VIRGINIA REGISTER OF REGULATIONS

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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 18 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. **34:8 VA.R. 763-832 December 11, 2017,** refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

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

Members of the Virginia Code Commission: **John S. Edwards,** Chair; **James A. "Jay" Leftwich,** Vice Chair; **Ryan T. McDougle; Rita Davis; Leslie L. Lilley; E.M. Miller, Jr.; Thomas M. Moncure, Jr.; Christopher R. Nolen; Charles S. Sharp; Samuel T. Towell; Mark J. Vucci.**

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PUBLICATION SCHEDULE AND DEADLINES

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

March 2019 through April 2020

Volume: Issue	Material Submitted By Noon*	Will Be Published On
35:14	February 13, 2019	March 4, 2019
35:15	February 27, 2019	March 18, 2019
35:16	March 13, 2019	April 1, 2019
35:17	March 27, 2019	April 15, 2019
35:18	April 10, 2019	April 29, 2019
35:19	April 24, 2019	May 13, 2019
35:20	May 8, 2019	May 27, 2019
35:21	May 22, 2019	June 10, 2019
35:22	June 5, 2019	June 24, 2019
35:23	June 19, 2019	July 8, 2019
35:24	July 3, 2019	July 22, 2019
35:25	July 17, 2019	August 5, 2019
35:26	July 31, 2019	August 19, 2019
36:1	August 14, 2019	September 2, 2019
36:2	August 28, 2019	September 16, 2019
36:3	September 11, 2019	September 30, 2019
36:4	September 25, 2019	October 14, 2019
36:5	October 9, 2019	October 28, 2019
36:6	October 23, 2019	November 11, 2019
36:7	November 6, 2019	November 25, 2019
36:8	November 18, 2019 **(Monday)**	December 9, 2019
36:9	December 4, 2019	December 23, 2019
36:10	December 16, 2019 **(Monday)**	January 6, 2020
36:11	January 1, 2020	January 20, 2020
36:12	January 15, 2020	February 3, 2020
36:13	January 29, 2020	February 17, 2020
36:14	February 12. 2020	March 2, 2020
36:15	February 26, 2020	March 16, 2020
36:16	March 11, 2020	March 30, 2020
36:17	March 25, 2020	April 13, 2020

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending:

9VAC25-830, Chesapeake Bay Preservation Area Designation and Management Regulations (formerly 4VAC50-90)

9VAC25-840, Erosion and Sediment Control Regulations (formerly 4VAC50-30)

9VAC25-850, Erosion and Sediment Control and Stormwater Management Certification Regulations (formerly 4VAC50-50)

9VAC25-870, Virginia Stormwater Management Program (VSMP) Regulation (formerly 4VAC50-60)

9VAC25-880, General VPDES Permit for Discharges of Stormwater from Construction Activities (formerly Part XIV of 4VAC50-60)

9VAC25-890, General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (formerly Part XV, 4VAC50-60)

The purpose of the proposed action is to implement Chapters 68 and 758 of the 2016 Acts of Assembly, which combine the existing Virginia Stormwater Management Act and Virginia Erosion and Sediment Control Law to create the Virginia Erosion and Stormwater Management Act. The legislation directs the State Water Control Board to permit, regulate, and control both erosion and stormwater runoff, and for this legislation to become effective, the board is required to initiate a regulatory action to consolidate and clarify program requirements, eliminate redundancies, and correct inconsistencies between erosion and sediment control regulations and stormwater management program regulations. No substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria are proposed as part of this regulatory action.

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

Statutory Authority: § 62.1-44.15:28 of the Code of Virginia; Chapters 68 and 758 of the 2016 Acts of Assembly.

Public Comment Deadline: March 6, 2019.

Agency Contact: Jaime Robb, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4416, FAX (804) 698-4032, or email jaime.robb@deq.virginia.gov.

