be provided in the community if ~~supported by the needs assessment and ISP~~ the rationale is supported in the clinical record.

~~4.~~ 5. These services shall be provided when the clinical needs of the child put ~~the child~~ him at risk for out-of-home placement:

a. When services that are far more intensive than outpatient clinic care are required to stabilize the child in the family situation, or

b. When the child's residence as the setting for services is more likely to be successful than a clinic.

~~5.~~ 6. Services may not be billed when provided to a family while the child is not residing in the home.

~~6.~~ 7. Services shall also be used to facilitate the transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful. The child and responsible parent/guardian must be available and in agreement to participate in the transition.

~~7.~~ 8. At least one parent or responsible adult with whom the child is living must be willing to participate in the intensive in-home services with the goal of keeping the child with the family.

~~8.~~ 9. The enrolled provider ~~must~~ shall be licensed by the Department of ~~Mental Health, Mental Retardation and Substance Abuse Services~~ Behavioral Health and Developmental Services (DBHDS) as a provider of intensive in-home services.

~~9.~~ 10. Services must be provided by an LMHP, ~~or a~~ LMHP Supervisee or Resident, ~~QMHP~~ QMHP-C, or QMHP-E as defined in 12VAC30-50-226. Reimbursement shall not be provided for such services when they have been rendered by a QPPMH as defined in 12VAC30-50-226.

~~10.~~ 11. The billing unit for intensive in-home service ~~is~~ shall be one hour. Although the pattern of service delivery may vary, intensive in-home services is an intensive service provided to individuals for whom there is a plan of care in effect which demonstrates the need for a minimum of three hours a week of intensive in-home service, and includes a plan for service provision of a minimum of three hours of service delivery per client/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the ~~client~~ child and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Service plans ~~must~~ shall incorporate a discharge plan which identifies transition from intensive in-home to less intensive or nonhome based services. If there is a lapse in service for more than two weeks, the reason for the lapse and the rationale for the continued need for the service shall be documented. The ISP shall be reviewed and updated if there are changes, and signed by either the parent or legal guardian and if appropriate, the child. If the lapse is greater than 31 days, a new admission shall occur.

~~11.~~ 12. The provider ~~must~~ shall ensure that the maximum staff-to-caseload ratio fully meets the needs of the

individual. For full time staff, the staff-to-client ratio shall not exceed five cases per staff person. The ratio for half-time staff-to-clients shall be 1 to 3. Staff that work less than half-time shall be authorized by the licensing specialist for more than one case. A case load may be 1:6 staff to client ratio if the staff is transitioning one of the clients off of the case load for up to 30 days.

13. A full-time clinical supervisor shall not have more than 10 QMHPs to supervise. A half-time clinical supervisor shall not have more than five QMHPs to supervise.

~~12.~~ 14. Since case management services are an integral and inseparable part of this service, case management services may not be billed separately for periods of time when intensive in-home services are being provided.

~~13.~~ 15. Emergency assistance shall be available 24 hours per day, seven days a week.

16. Providers shall comply with DMAS marketing requirements at 12VAC30-130-2000 et seq. Providers that DMAS determines to have violated the DMAS marketing requirements shall be terminated as a Medicaid provider pursuant to 12VAC30-130-2000 E.

17. If a child receiving services is also receiving case management services, as specified in 12VAC30-50-420 or 12VAC30-50-430, the provider shall collaborate with the case manager and provide notification of the provision of services. In addition, the provider shall send monthly updates to the case manager on the child's progress. A discharge summary shall be sent to the case manager within 30 days of the service discontinuation date.

18. The provider shall also inform the primary care provider of the child's receipt of community mental health rehabilitative services.

~~B.~~ C. Therapeutic day treatment for children and adolescents.

1. Therapeutic day treatment is appropriate for children and adolescents who meet one of the following:

a. Children and adolescents who require year-round treatment in order to sustain behavior or emotional gains.

b. Children and adolescents whose behavior and emotional problems are so severe they cannot be handled in self-contained or resource emotionally disturbed (ED) classrooms without:

(1) This programming during the school day; or

(2) This programming to supplement the school day or school year.

c. Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

d. Children and adolescents who (i) have deficits in social skills, peer relations or dealing with authority; (ii) are hyperactive; (iii) have poor impulse control; (iv) are extremely depressed or marginally connected with reality.

e. Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that they cannot function in these programs without additional services.

2. Such services ~~must~~ shall not duplicate those services provided by the school.

3. Individuals qualifying for this service ~~must~~ shall demonstrate a clinical necessity for the service arising from a condition due to mental, behavioral or emotional illness which results in significant functional impairments in major life activities. Individuals ~~must~~ shall meet at least two of the following criteria on a continuing or intermittent basis:

a. Have difficulty in establishing or maintaining normal interpersonal relationships to such a degree that they are at risk of hospitalization or out-of-home placement because of conflicts with family or community.

b. Exhibit such inappropriate behavior that repeated interventions by the mental health, social services or judicial system are necessary.

c. Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or recognize significantly inappropriate social behavior.

4. The enrolled provider of therapeutic day treatment for child and adolescents services ~~must~~ shall be licensed by ~~the Department of Mental Health, Mental Retardation and Substance Abuse Services~~ DBHDS to provide day support services.

5. Services ~~must~~ shall be provided by ~~an~~ a LMHP, LMHP Supervisee or Resident, ~~a QMHP, or a QPPMH who is supervised by a QMHP or LMHP~~ QMHP-C, or QMHP-E.

6. The minimum ~~staff-to-youth~~ staff-to-individual ratio shall ensure that adequate staff is available to meet the needs of the ~~youth~~ individual identified on the ISP. The staff-to-individual ratio shall not exceed one clinical staff to six clients.

7. The program ~~must~~ shall operate a minimum of two hours per day and may offer flexible program hours (i.e., before or after school or during the summer). One unit of service ~~is~~ shall be defined as a minimum of two hours but less than three hours in a given day. Two units of service shall be defined as a minimum of three but less than five hours in a given day. Three units of service shall be defined as five or more hours of service in a given day.

8. Time for academic instruction when no treatment activity is going on ~~cannot~~ shall not be included in the billing unit.

9. Services shall be provided following a ~~diagnostic~~ service-specific provider assessment that is ~~authorized~~ conducted by an LMHP or LMHP Supervisee or Resident. A LMHP or LMHP Supervisee or Resident person shall make the diagnosis. Services ~~must~~ shall be provided in accordance with an ~~ISP~~ individual service plan (ISP) which ~~must~~ shall be fully completed within 30 days of initiation of the service. The assessment shall include the elements specified in 12VAC30-60-61 A 2.

10. If an individual receiving services is also receiving case management services, pursuant to 12VAC30-50-420 or 12VAC30-50-430, the provider shall collaborate with the case manager and provide notification of the provision of services. In addition, the provider shall send monthly updates to the case manager on the individual's progress. A discharge summary shall be sent to the case manager within 30 days of the service discontinuation date.

11. The provider shall also inform the primary care provider of the child's receipt of community mental health rehabilitative services.

12. Providers shall comply with DMAS marketing requirements as set out in 12VAC30-130-2000 et seq. Providers that violate the DMAS marketing requirements shall be terminated as a Medicaid provider pursuant to 12VAC30-130-2000 E.

13. If there is a lapse in service for more than two weeks, the reason for the lapse and the rationale for the continued need for the service shall be documented. The ISP shall be reviewed, updated to determine if there are changes, and signed by either the parent or legal guardian and if appropriate, the child. If the lapse is greater than 31 days, a new admission shall occur.

~~C.~~ D. Community-Based Services for Children and Adolescents under 21 (Level A).

1. The staff ratio must be at least 1 to 6 during the day and at least 1 to 10 while asleep. The program director supervising the program/group home must be, at minimum, a qualified mental health professional (as defined in 12VAC35-105-20) with a bachelor's degree and have at least one year of direct work with mental health clients. The program director must be employed full time.

2. At least 50% of the direct care staff must meet DMAS paraprofessional staff criteria, defined in 12VAC30-50-226.

3. ~~Authorization is required for Medicaid reimbursement.~~ All community-based services for children and adolescents under 21 (Level A) shall be authorized prior to reimbursement for these services. DMAS shall monitor the services rendered. ~~All Community-Based Services for Children and Adolescents under 21 (Level A) must be authorized prior to reimbursement for these services.~~ Services rendered without such authorization shall not be covered. Reimbursement shall not be made for this service when other less intensive services may achieve stabilization.

4. Services must be provided in accordance with an Individual Service Plan (ISP) (plan of care), which must be fully completed within 30 days of authorization for Medicaid reimbursement.

5. Prior to admission, a service-specific provider assessment shall be conducted according to DMAS specifications described in 12VAC30-60-61 A 2.

6. Such service-specific provider assessments shall be performed by a LMHP or LMHP Supervisee or Resident. If the LMHP Supervisee or Resident performs the assessment, then it must be reviewed, within 24 hours, approved and signed/dated in order for Medicaid reimbursement to occur.

7. If an individual receiving community-based services for children and adolescents under 21 (Level A) is also receiving case management services, the provider shall collaborate with the case manager by notifying the case manager of the provision of Level A services and shall send monthly updates on the individual's progress. A discharge summary shall be sent to the case manager when the service is discontinued.

~~D.~~ E. Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B).

1. The staff ratio must be at least 1 to 4 during the day and at least 1 to 8 while asleep. The clinical director must be a licensed mental health professional. The caseload of the clinical director must not exceed 16 clients including all sites for which the clinical director is responsible. The program director must be full time and be a qualified mental health professional with a bachelor's degree and at least one year's clinical experience.

2. ~~At~~ In order for Medicaid reimbursement to be approved, at least 50% of the direct care staff must meet DMAS paraprofessional staff criteria, as defined in 12VAC30-50-226. The program/group home must coordinate services with other providers.

3. All Therapeutic Behavioral Services (Level B) ~~must~~ shall be authorized prior to reimbursement for these services. Services rendered without such prior authorization shall not be covered.

4. Services must be provided in accordance with an ISP (plan of care), which ~~must~~ shall be fully completed within 30 days of authorization for Medicaid reimbursement.

5. Prior to admission, a service-specific provider assessment shall be performed using elements specified by DMAS in the agency guidance documents.

6. Such service-specific provider assessments shall be performed by a LMHP or LMHP Supervisee or Resident. If the LMHP Supervisee or Resident performs the assessment then it must be reviewed, within 24 hours, approved and signed/dated in order for Medicaid reimbursement to occur.

7. If an individual receiving day therapeutic behavioral services for children and adolescents under 21 (Level B) is also receiving case management services the provider must collaborate with the case manager by notifying the case manager of provision of Level B services and send monthly updates on the individual's progress. A discharge summary shall be sent to the case manager when the services are discontinued.

8. The provider shall also inform the primary care provider of the child's receipt of community mental health rehabilitative services.

~~E.~~ F. Utilization review. Utilization reviews for Community-Based Services for Children and Adolescents under 21 (Level A) and Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B) shall include determinations whether providers meet all DMAS requirements, including compliance with DMAS marketing requirements. Providers that violate the DMAS marketing requirements shall be terminated as a Medicaid provider pursuant to 12VAC30-130-2000 E.

12VAC30-60-143. Mental health services utilization criteria.

A. Utilization reviews shall include determinations that providers meet the following requirements:

1. The provider shall meet the federal and state requirements for administrative and financial management capacity.

2. The provider shall document and maintain individual case records in accordance with state and federal requirements.

3. The provider shall ensure eligible ~~recipients~~ individuals have free choice of providers of mental health services and other medical care under the Individual Service Plan.

4. Providers shall comply with DMAS marketing requirements as set out in 12VAC30-130-2000 et seq. Providers that violate the DMAS marketing requirements shall be terminated as a Medicaid provider pursuant to 12VAC30-130-2000 E.

5. If an individual receiving community mental health rehabilitative services is also receiving case management services, pursuant to 12VAC30-50-420 or 12VAC30-50-430, the provider must collaborate with the case manager by notifying the case manager of the provisions of community mental health rehabilitative services and send monthly updates on the individual's progress. The provider must also inform the primary care provider of the child's receipt of community mental health rehabilitative services. A discharge summary shall be sent when the services are discontinued.

B. Day treatment/partial hospitalization services shall be provided following a ~~diagnostic~~ service-specific provider assessment and be authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or licensed clinical nurse specialist-psychiatric. An ISP shall be fully completed by either the LMHP or the QMHP as defined at 12VAC30-50-226 within 30 days of service initiation.

1. The enrolled provider of day treatment/partial hospitalization shall be licensed by ~~DMHMRSAS~~ DBHDS as providers of day treatment services.

2. Services shall be provided by an LMHP, LMHP Supervisee or Resident, a ~~QMHP~~ QMHP-A or QMHP-E, or a qualified paraprofessional under the supervision of a ~~QMHP~~ QMHP-A or an LMHP or LMHP Supervisee or Resident as defined at 12VAC30-50-226.

3. The program shall operate a minimum of two continuous hours in a 24-hour period.

4. Individuals shall be discharged from this service when other less intensive services may achieve or maintain psychiatric stabilization.

C. Psychosocial rehabilitation services shall be provided to those individuals who have experienced long-term or repeated psychiatric hospitalization, or who experience difficulty in activities of daily living and interpersonal skills, or whose support system is limited or nonexistent, or who are unable to function in the community without intensive intervention or when long-term services are needed to maintain the individual in the community.

1. Psychosocial rehabilitation services shall be provided following ~~an~~ a service-specific provider assessment which clearly documents the need for services. The service-specific provider assessment shall be completed by an LMHP, LMHP Supervisee or Resident or a ~~QMHP, and~~ QMHP-A or QMHP-E. If the service-specific provider assessment is done by a QMHP-A or QMHP-E, it shall be approved by a LMHP, LMHP Supervisee or Resident within 30 days of admission to services. An ISP shall be completed by the LMHP, or LMHP Supervisee or Resident or the ~~QMHP~~ QMHP-A or QMHP-E within 30 days of service initiation. Every three months, the LMHP, LMHP Supervisee or Resident or the ~~QMHP~~ QMHP-A or QMHP-E must review, modify as appropriate, and update the ISP.

2. Psychosocial rehabilitation services of any individual that continue more than six months must be reviewed by an LMHP, or LMHP Supervisee or Resident who must document the continued need for the service. The ISP shall be rewritten at least annually.

3. The enrolled provider of psychosocial rehabilitation services shall be licensed by ~~DMHMRSAS~~ DBHDS as a provider of psychosocial rehabilitation or clubhouse services.

4. Psychosocial rehabilitation services may be provided by either an LMHP, LMHP Supervisee or Resident, a ~~QMHP~~ QMHP-A, QMHP-E or a qualified paraprofessional under the supervision of either a ~~QMHP~~ QMHP-A, QMHP-E, ~~or an~~ LMHP, or LMHP Supervisee or Resident.

5. The program shall operate a minimum of two continuous hours in a 24-hour period.

6. Time allocated for field trips may be used to calculate time and units if the goal is to provide training in an integrated setting, and to increase the ~~client's~~ individual's understanding or ability to access community resources.

D. Admission to crisis intervention services is indicated following a marked reduction in the individual's psychiatric, adaptive or behavioral functioning or an extreme increase in personal distress.

1. The crisis intervention services provider shall be licensed as a provider of outpatient services by ~~DMHMRSAS~~ DBHDS.

2. ~~Client related~~ Individual-related activities provided in association with a face-to-face contact are reimbursable.

3. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

4. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP must be developed or revised to reflect the short-term counseling goals by the fourth face-to-face contact.

5. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

6. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed, provided the provision of out-of-clinic services is clinically/programmatically appropriate. Travel by staff to provide out-of-clinic services is not reimbursable. Crisis intervention may involve contacts with the family or significant others. If other clinic services are billed at the same time as crisis intervention, documentation must clearly support the separation of the services with distinct treatment goals.

7. An LMHP, LMHP Supervisee or Resident, a ~~QMHP~~ QMHP-A, QMHP-C, or QMHP-E, or a certified prescreener must conduct a face-to-face service-specific provider assessment. If the ~~QMHP~~ QMHP-A, QMHP-C, or QMHP-E performs the service-specific provider assessment, it must be reviewed and approved by an LMHP, LMHP Supervisee or Resident or a certified prescreener within 72 hours of the face-to-face service-specific provider assessment. The service-specific provider assessment shall document the need for and the anticipated duration of the crisis service. Crisis intervention will be provided by an LMHP, LMHP Supervisee or Resident, a certified prescreener, or a ~~QMHP~~ QMHP-A, QMHP-C, or QMHP-E.

8. Crisis intervention shall not require an ISP.

9. For an admission to a freestanding inpatient psychiatric facility for individuals younger than age 21, federal regulations (42 CFR 441.152) require certification of the admission by an independent team. The independent team must include mental health professionals, including a physician. Preadmission screenings cannot be billed unless the requirement for an independent team, with a physician's signature, is met.

10. Services must be documented through daily notes and a daily log of time spent in the delivery of services.

E. Case management services ~~(pursuant to 12VAC30-50-226)~~ (pursuant to 12VAC30-50-420 (seriously mental ill adults and emotionally disturbed children) or 12VAC30-50-430 (youth at risk of serious emotional disturbance)).

1. Reimbursement shall be provided only for "active" case management clients, as defined. 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 activity or communication with the client or families, significant others, service providers, and others including a minimum of one face-to-face client contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. The Medicaid eligible individual shall meet the ~~DMHMRSAS~~ DBHDS criteria of serious mental illness, serious emotional disturbance in children and adolescents, or youth at risk of serious emotional disturbance.

3. There shall be no maximum service limits for case management services. Case management shall not be billed for persons in institutions for mental disease.

4. The ISP must document the need for case management and be fully completed within 30 days of initiation of the service, and the case manager shall review the ISP every three months. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.

5. The ISP shall be updated at least annually.

6. The provider of case management services shall be licensed by ~~DMHMRSAS~~ DBHDS as a provider of case management services.

F. Intensive community treatment (ICT) for adults.

1. ~~An~~ A service-specific provider assessment which documents eligibility and need for this service shall be completed by the LMHP, LMHP Supervisee or Resident or the ~~QMHP~~ QMHP-A or QMHP-E prior to the initiation of services. This assessment must be maintained in the individual's records.

2. An individual service plan, based on the needs as determined by the service specific provider assessment, must be initiated at the time of admission and must be fully developed by the LMHP, LMHP Supervisee or Resident or the ~~QMHP~~ QMHP-A or QMHP-E and approved by the LMHP or LMHP Supervisee or Resident within 30 days of the initiation of services.

3. ICT may be billed if the client is brought to the facility by ICT staff to see the psychiatrist. Documentation must be present to support this intervention.

4. The enrolled ICT provider shall be licensed by the ~~DMHMRSAS~~ DBHDS as a provider of intensive community services or as a program of assertive community treatment, and must provide and make available emergency services 24-hours per day, seven days per week, 365 days per year, either directly or on call.

5. ICT services must be documented through a daily log of time spent in the delivery of services and a description of the activities/services provided. There must also be at least a weekly note documenting progress or lack of progress toward goals and objectives as outlined on the ISP.

G. Crisis stabilization services.

1. This service must be authorized following a face-to-face service-specific provider assessment by an LMHP, LMHP Supervisee or Resident, a certified prescreener, or a ~~QMHP~~ QMHP-A, QMHP-C, or QMHP-E. This assessment must be reviewed and approved by a licensed mental health professional within 72 hours of the assessment.

2. The service specific provider assessment must document the need for crisis stabilization services and anticipated duration of need.

3. The Individual Service Plan (ISP) must be developed or revised within 10 business days of the approved service-specific provider assessment or reassessment. The LMHP, certified prescreener, or QMHP shall develop the ISP.

4. Room and board, custodial care, and general supervision are not components of this service.

5. Clinic option services are not billable at the same time crisis stabilization services are provided with the exception of clinic visits for medication management. Medication management visits may be billed at the same time that crisis stabilization services are provided but documentation must clearly support the separation of the services with distinct treatment goals.

6. Individuals qualifying for this service must demonstrate a clinical necessity for the service arising from a condition due to an acute crisis of a psychiatric nature which puts the individual at risk of psychiatric hospitalization.

7. Providers of crisis stabilization shall be licensed by ~~DMHMRSAS~~ DBHDS as providers of outpatient services.

H. Mental health support services.

1. At admission, an appropriate face-to-face service-specific provider assessment must be made, within 30 days, and documented by the LMHP or ~~the QMHP~~ the LMHP Supervisee or Resident indicating that service needs can best be met through mental health support services. ~~The assessment must be performed by the LMHP or the QMHP and approved by the LMHP within 30 days of the date of admission.~~ The service-specific provider assessment must be performed in order for Medicaid reimbursement to occur. The LMHP, LMHP Supervisee or Resident, or the QMHP ~~will~~ shall complete the ISP within 30 days of the admission to this service.

2. The ISP, as defined in 12VAC30-50-226, ~~must~~ shall indicate the specific supports and services to be provided and the goals and objectives to be accomplished. The LMHP, LMHP Supervisee or Resident or ~~QMHP~~, QMHP-A, or QMHP-E will supervise the care if delivered by the qualified paraprofessional.