VA.R. Doc. No. R19-5787; Filed January 16, 2019, 9:14 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department for Aging and Rehabilitative Services intends to consider promulgating **22VAC30-140, State Long-Term Care Ombudsman Program,** and amending **22VAC30-60, Grants to Area Agencies on Aging**. The purpose of the proposed action is to repeal 22VAC30-60-570, 22VAC30-60-580, and 22VAC30-60-590 regarding the Office of the State Long-Term Care Ombudsman (OSLTCO) and the State Long-Term Care Ombudsman Program (SLTCOP) and amend several additional sections within 22VAC30-60 that include OSLTCO and the SLTCOP references or content to fully execute the move of program requirements to a single new chapter. The new chapter will more clearly present OSLTCO and SLTCOP requirements and update the regulation provisions to incorporate new requirements stemming from the 2006 reauthorization of the federal Older Americans Act (P.L. 109-365) and its ensuing federal regulations (45 CFR Parts 1321 and 1324), aligning Virginia's regulations for OSLTCO and SLTCOP operations with the federal requirements.

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

Statutory Authority: § 51.5-131 of the Code of Virginia; 42 USC § 3001 et seq.

Public Comment Deadline: March 6, 2019.

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

VA.R. Doc. No. R19-5669; Filed January 9, 2019, 8:55 a.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Board of Agriculture and Consumer Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Board of Agriculture and Consumer Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **2VAC5-585. Retail Food Establishment Regulations (amending 2VAC5-585-250, 2VAC5-585-330, 2VAC5-585-3310).**

Statutory Authority: § 3.2-5121 of the Code of Virginia.

Effective Date: March 6, 2019.

Agency Contact: Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8910, FAX (804) 371-7792, TTY (800) 828-1120, or email ryan.davis@vdacs.virginia.gov.

Summary:

The amendments align regulations with legislation enacted during the 2018 Session of the General Assembly and include provisions that (i) exempt commercially slaughtered or processed rabbits that are offered for sale or service from being slaughtered or processed under a voluntary inspection program administered by the department or the U.S. Department of Agriculture (Chapter 674) and (ii) allow dogs in designated areas inside or on the premises of a licensed distillery, winery, farm winery, brewery, or farm brewery, except in any area used for the manufacture of food products (Chapter 819).

2VAC5-585-250. Handling of animals prohibited.

A. Except as specified in subsection B of this section, food employees may not care for or handle animals that may be present such as patrol dogs, service animals, or pets that are allowed as specified in subdivisions B 2 through B 6 and subsection C of 2VAC5-585-3310.[Pf]

B. Food employees with service animals may handle or care for their service animals, and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in display tanks if they wash their hands as specified under 2VAC5-585-140 and subdivision 3 of 2VAC5-585-160.

2VAC5-585-330. Game animals.

A. If game animals are received for sale or service they shall be:

1. Commercially raised for food and raised, slaughtered, and processed under a voluntary inspection program that is conducted by the state agency that has animal health jurisdiction or under a voluntary inspection program administered by the USDA for game animals such as exotic animals (i.e., reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR Part 352~~, or rabbits that are "inspected and certified" in accordance with 9 CFR Part 354~~;[P]

2. As allowed by law, for wild game animals that are live-caught:

a. Under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction;[P]

b. Slaughtered and processed according to:

(1) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program;[P] and

(2) Requirements that are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee;[P] or

3. As allowed by law for field-dressed wild game animals under a routine inspection program that ensures the animals:

a. Receive a postmortem examination by an approved veterinarian or veterinarian's designee; [P]

b. Are field-dressed and transported according to requirements specified by the agency that has animal health jurisdiction and the agency that conducts the inspection program;[P] and

c. Are processed according to laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program.[P]

B. A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR Part 17.

C. The requirements of subsection A of this section shall not apply to commercially slaughtered or processed rabbits that are offered for sale or service.

2VAC5-585-3310. Prohibiting animals.

A. Except as specified in subsections B ~~and~~, C, and D of this section, live animals may not be allowed on the premises of a food establishment.[Pf]

B. Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result:

1. Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

2. Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

3. In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal;

4. Pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:

a. Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;

b. Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

c. Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service;

5. In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals; and

6. Dogs in outdoor dining areas if:

a. The outdoor dining area is not fully enclosed with floor to ceiling walls and is not considered a part of the interior physical facility.

b. The outdoor dining area is equipped with an entrance that is separate from the main entrance to the food establishment, and the separate entrance serves as the sole means of entry for patrons accompanied by dogs.

c. A sign stating that dogs are allowed in the outdoor dining area is posted at each entrance to the outdoor dining area in such a manner as to be clearly observable by the public.

d. A sign within the outdoor dining area stating the requirements as specified in subdivisions 6 e, f, and g of this subsection is provided in such a manner as to be clearly observable by the public.

e. Food and water provided to dogs is served using equipment that is not used for the service of food to a person or is served in single-use articles.

f. Dogs are not allowed on chairs, seats, benches, or tables.

g. Dogs are kept on a leash or within a pet carrier and under the control of an adult at all times.

h. The establishment provides effective means for cleaning up dog vomitus and fecal matter.