~~2.~~ 3. Every three months, the LMHP, LMHP Supervisee or Resident, ~~or the QMHP must~~ QMHP-A, or QMHP-E shall review, modify as appropriate, and update the ISP. If the QMHP-A or QMHP-E reviews the ISP, it shall be discussed face to face with the LMHP or LMHP Supervisee or Resident. Such review shall be documented in the client's record. The ISP ~~must~~ shall be rewritten at least annually.

~~3.~~ 4. Only direct face-to-face contacts and services to individuals shall be reimbursable.

~~4.~~ 5. Any services provided to the client that are strictly academic in nature shall not be billable. These include, but are not limited to, such basic educational programs as instruction in reading, science, mathematics, or GED.

~~5.~~ 6. Any services provided to clients that are strictly vocational in nature shall not be billable. However, support activities and activities directly related to assisting a client to cope with a mental illness to the degree necessary to develop appropriate behaviors for operating in an overall work environment shall be billable.

~~6.~~ 7. Room and board, custodial care, and general supervision are not components of this service.

~~7.~~ 8. This service is not billable for individuals who reside in facilities where staff are expected to provide such services under facility licensure requirements.

~~8.~~ 9. Provider qualifications. The enrolled provider of mental health support services ~~must~~ shall be licensed by ~~DMHMRSAS~~ DBHDS as a provider of supportive in-home services, intensive community treatment, or as a program of assertive community treatment. Individuals employed or contracted by the provider to provide mental health support services ~~must~~ shall have training in the characteristics of mental illness and appropriate interventions, training strategies, and support methods for persons with mental illness and functional limitations.

~~9.~~ 10. Mental health support services, which continue for six consecutive months, ~~must~~ shall be reviewed and renewed at the end of the six-month period of authorization by an LMHP or LMHP Supervisee or Resident who ~~must~~ shall document the continued need for the services. The LMHP or LMHP Supervisee or Resident shall see the client face to face to conduct the six-month review.

~~10.~~ 11. Mental health support services ~~must~~ shall be documented through a daily log of time involved in the delivery of services and a minimum of a weekly summary note of services provided.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-60)

Virginia Medicaid Nursing Home Manual, Department of Medical Assistance Services.

Virginia Medicaid Rehabilitation Manual, Department of Medical Assistance Services.

Virginia Medicaid Hospice Manual, Department of Medical Assistance Services.

Virginia Medicaid School Division Manual, Department of Medical Assistance Services.

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV-TR), copyright 2000, American Psychiatric Association.

Patient Placement Criteria for the Treatment of Substance-Related Disorders (ASAM PPC-2R), Second Edition, copyright 2001, American Society on Addiction Medicine, Inc.

Medicaid Special Memo, Subject: New Service Authorization Requirement for an Independent Clinical Assessment for an Independent Clinical Assessment for Medicaid and FAMIS Children's Community Mental Health Rehabilitative Services, dated June 16, 2011, Department of Medical Assistance Services.

Medicaid Special Memo, Subject: Changes to Children Community Mental Health Rehabilitative Services - Children's Services, July 1, 2010 & September 1, 2010, dated July 23, 2010, Department of Medical Assistance Services.

Medicaid Special Memo, Subject: Changes to Community Mental Health Rehabilitative Services - Adult-Oriented Services, July 1, 2010 & September 1, 2010, dated July 23, 2010, Department of Medical Assistance Services.

Part XVII

12VAC30-130-2000. Marketing requirements and restrictions.

A. Purpose. The purpose of these rules shall be to control how providers shall be permitted to market their services to potential Medicaid/FAMIS Plus beneficiaries and clients who may or may not be currently enrolled with the particular provider.

B. Definitions.

"Beneficiaries" means those individuals and their families who are using community mental health rehabilitative services.

"DMAS" means the Department of Medical Assistance Services.

"Provider" means an individual or organizational entity which is appropriately licensed as required by the Code of Virginia and enrolled as a DMAS provider.

C. Requirements.

1. Marketing and promotional activities (including provider promotional activities) shall comply with all relevant federal and state laws.

2. Providers shall provide clearly written materials that completely and accurately describe the Medicaid mental health services offered, the beneficiary eligibility requirements to receive the service, applicable fees and other charges and all other information required for

beneficiaries and their families to make informed decisions about enrollment into the service.

3. Providers shall distribute their marketing materials only in the service locations approved within the license issued by the Licensing Division of the Department of Behavioral Health and Developmental Services.

4. Prior to the initiation of or a change to a provider's marketing plan, the provider must submit its marketing plan and receive approval by DMAS before engaging in any marketing activity.

a. Within 30 calendar days of receipt of providers' submissions, DMAS shall review submitted individual marketing materials and services and either approve them or deny their use or direct that specified modifications be made.

b. Providers failing to implement DMAS' required changes may be subject to termination of the provider contract pursuant to 12VAC30-130-2000 E.

D. Limits and prohibitions.

1. Providers shall not offer cash or noncash incentives to their enrolled members for the purposes of marketing, retaining beneficiaries within the providers' services, or rewarding behavior changes in compliance with goals and objectives stated in beneficiaries' individual service plans.

2. While engaging in marketing activities, providers shall not:

a. Engage in any marketing activities that could misrepresent the service or DMAS;

b. Assert or state that the beneficiary must enroll with the provider in order to prevent the loss of Medicaid or FAMIS Plus benefits;

c. Conduct door-to-door, telephone, or other 'cold call' marketing directed at potential or current beneficiaries;

d. Conduct any marketing activities that are not specifically approved by DMAS;

e. Make home visits for direct or indirect marketing or enrollment activities except when specifically requested by the beneficiary or family;

f. Collect or use Medicaid confidential information or Medicaid protected health information (PHI), as that term is defined in Health Insurance Portability and Accountability Act of 1996 (HIPPA), that may be provided by another entity, to identify and market its services to prospective beneficiaries;

g. Violate the confidential information or confidentiality of PHI by sharing or selling or sharing lists of information about beneficiaries for any purposes other than the performance of the provider's obligations relative to its DMAS provider agreement;

h. Contact, after the effective date of disenrollment, beneficiaries who choose to disenroll from the provider except as may be specifically required by DMAS;

i. Conduct service assessment or enrollment activities at any marketing or community event; or

j. Assert or state (either orally or in writing) that the provider is endorsed by either the Centers for Medicare and Medicaid Services, DMAS, or any other federal or state governmental entities.

E. Termination. Providers who conduct any marketing activity, that is not specifically approved by DMAS, or who violate any of the above prohibitions or requirements shall be subject to termination of their provider agreements for the services affected by the marketing plan/activity.

VA.R. Doc. No. R11-2790; Filed July 18, 2011, 4:53 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

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.

Proposed Regulation

Title of Regulation: **20VAC5-315. Regulations Governing Net Energy Metering (amending 20VAC5-315-20, 20VAC5-315-50).**

Statutory Authority: §§ 12.1-13 and 56-594 of the Code of Virginia.

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comment Deadline: August 22, 2011.

Agency Contact: Kelli Gravely, Senior Utility Analyst, Energy Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9765, FAX (804) 371-9350, or email kelli.gravely@scc.virginia.gov.

Summary:

The amendments (i) increase the maximum capacity of an electrical generation facility of a residential customer that qualifies for participation in a net energy metering program from 10 to 20 kilowatts and (ii) require that a

residential customer-generator whose generating facility has a capacity that exceeds 10 kilowatts shall pay a monthly standby charge that allows the supplier to recover that portion of its infrastructure costs that are properly associated with serving the eligible customer-generator. The proposed amendments reflect the 2011 statutory increase of allowable total capacity of net metering customers and requirement for any residential customer-generator with a generating facility with a capacity greater than 10 kilowatts to pay any applicable monthly standby charges to the customer's supplier pursuant to a commission-approved tariff.

AT RICHMOND, JULY 12, 2011

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. PUE-2011-00079

Ex Parte: In the matter of amending regulations governing net energy metering

ORDER ESTABLISHING PROCEEDING

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia, establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth. The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.[1]

Chapter 239 of the 2011 Acts of Assembly amended § 56-594 of the Code of Virginia to: (1) increase the maximum capacity of an electrical generation facility of a residential customer that qualifies for participation in a net energy metering program from 10 to 20 kilowatts; and (2) require that a residential customer-generator whose generating facility has a capacity that exceeds 10 kilowatts shall pay a monthly standby charge that allows the supplier to recover that portion of its infrastructure costs that are properly associated with serving the eligible customer-generator. Chapter 239 requires the Commission to approve of any such standby charges proposed by an electric utility upon finding that the standby charges are properly associated with serving the eligible customer-generator. The current Net Energy Metering Rules thus must be revised to reflect the permitted increase in residential capacity and to require residential customer-generators with an installed capacity of more than 10 kilowatts to pay a tariffed monthly standby charge to their respective suppliers.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that a proceeding should be established to amend the Net Energy Metering Rules to reflect the permitted increase in residential capacity and to require residential customer-generators with an installed capacity of more than 10 kilowatts to pay a tariffed monthly standby charge to their respective suppliers. To initiate this proceeding, the Commission Staff has prepared proposed rules ("Proposed Rules"), which are appended to this Order. We will direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We will further direct that each Virginia electric distribution company within the meaning of 20 VAC 5-315-20 serve a copy of this Order upon each of their respective net metering customers and file a certificate of service. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules and address only those issues pertaining to the amendment of § 56-594 of the Code of Virginia pursuant to Chapter 239 of the 2011 Acts of Assembly. Issues outside the scope of implementing these amendments will not be open for consideration.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUE-2011-00079.

(2) The Commission's Division of Information Resources shall forward a copy of this Order Establishing Proceeding to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) On or before July 26, 2011, each Virginia electric distribution company shall serve a copy of this Order upon each of their respective net metering customers and file a certificate of service no later than August 2, 2011, consistent with the findings above.

(4) On or before August 22, 2011, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing an original and fifteen (15) copies of such comments or requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules and address only those issues pertaining to the amendment of § 56-594 of the Code of Virginia pursuant to Chapter 239 of the 2011 Acts of Assembly. Issues outside the scope of implementing this amendment will not be open for consideration. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and

enter an order based upon the papers filed herein. Interested parties shall refer in their comments or requests to Case No. PUE-2011-00079. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/case.

(5) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all electric distribution companies licensed in Virginia as shown on Appendix A, hereto; and a copy shall be sent to the Commission's Office of General Counsel and Divisions of Energy Regulation, Public Utility Accounting, and Economics and Finance.

---

[1] The Commission previously amended the Net Metering Rules on August 7, 2008, and April 13, 2010, to reflect statutory changes enacted in the 2007 and 2009 Acts of Assembly. See Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of amending regulations governing net energy metering, Case No. PUE-2008-00008, 2008 S.C.C. Ann. Rept. 475, Order Adopting Final Regulations (Aug. 7, 2008); Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of amending regulations governing net energy metering, Case No. PUE-2009-00105, 2010 S.C.C. Ann. Rept. 400, Order Adopting Regulations (Apr. 13, 2010).

20VAC5-315-20. Definitions.

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

"Billing period" means, as to a particular customer, the time period between the two meter readings upon which the electric distribution company and the energy service provider calculate the customer's bills.

"Billing period credit" means, for a nontime-of-use net metering customer, the quantity of electricity generated and fed back into the electric grid by the customer's renewable fuel generator in excess of the electricity supplied to the customer over the billing period. For time-of-use net metering customers, billing period credits are determined separately for each time-of-use tier.

"Demand charge-based time-of-use tariff" means a retail tariff for electric supply service that has two or more time-of-use tiers for energy-based charges and an electricity supply demand (kilowatt) charge.

"Electric distribution company" means the entity that owns and/or operates the distribution facilities delivering electricity to the net metering customer's premises.

"Energy service provider (supplier)" means the entity providing electricity supply service to a net metering customer either as tariffed or competitive service.

"Excess generation" means the amount of electricity generated by the renewable fuel generator in excess of the electricity consumed by the customer over the course of the net metering period. For time-of-use net metering customers, excess generation is determined separately for each time-of-use tier.

"Net metering customer (customer)" means a customer owning and operating, or contracting with other persons to own or operate, or both, a renewable fuel generator under a net metering service arrangement.

"Net metering period" means each successive 12-month period beginning with the first meter reading date following the date of final interconnection of the renewable fuel generator with the electric distribution company's facilities.

"Net metering service" means providing retail electric service to a customer operating a renewable fuel generator and measuring the difference, over the net metering period, between electricity supplied to the customer from the electric grid and the electricity generated and fed back to the electric grid by the customer.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity and the Commonwealth or any municipality.

"Renewable Energy Certificate (REC)" represents the renewable energy attributes associated with the production of one megawatt-hour (MWh) of electrical energy generated by a renewable fuel generator.

"Renewable fuel generator" means an electrical generating facility that:

1. Has an alternating current capacity of not more than ~~10~~ 20 kilowatts for residential customers and not more than 500 kilowatts for nonresidential customers unless the electric distribution company has chosen a higher capacity limit for nonresidential customers in its net metering tariff;

2. Uses renewable energy, as defined by § 56-576 of the Code of Virginia, as its total fuel source;

3. The net metering customer owns and operates, or has contracted with other persons to own or operate, or both;

4. Is located on the customer's premises and is connected to the customer's wiring on the customer's side of its interconnection with the distributor;

5. Is interconnected pursuant to a net metering arrangement and operated in parallel with the electric distribution company's facilities; and

6. Is intended primarily to offset all or part of the net metering customer's own electricity requirements.

"Time-of-use net metering customer (time-of-use customer)" means a net metering customer receiving retail electricity supply service under a demand charge-based time-of-use tariff.

"Time-of-use period" means an interval of time over which the energy (kilowatt-hour) rate charged to a time-of-use customer does not change.

"Time-of-use tier (tier)" means all time-of-use periods given the same name (e.g., on-peak, off-peak, critical peak, etc.) for the purpose of time-differentiating energy (kilowatt-hour)-based charges. The rates associated with a particular tier may vary by day and by season.

20VAC5-315-50. Metering, billing, payment and contract or tariff considerations.

Net metered energy shall be measured in accordance with standard metering practices by metering equipment capable of measuring (but not necessarily displaying) power flow in both directions. Each contract or tariff governing the relationship between a net metering customer, electric distribution company or energy service provider shall be identical, with respect to the rate structure, all retail rate components, and monthly charges, to the contract or tariff under which the same customer would be served if such customer was not a net metering customer with the ~~exception~~ exceptions that a residential customer-generator whose generating facility has a capacity that exceeds 10 kilowatts shall pay any applicable tariffed monthly standby charges to his supplier, and that time-of-use metering under an electricity supply service tariff having no demand charges is not permitted. Said contract or tariff shall be applicable to both the electric energy supplied to, and consumed from, the grid by that customer.

In instances where a net metering customer's metering equipment is of a type for which meter readings are made off site and where this equipment has, or will be, installed for the convenience of the electric distribution company, the electric distribution company shall provide the necessary additional metering equipment to enable net metering service at no charge to the net metering customer. In instances where a net metering customer has requested, and where the electric distribution company would not have otherwise installed, metering equipment that is intended to be read off site, the electric distribution company may charge the net metering customer its actual cost of installing any additional equipment necessary to implement net metering service. A time-of-use net metering customer shall bear the incremental metering costs associated with net metering. Any incremental metering costs associated with measuring the total output of the renewable fuel generator for the purposes of receiving renewable energy certificates shall be installed at the customer's expense unless otherwise negotiated between the customer and the REC purchaser.

A net metering customer shall receive no compensation for excess generation unless the net metering customer has entered into a power purchase agreement with its supplier.

Upon the written request of the net metering customer, the customer's supplier shall enter into a power purchase agreement for the excess generation for one or more net metering periods, as requested by the net metering customer. The written request of the net metering customer shall be submitted prior to the beginning of the first net metering period covered by the power purchase agreement. The power purchase agreement shall be consistent with this chapter. If the customer's supplier is an investor-owned electric distribution company, the supplier shall be obligated by the power purchase agreement to purchase the excess generation for the requested net metering periods at a price equal to the PJM Interconnection, L.L.C. (PJM) zonal day-ahead annual, simple average LMP (locational marginal price) for the PJM load zone in which the electric distribution company's Virginia retail service territory resides (simple average of hourly LMPs, by tiers, for time-of-use customers), as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the electric distribution company and the net metering customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology. If the Virginia retail service territory of the investor-owned electric distribution company does not reside within a PJM load zone, the power purchase agreement shall obligate the electric distribution company to purchase excess generation for the requested net metering periods at a price equal to the systemwide PJM day-ahead annual, simple average LMP (simple average of hourly LMPs, by tiers, for time-of-use customers), as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the electric distribution company and the net metering customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology.

If the customer's supplier is a member-owned electric cooperative, the supplier shall be obligated by the power purchase agreement to purchase excess generation for the requested net metering periods at a price equal to the simple average (by tiers for time-of-use customers) of the electric cooperative's hourly avoidable cost of energy, including fuel, based on the energy and energy-related charges of its primary wholesale power supplier for the net metering period, unless the electric distribution company and the net metering customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology.

If the customer's supplier is a competitive supplier, the supplier shall be obligated by the power purchase agreement to purchase the excess generation for the requested net metering periods at a price equal to the systemwide PJM day-ahead annual, simple average LMP (simple average of hourly LMPs, by tiers, for time-of-use customers), as published by the PJM Market Monitoring Unit, for the most recent

calendar year ending on or before the end of each net metering period, unless the supplier and the net metering customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology.

The customer's supplier shall make full payment annually to the net metering customer within 30 days following the latter of the end of the net metering period or, if applicable, the date of the PJM Market Monitoring Unit's publication of the previous calendar-year's applicable zonal or systemwide PJM day-ahead annual, simple average LMP, or hourly LMP, as appropriate. The supplier may offer the net metering customer the choice of an account credit in lieu of a direct payment. The option of a net metering customer to request payment from its supplier for excess generation and the price or pricing formula shall be clearly delineated in the net metering tariff of the electric distribution company or timely provided by the customer's competitive supplier, as applicable. A copy of such tariff, or an Internet link to such tariff, at the option of the customer, shall be provided to each customer requesting interconnection of a renewable fuel generator. A competitive supplier shall provide in its contract with the net metering customer the price or pricing formula for excess generation.

For a nontime-of-use net metering customer, in any billing period in which there is a billing period credit, the customer shall be required to pay only the nonusage sensitive charges, including any applicable standby charges, for that billing period. For a time-of-use net metering customer, in any billing period for which there are billing period credits in all tiers, the customer shall be required to pay only the demand charge or charges ~~and~~, nonusage sensitive charges, and any applicable standby charges, for that billing period. Any billing period credits shall be accumulated, carried forward, and applied at the first opportunity to any billing periods having positive net consumptions (by tiers, in the case of time-of-use customers). However, any accumulated billing period credits remaining unused at the end of a net metering period shall be carried forward into the next net metering period only to the extent that such accumulated billing period credits carried forward do not exceed the net metering customer's billed consumption for the current net metering period, adjusted to exclude accumulated billing period credits carried forward and applied from the previous net metering period (recognizing tiers for time-of-use customers).

A net metering customer owns any renewable energy certificates associated with the total output of its renewable fuel generator. A supplier is only obligated to purchase a net metering customer's RECs if the net metering customer has exercised its one-time option at the time of signing a power purchase agreement with its supplier to include a provision requiring the purchase by the supplier of all generated RECs over the duration of the power purchase agreement.

Payment for all whole RECs purchased by the supplier during a net metering period in accordance with the purchase power agreement shall be made at the same time as the payment for any excess generation. The supplier will post a credit to the customer's account, or the customer may elect a direct payment. Any fractional REC remaining shall not receive immediate payment, but may be carried forward to subsequent net metering periods for the duration of the power purchase agreement.

The rate of the payment by the supplier for a customer's RECs shall be the daily unweighted average of the "CR" component of Virginia Electric and Power Company's Virginia jurisdiction Rider G tariff in effect over the period for which the rate of payment for the excess generation is determined, unless the customer's supplier is not Virginia Electric and Power Company, and that supplier has an applicable Virginia retail renewable energy tariff containing a comparable REC commodity price component, in which case that price component shall be the basis of the rate of payment. The commission may, with notice and opportunity for hearing, set another rate of payment or methodology for setting the rate of payment for RECs.

To the extent that RECs are not sold to the net metering customer's supplier, they may be sold to any willing buyer at any time at a mutually agreeable price.

VA.R. Doc. No. R11-2900; Filed July 12, 2011, 11:39 a.m.

Proposed Regulation

Title of Regulation: **20VAC5-330. Limitations on Disconnection of Electric and Water Service (adding 20VAC5-330-10 through 20VAC5-330-50).**

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

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comment Deadline: August 16, 2011.

Agency Contact: Timothy R. Faherty, Manager, Consumer Services, Energy Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9629, FAX (804) 371-9350, or email tim.faherty@scc.virginia.gov.

Summary:

These proposed regulations required by Chapters 500, 662, and 673 of the 2011 Acts of Assembly establish limitations on the authority of an investor owned electric utility, electric cooperative, or public utility providing water service to terminate electric service or water service to the residence of any customer who provides the certification of a licensed physician that the customer or a family member who resides with the customer has a serious medical condition. These proposed regulations also provide a cost recovery mechanism under which

electric and water utilities are authorized to recover any losses on customer accounts that are written off or otherwise determined to be uncollectible as a result of these regulations.

AT RICHMOND, JULY 11, 2011

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. PUE-2011-00060

Ex Parte: In re: Establishing rules providing limitations on disconnection of electric and water service for persons with serious medical conditions

ORDER FOR NOTICE AND COMMENT

This Order initiates a rulemaking required by Chapters 500, 662, and 673 of the 2011 Acts of Assembly ("Acts"). Through these Acts, the Virginia General Assembly has directed the State Corporation Commission ("Commission"), in order to promote public health and safety, to conduct a proceeding for the purpose of establishing limitations on the authority of an investor-owned electric utility, electric cooperative, or public utility providing water service to terminate electric service or water service to the residence of any customer who provides the certification of a licensed physician that the customer, or a family member who resides with the customer, has a serious medical condition. The Acts, inter alia, direct the Commission to: (i) establish limitations that are consistent with the public interest; (ii) establish a cost recovery mechanism under which electric and water utilities shall be authorized to recover any losses on customer accounts that are written off or otherwise determined to be uncollectible as a result of these regulations; and (iii) make these regulations effective no later than October 31, 2011. Finally, the Acts provide that in the proceeding establishing these regulations, the Commission shall consult with the Commissioner of Health, the Commissioner of Social Services, the Virginia Poverty Law Center, the Virginia League of Social Services Executives, electric utilities, water utilities, and other persons the Commission deems appropriate ("Designated Entities").

At our direction, the Staff of the Commission ("Staff") has conferred informally with representatives of the Designated Entities. The Staff has prepared proposed rules implementing the regulations required by the Acts ("Proposed Rules"), which are attached hereto.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that a rulemaking proceeding should be initiated for the purpose of establishing rules of the Commission governing limitations on disconnection of water and electric service for persons with serious medical conditions. We find that the Designated Entities and any other persons or entities should be afforded notice and an opportunity to comment formally on the Proposed Rules, to request a hearing thereon, or to propose modifications or supplements to the Proposed Rules. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the Virginia Register.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUE-2011-00060.

(2) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment, including a copy of the Proposed Rules, to the Registrar of Regulations for publication in the Virginia Register.

(3) A downloadable version of this Order and the Proposed Rules shall be available for access by the public on the Commission's website: http://www.scc.virginia.gov/case. A copy of this Order and the Proposed Rules shall be available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday, 8:15 a.m. to 5:00 p.m., excluding holidays.

(4) On or before August 1, 2011, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF A PROCEEDING TO ESTABLISH RULES OF THE STATE CORPORATION COMMISSION PROVIDING LIMITATIONS ON DISCONNECTION OF ELECTRIC AND WATER SERVICE FOR PERSONS WITH SERIOUS MEDICAL CONDITIONS

The Virginia General Assembly, through Chapters 500, 662, and 673 of the 2011 Acts of Assembly ("Acts"), has directed the State Corporation Commission ("Commission"), in order to promote public health and safety, to conduct a proceeding for the purpose of establishing limitations on the authority of an investor-owned electric utility, electric cooperative, or public utility providing water service to terminate electric service or water service to the residence of any customer who provides the certification of a licensed physician that the customer, or a family member who resides with the customer, has a serious medical condition.

The Commission has initiated a proceeding to establish regulations in accordance with the Virginia General Assembly's directive. The Staff of the Commission has prepared proposed rules on disconnection of electric and water service ("Proposed Rules"). The Commission has issued an Order for Notice and Comment that provides,

inter alia, that notice be given to the public and that interested persons be given an opportunity to file written comments on, to propose modifications or supplements to, or to request a hearing on these Proposed Rules.

Copies of the Commission's Order and the Proposed Rules are available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia, 23219, Monday through Friday 8:15 a.m. to 5:00 p.m., excluding holidays. Interested persons may also download unofficial copies from the Commission's website: http://www.scc.virginia.gov/case.

On or before August 16, 2011, any interested person may file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing such comments, proposals, or hearing request with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Any interested person desiring to submit comments electronically may do so by following the instructions on the Commission's website: http://www.scc.virginia.gov/case. All correspondence shall refer to Case No. PUE-2011-00060.

STATE CORPORATION COMMISSION

(5) On or before August 16, 2011, any interested person or entity, including any of the Designated Entities, may comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing comments, proposals, or hearing requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Interested persons desiring to submit comments electronically may do so by following the instructions on the Commission's website: http://www.scc.virginia.gov/case. All correspondence shall refer to Case No. PUE-2011-00060.

(6) The Staff may file a report with the Clerk of the Commission on or before August 30, 2011, concerning comments submitted to the Commission addressing the Proposed Rules.

(7) This matter is continued pending further order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy hereof shall be delivered to the Commission's Office of General Counsel and Divisions of Energy Regulation and Public Utility Accounting.

CHAPTER 330
LIMITATIONS ON DISCONNECTION OF ELECTRIC AND WATER SERVICE

20VAC5-330-10. Applicability and scope.

This chapter is promulgated pursuant to Chapters 500, 662, and 673 of the 2011 Acts of Assembly. The provisions in this chapter apply to investor-owned electric utilities, electric cooperatives, and public utilities providing water service. In order to promote public health and safety, this chapter is designed to establish reasonable limitations, consistent with the public interest, on the ability of investor-owned electric utilities, electric cooperatives, and public utilities providing water service to terminate service to residential customers who have a serious medical condition or to residential customers who reside with a family member with a serious medical condition and to provide such residential customers adequate time prior to the termination of electric or water service to either enter into a payment plan with the utility or make other arrangements for housing or medical care. Nothing in this chapter shall be interpreted to require an investor-owned electric utility, electric cooperative, or public utility providing water service to terminate service after the expiration of the timelines established herein.

20VAC5-330-20. Definitions.

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

"Licensed physician" means a person licensed to practice medicine or osteopathic medicine (M.D. or D.O.) in any of the 50 states or the District of Columbia.

"Serious medical condition" means a physical or psychiatric condition that requires medical intervention to prevent further disability, loss of function, or death. Such conditions are characterized by a need for ongoing medical supervision or the consultation of a physician. A serious medical condition carries with it a risk to health beyond that experienced by the majority of children and adults in their day-to-day minor illnesses and injuries. Individuals with a serious medical condition may require administration of specialized treatments and may be dependent on medical technology such as ventilators, dialysis machines, enteral or parenteral nutrition support, or continuous oxygen. Medical interventions may include medications with special storage requirements, use of powered equipment, or access to water. Further, a medical condition shall only be considered a serious medical condition if a licensed physician certifies that electric or water service is necessary in the treatment of the medical condition.

"Serious Medical Condition Certification Form" means a written document, approved by the State Corporation Commission, signed by (i) a licensed physician, (ii) the customer, and (iii) the patient or the patient's legal guardian

or power of attorney. The Serious Medical Condition Certification Form shall (i) identify the medical condition of the customer or family member who resides with the customer, (ii) include a certification by a licensed physician that the medical condition meets the definition of a serious medical condition, (iii) identify the anticipated length of time that the serious medical condition will persist, and (iv) identify any equipment prescribed or treatment required for the medical condition.

20VAC5-330-30. General provisions.

A. A request for a waiver of any of the provisions of this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission may impose.

B. An investor-owned electric utility, electric cooperative, or public utility providing water service shall use the Serious Medical Condition Certification Form (Form SMCC) provided on the State Corporation Commission's website at http://www.scc.virginia.gov/pue/rules.aspx unless the State Corporation Commission approves the use of an alternative form.

C. An investor-owned electric utility, electric cooperative, or public utility providing water service may require a customer to provide it a new Serious Medical Condition Certification Form either annually or upon the expiration of the anticipated length of time that the serious medical condition will persist if such time is less than 12 months.

D. An investor-owned electric utility, electric cooperative, or public utility providing water service may take reasonable actions to verify the validity of the Serious Medical Condition Certification Form. Such actions include, but are not limited to, contacting (i) the licensed physician to confirm the medical condition of the patient and the treatment or treatments associated therewith; (ii) the Virginia Department of Health Professions, or the applicable state's licensing board, to verify that the physician is a licensed physician; or (iii) the customer to verify that the patient currently resides at the residence.

E. In the event that the investor-owned electric utility, electric cooperative, or public utility providing water service is of the opinion that the information provided on the Serious Medical Condition Certification Form is invalid, or otherwise is of the opinion that there has been fraud or abuse of the process provided in this chapter, it may petition the State Corporation Commission for redress pursuant to 5VAC5-20-100 B, State Corporation Commission's Rules of Practice and Procedure.

20VAC5-330-40. Limitations on service termination to residential customers.

A. Following the issuance of a notice of intent to terminate service pursuant to § 56-247.1 D or F of the Code of Virginia, an investor-owned electric utility, electric cooperative, or public utility providing water service shall, upon request from a residential customer who has a Serious Medical Condition Certification Form filed with the utility, delay termination of service for a minimum of an additional 30 calendar days beyond the expiration of the notice.

B. Following the issuance of a notice of intent to terminate service pursuant to § 56-247.1 D or F of the Code of Virginia, an investor-owned electric utility, electric cooperative, or public utility providing water service shall, upon request from a residential customer who does not have a Serious Medical Condition Certification Form filed with the utility, delay termination of service for 10 calendar days upon oral or written notification from a residential customer that such customer or a family member residing with the customer has a serious medical condition. The 10-calendar day delay in service termination shall commence on the date the investor-owned electric utility, electric cooperative, or public utility providing water service receives notification. At the time of such notification, the investor-owned electric utility, electric cooperative, or public utility providing water service shall:

1. Advise the residential customer that service termination will be delayed for 10 calendar days pending receipt of the Serious Medical Condition Certification Form;

2. Provide the customer access to the Serious Medical Condition Certification Form via its website;

3. Not later than the next business day, mail, email, or deliver via facsimile transmission a copy of the Serious Medical Condition Certification Form upon a request from the customer; and

4. Not later than the next business day, mail the customer a letter advising the customer:

a. The date notification was received;

b. The date that the 10-calendar day delay expires; and

c. That upon receipt of a Serious Medical Condition Certification Form within the 10-calendar day time period provided for in this subsection, it will delay the termination of service 30 calendar days from the date of termination initially noticed.

Upon receipt of a Serious Medical Condition Certification Form within the 10-calendar day time period provided for in this subsection, an investor-owned electric utility, electric cooperative, or public utility providing water service shall provide the 30-calendar day delay in termination of service required in subsection A of this section.

C. In the event an investor-owned electric utility, electric cooperative, or public utility providing water service has terminated service to a residential customer within the preceding 14 calendar days, the investor-owned electric utility, electric cooperative, or public utility providing water service shall promptly restore service upon (i) receipt of a Serious Medical Condition Certification Form, or confirmation of such a form on file; and (ii) a request from the customer to reconnect service. The investor-owned electric utility, electric cooperative, or public utility providing water service shall not be permitted to require any payment as a condition to reconnect; however, it may charge the customer, on the next monthly bill, any applicable reconnection fees that are on file in its State Corporation Commission approved tariffs and terms and conditions of service. Following the reconnection of service, the investor-owned electric utility, electric cooperative, or public utility providing water service shall delay termination of service for a minimum of 30 calendar days from the date it reconnects the customer.

D. An investor-owned electric utility, electric cooperative, or public utility providing water service shall permit a residential customer to delay termination of service under this chapter two times within a 12-month period. The 30-calendar day delays may be consecutive. Nothing in this chapter shall prohibit an investor-owned electric utility, electric cooperative, or public utility providing water service from providing to a customer additional delay from the termination of service beyond the delay required.

E. During the delay in service termination pursuant to subsections A and C of this section, the investor-owned electric utility, electric cooperative, or public utility providing water service shall:

1. In the event the investor-owned electric utility, electric cooperative, or public utility providing water service is able to establish payment arrangements with the customer, mail to the customer a letter detailing the agreement not later than three business days after the agreement on payment arrangements is made; or

2. In the event the investor-owned electric utility, electric cooperative, or public utility providing water service is unable to establish payment arrangements with the customer, mail the customer a letter, not later than 10 calendar days prior to the expiration of the 30-calendar day delay required by this chapter, advising the customer of (i) the date that service may be terminated and (ii) any payment arrangements available to the customer. The letter shall also advise the customer of his right to delay service termination pursuant to this chapter twice within a 12-month period.

F. The investor-owned electric utility, electric cooperative, or public utility providing water service shall (i) maintain a copy of any letters required under this section for a minimum of 12 months and (ii) provide such copies to the State Corporation Commission's Division of Energy Regulation upon request.

20VAC5-330-50. Cost recovery mechanism.

A. An investor-owned electric utility, electric cooperative, or public utility providing water service shall be permitted to recover losses on customer accounts resulting from the implementation of this chapter in the same manner as other uncollectable costs are recovered through rates.

B. An investor-owned electric utility, electric cooperative, or public utility providing water service shall maintain write-offs and recoveries of uncollectable accounts in such a manner that would allow those amounts written off as a result of the implementation of this chapter to be separately identified.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access the form. The form is also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (20VAC5-330)

Serious Medical Condition Certification Form, Form SMCC (10/11).

VA.R. Doc. No. R11-2908; Filed July 11, 2011, 2:49 p.m.

◆ ◆

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Commonwealth Transportation Board is exempt from the Administrative Process Act in accordance with § 2.2-4002 B 3 of the Code of Virginia, which exempts regulations relating to the location, design, specifications, or construction of public buildings or other facilities.

Title of Regulation: **24VAC30-80. State Noise Abatement Policy (repealing 24VAC30-80-10).**

Statutory Authority: § 33.1-12 of the Code of Virginia.

Effective Date: July 13, 2011.

Agency Contact: Stephen J. Long, State Environmental Administrator, Department of Transportation, Environmental Division, 1201 East Broad Street, Richmond, VA 23219,

telephone (804) 371-6831, or email steve.long@vdot.virginia.gov.

Summary:

The action repeals 24VAC30-80, the State Noise Abatement Policy, as new rules established by the Federal Highway Administration concerning noise abatement analysis on federal aid projects render the regulation obsolete.

VA.R. Doc. No. R11-2919; Filed July 8, 2011, 10:02 a.m.

EXECUTIVE ORDER NUMBER 36 (2011)

CONTINUING THE GOVERNOR'S ADVISORY BOARD ON VOLUNTEERISM AND NATIONAL SERVICE

Moving Toward Alternative Fuel Solutions for State-Owned Vehicles

Importance of the Issue

The Commonwealth of Virginia owns thousands of vehicles powered primarily by gasoline or diesel fuels blended from foreign oil. In addition to contributing to our nation's dependence on foreign sources of oil, they also release emissions into our environment.

Today, there are vehicles on the market, and others in design and testing for entry into the market in the near future, that can operate on fuels other than gasoline and diesel fuel. These alternative fuel vehicles can and should be used by the Commonwealth to reduce the Commonwealth's dependence on foreign oil and increase reliance on domestic fuel sources with reduced emissions.

Although alternative fuel vehicles, such as natural gas, propane, electric, biodiesel, and ethanol, are available and operating on our roads today, the available refueling infrastructure for these vehicles is limited. Without sufficient infrastructure to provide adequate refueling options to alternative fuel vehicle owners, our ability to make a meaningful difference in our consumption of foreign oil is similarly limited.

In order to support expansion of alternative fuel vehicle markets and to reduce Virginia's dependence on foreign oil, I proposed legislation to the 2011 session of the General Assembly that passed unanimously to require a plan for moving the state's vehicles to alternative fuels. The plan must be completed for my review and approval on or before January 1, 2012, must address alternative fuel infrastructure, and set out a path for reducing the Commonwealth's reliance on foreign oil.

An effective strategy for achieving the goals set by the plan should include participation by industry and businesses that are leading the research and innovation in alternative fuel technology, infrastructure, and vehicle manufacturing. A Commonwealth-wide alternative fuel solution will not only benefit state and local public entities but, if positioned properly, will also benefit citizens and visitors to the Commonwealth that own alternative fuel vehicles and would like to use them as they travel throughout our beautiful state. We may also be able to partner in support of Virginia businesses that would like to make a similar transition to alternative fuel vehicles.

Plan for Moving Toward a Statewide Alternative Fuel Solution

In April 2011, I directed the Department of General Services (DGS) and the Department of Mines, Minerals, and Energy (DMME) to develop a survey document to collect data on state-owned vehicles, including information on the types, locations, uses and fueling habits of those vehicles. I asked that they work closely with the Virginia Municipal League (VML) and the Virginia Association of Counties (VaCO), to survey local governments to gather similar information concerning local government fleets across the Commonwealth. At my request, DGS and DMME also investigated fuel infrastructure availability around the Commonwealth, types and costs of alternative fuel vehicles available in the marketplace, the availability and cost efficiency of alternative fuels (natural gas, propane, electricity, biodiesel, ethanol, and hydrogen), and interest from private sector alternative fuel providers, infrastructure vendors, vehicle manufacturers, commercial fleet operators and other industry experts in investing in alternative fuels solutions.

Specific Directives

As a result of this investigation and analysis, in fulfillment of the obligation created by HB2282's amendment of Virginia Code § 2.2-1176 B, and by this Executive Order, I hereby direct release of a Public-Private Partnership solicitation, in accordance with the Public-Private Education Facilities and Infrastructure Act (PPEA) of 2002 (§ 56.575.1), no later than July 22, 2011. At a minimum the PPEA solicitation should set out:

- the Commonwealth's interest in partnerships with and among alternative fuel source providers, infrastructure developers, vehicle manufacturers, and other industry leaders to expand alternative fuels refueling infrastructure, and provision of alternative fuel vehicles to support the Commonwealth's vehicle pools and fleets;
- the need for short- (within next 2 years), mid- (between 2 and 5 years), and long- term (5 to 10 years) alternative fuel solutions;
- that state-owned vehicles and other state resources may be available as part of a public-private partnership aimed at expansion of alternative fuel solutions;
- that private sector teams may provide any variety of project elements, including planned conversion or purchase of vehicles, addressing specific vehicle fleets and uses, at individual, several or all locations across the Commonwealth;
- that proposals must include a plan for maintenance of infrastructure equipment, fuel sources, and

vehicles or means to guarantee proposed solutions will remain in operational state for at least the time period of the alternative fuel proposal;

- the need for training and certification opportunities for personnel working with alternative fuel technologies;
- a request for strategies that will be used to rollout proposed solutions to targeted fleets including an implementation timeline;
- that proposals should provide a plan for fueling for the life of the vehicles and if a bi-fuel system is proposed, a strategy should be included to compel use of cleaner, cheaper domestic fuels over imported fuels when financially viable;
- that local public entities and other fleets such as federal government and business fleets might be included in a partnership to enhance the effectiveness and benefits of any proposal;
- how citizens of the Commonwealth and visitors passing though the Commonwealth that operate alternative fuel vehicles might benefit from alternative fuel solutions proposal;
- the need to address the environmental advantages and disadvantages of the proposed solution;
- that each proposal must provide detailed operational and cost feasibility analysis of implementing the proposed partnership; and
- a description of the data gathered about current state and local vehicle inventories and uses, and available infrastructure, together with directions for accessing that data to support the development of proposals.

I am also directing the Department of General Services and the Department of Mines, Minerals, and Energy to brief my Secretary of Administration, Senior Advisor on Energy and the Secretary of Finance monthly on the progress of this initiative, beginning in August 2011 and to make a recommendation(s), pursuant to the PPEA process, no later than the end of May 2012, on the best available path ahead for moving state vehicles to alternative fuels and whether the goal should be accomplished through a formal PPEA agreement.

If it is determined that implementation of a proposed PPEA solution is practicable and financially viable, considering available infrastructure, the location and use of vehicles, capital and operating costs, and potential for fuel savings, negotiations towards a PPEA agreement(s) will commence with a target completion date of July 2012.

Finally, I direct all agencies, institutions and offices of the Commonwealth to cooperate in every way possible with this effort, contribute their ideas and lend their support and resources as we move forward with this ground breaking initiative.

This is an opportunity for the Commonwealth's public and private sectors, industry leaders and innovators to work collaboratively to move state government away from vehicles fueled by gasoline and diesel fuel and reduce our dependence on foreign oil. Virginia has an opportunity to lead the nation as the first state fully committed to making a substantial contribution to our nation's energy independence from foreign oil.

Effective Date of the Executive Order

This Executive Order shall become effective upon its signing and shall remain in full force and effect until January 31, 2014, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 12th day of July, 2011.

/s/ Robert F. McDonnell
Governor

STATE CORPORATION COMMISSION

Bureau of Insurance

July 14, 2011

Administrative Letter 2011-05

To: All Insurers Licensed to Write Accident and Sickness Insurance, Health Maintenance Organizations, Health Services Plans, Dental and Optometric Services Plans, and Dental Plan Organizations

Re: Internal Appeal of Adverse Benefit Determinations and External Review of Adverse Determinations

The purpose of this administrative letter is to provide a summary of the new internal appeals and external review process under Virginia law, and to provide guidance for the submission of form filings and complaint system filings revised to comply with these new requirements.

Chapter 788 (House Bill 1928) of the Acts of Assembly, effective July 1, 2011, enacts a new chapter within the Code of Virginia (the Law) that requires a health carrier to establish an internal appeals process and adds requirements for external review consistent with the requirements set forth in the federal Patient Protection and Affordable Care Act (PPACA). The provisions of the bill expire on July 1, 2014. Additionally, 14 VAC 5-216-10 et seq., the Rules Governing Internal Appeal and External Review (the Rules), details internal appeal requirements and further defines external review provisions. The Law and Rules extend to adverse benefit determinations and adverse determinations made on or after July 1, 2011 and are applicable to all plans offered by health carriers except those specifically excluded in Virginia Code § 38.2-3557 and 14 VAC 5-216-10, regardless of whether or not the health benefit plan is grandfathered.

This letter highlights substantive requirements under the new provisions of the Law and Rules, but should not be relied on solely. A checklist that outlines the requirements of the internal appeals process, notice requirements, and new reporting requirements, as well as flowcharts that describe the internal appeal and external review processes and timeframes can be found on the Bureau's website at: http://www.scc.virginia.gov/boi/co/index.aspx.

Complaint System Filings

Code of Virginia § 38.2-5804 requires all Managed Care Health Insurance Plans (MCHIPs) to file their complaint systems with the State Corporation Commission and the State Health Commissioner. In order to expedite and facilitate the review and approval of MCHIP complaint and appeal procedure filings, the Bureau encourages MCHIPs to complete and return the checklist with any filing of its new or revised complaint and appeals process, indicating the appropriate document and page number where the required provision can be found.

Internal Appeals Requirements

For all adverse benefit determinations, as defined in the Rules, including rescissions and contractual denials, health carriers shall:

- Make available an internal appeals process.
- Provide instructions for filing available internal standard or urgent care appeals with each issuance of an adverse benefit determination, to include contact information to file an internal appeal, and certain contact information for the Bureau, or Office of the Managed Care Ombudsman if the health carrier is an MCHIP.
- Provide reasons for the denial and specific plan provisions used in the determination.
- Ensure a full and fair review of the denial.
- Make available an expedited internal appeals process for urgent care appeals, as defined in the Rules.

In the case of an adverse determination, initial or otherwise, that is based on medical necessity, appropriateness, healthcare setting, level of care, or effectiveness, and adverse determinations related to services determined to be experimental/investigational in nature, the health carrier shall provide in a written notice the circumstances when a person may be eligible for external review, as required by the Code of Virginia § 38.2-3559. In addition, the notice of an adverse determination shall include the health carrier's website and telephone number at which the person may obtain the forms necessary to request an external review. In the case of a final adverse determination, the health carrier must provide the forms needed to request an independent standard or expedited external review and the required disclosure about the person's external review rights.

Additional Provisions for Internal Appeals

- Health carriers may offer a two-level internal appeal process for group plans only. A one-level internal appeal process is required for individual plans.
- New timeframes are required for submission of internal appeals and the health carrier's response to standard and expedited internal appeals.
- Before the health carrier can make a final adverse benefit determination that relies on any new or additional evidence generated directly or indirectly by the health carrier, the health carrier must provide this information free of charge to the covered person sufficiently in advance of the final adverse determination deadline. The covered person must

have a reasonable opportunity to respond to the new information prior to the deadline.

- Benefit determinations on an urgent care appeal must be transmitted between the health carrier and the covered person by the most expeditious method available to include telephone and facsimile.
- Concurrent review can mean utilization review conducted not just during a patient's stay in a facility, but during a course of treatment in an outpatient health care setting. The health carrier must provide continued coverage pending the outcome of any internal appeal of a concurrent review decision.
- If a health carrier reduces or terminates an approved course of treatment or number of treatments, the health carrier must notify the covered person sufficiently in advance of such reduction or termination to allow the person time to file an internal appeal and obtain a determination before the benefit is reduced or terminated.

External Review Changes

- External review (ER) will no longer be limited to MCHIPs, Final Adverse Decisions (FADs) or Virginia contracts; ER will be available for review of adverse determinations and final adverse determinations rendered by health carriers licensed in Virginia.
- A covered person may elect to be represented by an authorized representative for ER.
- A covered person must exhaust the internal appeal process before requesting ER except as noted below:
    - Adverse determinations based on a determination that services are experimental/investigational may be expedited with written certification by the treating physician that services would be less effective if not initiated promptly.
    - Expedited ER for medical necessity, appropriateness, healthcare setting, level of care, or effectiveness denials may be requested simultaneously with an expedited internal review; the Independent Review Organization (IRO) will review and determine if internal appeal should be completed prior to ER.
    - Failure by the health carrier to render a standard internal appeal determination within 30 or 60 days and the covered person has not requested or agreed to a delay.
    - Health carrier may waive the exhaustion requirement.
- The Commissioner of Insurance will no longer render an order; instead, the decision that results from the review by the IRO is final and binding on the health carrier and the covered person (except to the extent that the covered person has remedies available under federal or state law). The IRO will communicate its decision to the covered person, the health carrier and the Bureau.
- ER will include different processes for various situations to include:
    - Standard ER of medical necessity
    - Expedited ER of medical necessity
    - Standard ER of experimental/investigational
    - Expedited ER of experimental/investigational
- Written certification by a physician will be required in order to qualify for an expedited ER and for an experimental/investigational ER.
- ER for experimental/investigational review will be conducted by a panel of physicians; process provides for a "tie breaker," if needed.
- Time for the covered person to file a request for ER is increased from 30 days from the date of the decision to 120 days from the date of receipt of a notice of the right to an ER.
- Total timeframes for the review processes are similar to the previous process with the exception of the time provided for parties to provide documentation (5 days for a standard appeal, rather than 20 days).
- Medical record documentation shall be provided directly to the IRO rather than to the Bureau.
- IRO is required to forward information received from the covered person to the health carrier for reconsideration, which shall not delay the ER.
- If the health carrier's reconsideration results in reversal, the health carrier shall notify the Bureau, the covered person and the IRO in writing of its decision; ER will be terminated by IRO upon receipt of such notification.
- At the completion of an ER, the IRO shall inform the covered person, the health carrier and the Bureau of its decision to uphold or reverse the adverse determination or final adverse determination.
- There is no longer a filing fee (previously $50.00).

- There is no longer a minimum cost of denied services threshold (previously the minimum was $300.00).
- The cost of the ER will be paid by the health carrier to the IRO in all cases.
- Each health carrier and each IRO shall maintain records of ER and make an annual report to the Bureau.
- Health carriers must meet disclosure requirements relating to ER including informing covered persons of ER procedures, providing covered persons with Bureau contact information and informing covered persons of the requirement to authorize release of medical records for the purpose of ER.
- Self-insured employee welfare benefit plans whose plan sponsor's headquarters is located in Virginia may "opt-in" to participate in the ER process.

The Role of the Bureau of Insurance

- The Bureau's duties:

  1. Oversight of determinations of ineligibility.

  2. Assign eligible requests to a qualified and approved IRO on a random basis, taking into consideration the nature of the health care services which are the subject of the ER.

  3. Approve IROs based on required minimum qualifications including full Utilization Review Accreditation Commission (URAC) accreditation; the Bureau shall reapprove qualified IROs every two years unless the Bureau determines that the IRO is not meeting minimum qualifications or if the IRO's decisions are consistently unclear or incomplete.

  4. Maintain list of approved IROs.

  5. Track annual reports received from the IROs and health carriers.

  6. Assist covered persons with filing an ER request.

- After receiving a request for ER, the Bureau shall forward the request to the health carrier for review of eligibility; the health carrier shall inform the Bureau and the covered person of eligibility and in the case of ineligibility, the right to an appeal of that determination by the Bureau.
- Bureau will no longer contract with IROs and will therefore no longer reimburse or bill for IRO services.

A copy of the revised Rules and the required forms are available on the following website at: http://leg1.state.va.us/000/reg/TOC14005.HTM.HTM#C0216.

Form and Complaint System Filings

The Bureau recognizes that carriers have had little time to modify forms and procedures to address the new requirements for internal and external appeals. In consideration of this short time-frame, and in accordance with Virginia Code § 38.2-316 I, the Bureau will temporarily exempt forms developed or modified exclusively to effect compliance with the Law and Rules from the approval requirements of § 38.2-316 until January 1, 2012. The exemption will only apply to endorsements, amendments, and riders to be attached to previously approved contracts, and to explanation of benefit forms, submitted specifically to adhere to the requirements of the Law and Rules. It should be noted that this temporary exemption extends only to the approval requirements that would otherwise apply under § 38.2-316 and does not extend to processes or procedures that carriers must implement to comply with the Law and Rules.

Similarly, the Bureau will provide carriers with an extension through January 1, 2012 to secure approval of their complaint system filings as required pursuant to § 38.2-5804. Again, however, this extension applies to the filings themselves and not to the implementation of appropriate processes and procedures to effect compliance with the Law and Rules.

It should also be noted that most MCHIPs with stand-alone dental and vision products will be required to establish a revised complaint and appeals process with revised forms and notices since these types of products should no longer include provisions for an external appeal process available through the Bureau of Insurance.

Any and all forms or MCHIP complaint procedures revised or modified to address the requirements identified in the Law and the Rules, including, but not limited to new or revised endorsements, amendments, riders and explanations of benefit forms, and MCHIP complaint system filings must be filed with and approved by the Bureau on or before January 1, 2012. Although the Bureau is providing this delayed period for form filings and MCHIP complaint system filings, full compliance with the processes and procedures of the new Law and Rules is required and expected on and after July 1, 2011.

This temporary exemption will not be employed with respect to any particular filing unless and until it is specifically requested by the submitting health carrier or MCHIP in accordance with this letter, and the following information is included. The Bureau will screen submissions as they are received and will reject the exemption request if one or more of the required items below are not included.

1. A statement that any and all forms or procedures included in the submission include provisions specifically drafted to address the requirements of the Law and Rules.

2. If an amendment, endorsement, or rider is submitted, an identification of any and all contracts or policies to which

the amendment, endorsement or rider will apply and the corresponding approval date(s) of such contracts or policies in Virginia.

3. A red-lined identification of all Law and Rule related changes to the forms or procedures.

4. A Certification from an officer of the health carrier or MCHIP stating:

(a) The forms or procedures included in the submission were developed and drafted to address the requirements of the Law and Rules; and

(b) The carrier or MCHIP understands and agrees that the exemption applied to this submission is temporary and that forms or procedures included in the submission remain subject to review in accordance with applicable Virginia laws and regulations. Form(s) may not be issued or issued for delivery in Virginia after the expiration of the temporary exemption period if the form(s) have not been approved by the Bureau prior to January 1, 2012. MCHIPs must have a complaint system filing approved by the Bureau on or before January 1, 2012. The carrier or MCHIP will be responsible to make corrective actions necessary as a result of the Bureau's review, including, but not limited to amending noncompliant form language or procedures.

Please refer any questions regarding this matter to Julie Blauvelt, Senior Insurance Market Examiner, Bureau of Insurance, Life and Health Division, P. O. Box 1157, Richmond, VA 23218, telephone (804) 371-9865, FAX (804) 371-9944, or email julie.blauvelt@scc.virginia.gov.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

DEPARTMENT OF ENVIRONMENTAL QUALITY

Revised Notice of Bacteria TMDL Modification of Assamoosick Swamp and Tributaries in Sussex and Southampton Counties, Virginia

The Department of Environmental Quality (DEQ) seeks public comment from interested persons on proposed minor modifications of the total maximum daily load (TMDL) developed for the watershed.

A TMDL of E. coli was developed to address the bacterial impairments in Assamoosick Swamp and Tributaries in Sussex and Southampton Counties, Virginia and was approved by the Environmental Protection Agency on June 3, 2010. The report is available athttp://www.deq.virginia.gov/tmdl/apptmdls/chowanrvr/assamoosickec.pdf.
DEQ seeks written comments from interested persons on the following three proposed modifications for the TMDL:

1. DEQ proposes to revise the Black Swamp Regional Wastewater Treatment Plant (WWTP) (VA0088978) annual individual waste load allocation (WLA), annual future growth load, and annual total WLA. The original annual individual WLA was calculated as 1.01E+12 E.coli (cfu/yr) based on the maximum design flow of the facility of 0.60 million gallons per day (MGD) at the E.coli standard of 126 colony forming units (cfu) per 100 milliliters (ml) monthly geometric mean. The annual future growth was calculated as 5 times this number as 5.04E+12 E.coli (cfu/yr) and the annual total WLA (individual WLA plus future growth) was 6.05E+12 E.coli (cfu/yr). DEQ discovered a miscalculation within the annual individual WLA and proposes to revise the value to 1.04E+12 E.coli (cfu/yr), the annual future growth value to 5.22E+12 E.coli (cfu/yr), and the annual total WLA to 6.27E+12 E.coli (cfu/yr).

2. To accommodate the modification in 1, DEQ proposes to revise the annual load allocation (LA) for the Assamoosick and Tributaries TMDL from 4.38E+13 E.coli (cfu/yr) to 4.36E+13 E.coli (cfu/yr).

3. DEQ proposes to revise the Black Swamp Regional Wastewater Treatment Plant (WWTP) (VA0088978) daily individual waste load allocation (WLA), daily future growth load, and daily total WLA. The original daily individual WLA was calculated as 2.76E+09 E.coli (cfu/day) based on the maximum design flow of the facility of 0.60 million gallons per day (MGD) at the E.coli standard of 126 colony forming units (cfu) per 100 milliliters (ml) monthly geometric mean. The daily future growth was calculated as 5 times this number as 1.38E+10 E.coli (cfu/day) and the daily total WLA (individual WLA plus future growth) was 1.66E+10 E.coli (cfu/day). DEQ discovered a miscalculation within the daily individual WLA and proposes to revise the value to 2.86E+09 E.coli (cfu/day), the daily future growth value to 1.43E+10 E.coli (cfu/day), and the daily total WLA to 1.71 E.coli (cfu/day). These changes will not require a modification of the daily LA value (which will remain 4.68E+12 E.coli (cfu/day)).

The proposed changes will neither cause nor contribute to the nonattainment of the Chowan River basin and equal to a <1% change of the TMDL and are merely a correction of errors discovered within the WLA calculations. The public comment period for these modifications will end on August 31, 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 (Attn: Margaret Smigo) at (804) 527-5106. Following the comment period, a modification letter and any comments received will be sent to EPA for final approval.

Initiation of a Water Quality Restoration Study (TMDL) for the James River and Tributaries Impaired for Bacteria in Henrico, Charles City, Prince George, and Surry Counties

Public meeting: Charles City County Government & School Board Administration Building Auditorium, 10900 Courthouse Road, Charles City, Virginia 23030. A public meeting will be held on Tuesday, August 2, 2011, at 6 p.m.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and study consultant, MapTech Inc, are presenting preliminary data for the initiation of a total maximum daily load (TMDL) study to restore water quality at a public meeting, an opportunity for the public to share their knowledge of the watershed, and a public comment period following the meeting.

Meeting description: Public meeting on a study to restore water quality along the James River and Tributaries within Henrico, Charles City, Prince George, and Surry Counties. Meeting will feature information gathered for the watershed including land use, water quality monitoring, and suspected sources of bacteria. Those attending the meeting are invited to ask questions and to contribute their knowledge of the watershed.

Description of study: Virginia agencies have been working to identify sources of the bacterial contamination in the waters of the James River and its tributaries in the following impaired waterways:

Stream	County/City	Length (mi.)	Impairment
Crewes Channel	Henrico	3.19	Bacteria (Primary Contact / Swimming Use)
Western Run	Henrico	1.85	
West Run	Charles City	1.86	
Wards Creek	Prince George	8.47	
Upper Chippokes Creek	Charles City, Surry	5.61	
James River (mainstem)	Prince George, Charles City, Surry	12.34 (sq. miles)	

These streams are impaired for failure to meet the primary contact (recreational or swimming) designated use because of bacteria standard violations. The study reports on the sources of bacterial contamination and recommends TMDLs for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels need to be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes two sets of public meetings and comment periods; one to initiate the study and another to present the final draft TMDL report. This meeting is the first for the James River and Tributaries project. After the final public meeting and all public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency and the State Water Control Board for approval.

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 begin on Wednesday, August 3, 2011, and end on Thursday, September 1, 2011.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Virginia Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email margaret.smigo@deq.virginia.gov. DEQ TMDL website: www.deq.virginia.gov/tmdl.

VIRGINIA DEPARTMENT OF HEALTH

Drinking Water State Revolving Fund Program Intended Use Plan for FY 2011

The Virginia Department of Health (VDH) received numerous funding requests and set-aside suggestions following the January 2010 announcement regarding funds available from the Drinking Water State Revolving Fund Program. Through the Safe Drinking Water Act, Congress authorizes capitalization grants to the states but authorization has not been finalized.

The VDH's Office of Drinking Water (ODW) has prepared a draft intended use plan (IUP) using information submitted via the funding requests and set-aside suggestions. This draft IUP is for review and comment by the public. The document entitled "Virginia Drinking Water State Revolving Fund Program Design Manual" (dated January 5, 2010) is a part of the IUP. This document was mailed in the January announcement and is available at: http://www.vdh.virginia.gov/drinkingwater/financial.

The VDH will hold a public meeting on Wednesday, September 21, 2011, from 9 a.m. to 11 a.m. at the Office of Drinking Water East Central Field Office, 300 Turner Road, Richmond, VA 23225. In addition, comments from the public are to be postmarked by Friday, September 30, 2011.

Those parties planning to attend may contact Theresa Hewlett at (804) 864-7501 by the close of business on Monday, September 19, 2011. Please direct your requests for information and forward written comments to: Steven D. Pellei, P. E., Virginia Department of Health, Office of Drinking Water, James Madison Building, Room 622, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7489, FAX (804) 864-7521.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Notice of Periodic Review of Regulations

The Board of Long-Term Care Administrators within the Department of Health Professions is preparing to conduct a periodic review of its regulations for nursing home administrators:

18VAC95-20, Regulations Governing the Practice of Nursing Home Administrators

The purpose of the review is to determine whether the regulations should be terminated, amended for clarification or for consistency with changes in practice, or retained in their current form. The review of the regulations will be guided by the principles in Executive Order 14 (2011) (http://www.governor.virginia.gov/Issues/ExecutiveOrders/2010/EO-14.cfm) and § 2.2-4007.1 of the Code of Virginia (http://lis.virginia.gov/cgi-bin/legp604.exe?000+cod+2.2-4007.1).

Public comment is sought on the review of any issue relating to the regulations, including whether the regulations (i) are necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) are clearly written and easily understandable.

Comment Begins: August 1, 2011

Comment Ends: September 1, 2011

If any member of the public would like to comment on these regulations, please send comments by the close of the comment period to Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233. Comments may also be e-mailed to elaine.yeatts@dhp.virginia.gov or faxed to (804) 527-4434.

Regulations for the Board of Long-Term Care Administrators may be viewed on-line at www.townhall.virginia.gov or www.dhp.virginia.gov or copies will be sent upon request.

DEPARTMENT OF REHABILITATIVE SERVICES

Small Business Impact Review for Regulations Adopted by the Department of Rehabilitative Services before July 1, 2005

The following regulations existed on July 1, 2005, and are required to be reviewed in accordance with § 2.2-4007.1 D of the Code of Virginia to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses:

22VAC30-20, Provision of Vocational Rehabilitation Services

As agency head, I have determined that completion of the required review has not been feasible and have extended the review time for one year. Prior to commencement of the review, the agency will publish a notice of the review and provide an opportunity for public comment as required by § 2.2-4007.1 of the Code of Virginia. The public comment period and review may be held in conjunction with a periodic review or a regulatory action.

/s/ James A. Rothrock
Commissioner
Department of Rehabilitative Services

Contact Information: Vanessa S. Rakestraw, Policy Analyst, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7663, TDD (800) 464-9950, or email vanessa.rakestraw@drs.virginia.gov.

Small Business Impact Review for Regulations Adopted between July 1, 2006 and July 1, 2010

The following regulations were adopted between July 1, 2006, and July 1, 2010, and are required to be reviewed in accordance with § 2.2-4007.1 D of the Code of Virginia to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses:

22VAC30-11, Public Participation Guidelines

22VAC30-30, Provision of Independent Living Rehabilitation Services

22VAC30-40, Protection of Participants in Human Research

22VAC30-50, Policies and Procedures for Administering Commonwealth Neurotrauma Initiative Trust Fund

As agency head, I have determined that completion of the required review has not been feasible and have extended the review time for one year. Prior to commencement of the review, the agency will publish a notice of the review and provide an opportunity for public comment as required by § 2.2-4007.1 of the Code of Virginia. The public comment period and review may be held in conjunction with a periodic review or a regulatory action.

/s/ James A. Rothrock
Commissioner
Department of Rehabilitative Services

Contact Information: Vanessa S. Rakestraw, Policy Analyst, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7663, TDD (800) 464-9950, or email vanessa.rakestraw@drs.virginia.gov.

ERRATA

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **9VAC5-80. Permits for Stationary Sources (Rev. A-11).**

Publication: 27:23 VA.R. 2477-2506 July 18, 2011.

Correction to Final Regulation:

Page 2494, first column, 9VAC5-80-1765 F, line 14, strike "particulate matter" and insert "$PM_{2.5}$, PM_{10}"

VA.R. Doc. No. R11-2833; Filed July 18, 2011, 1:21 p.m.