C. A dog may be allowed within a designated area inside or on the premises of, except in any area used for the manufacture of food products, a distillery licensed pursuant to § 4.1-206 of the Code of Virginia, a winery or farm winery licensed pursuant to § 4.1-207 of the Code of Virginia, or a brewery or farm brewery licensed pursuant to § 4.1-208 of the Code of Virginia.

D. Live or dead fish bait may be stored if contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.

VA.R. Doc. No. R19-5547; Filed January 14, 2019, 11:16 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: Pursuant to 1VAC7-10-60, the Registrar of Regulations is updating certain regulations of the Marine Resources Commission to correct an invalid street address in the Virginia Administrative Code.

Title of Regulation: **4VAC20-610. Pertaining to Commercial Fishing and Mandatory Harvest Reporting (amending 4VAC20-610-40).**

Effective Date: January 28, 2019.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The street address for the main office of the Marine Resources Commission is changed to 380 Fenwick Road, Building 96, Fort Monroe, Virginia 23651.

VA.R. Doc. No. R19-5811; Filed January 23, 2019, 9:33 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption 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.

Title of Regulation: **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-20, 4VAC20-950-45, 4VAC20-950-46, 4VAC20-950-48.1, 4VAC20-950-49).**

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

Effective Date: January 23, 2019.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments establish a February 2019 recreational black sea bass fishery, modify the recreational black sea bass permitting requirements, and improve the characterization of directed and bycatch fishery permits for the black sea bass fishery.

4VAC20-950-20. Definitions.

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

"Black sea bass" means any fish of the species Centropristis striata.

"Land" or "landing" means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

"Recreational vessel" means any vessel, kayak, charter vessel, or headboat participating in the recreational black sea bass fishery.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, excluding the caudal fin filament, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

4VAC20-950-45. Recreational possession limits and seasons.

A. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig, or other recreational gear to possess more than 15 black sea bass. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for that boat or vessel and shall be equal to the number of persons on board legally licensed to fish, multiplied by 15. The captain or operator of the boat or vessel shall be responsible for that boat or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. The open recreational fishing season shall be from February 1 through February 28 and May 15 through December 31.

D. It shall be unlawful for any person fishing recreationally to take, catch, or possess any black sea bass, except during an open recreational season.

E. ~~It~~ From February 1 through February 28, it shall be unlawful for any person ~~fishing recreationally to take, catch, or~~ to possess or land any black sea bass ~~from February 1 through February 28 without first having~~ harvested from a recreational vessel, unless the captain or operator of that recreational vessel has obtained a Recreational Black Sea Bass Permit from the Marine Resources Commission. ~~It shall be unlawful for any permittee to fail to contact the Marine Resources Commission Operation Station before returning to shore at the end of the fishing trip.~~ The ~~permittee~~ captain or operator shall ~~provide the operation station with~~ be responsible for reporting for all anglers on the recreational vessel and shall provide his ~~name,~~ Marine Resources Commission identification (MRC ID) number, the ~~point of landing, a description of the vessel, and an estimated return to shore time. Any such permittee shall submit a report for any recreational black sea bass fishing trips, which incudes that permittee's MRC ID number,~~ the date of fishing, the ~~mode of~~

~~fishing~~ number of individuals on board, the mode of fishing, and the number of black sea bass kept or released. That report shall be submitted to the commission or to the Standard Atlantic Fisheries Information System ~~no later than March 15 of the current calendar year~~, as described in this subsection. ~~Any authorized permittee shall allow commission staff to sample the catch to obtain biological information for scientific and management purposes only.~~ It shall be unlawful for any permittee to fail to report trips where black sea bass were caught, whether harvested, released, or possessed in accordance with this section, on forms provided by the commission or through the Virginia Saltwater Fisherman's Journal within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where black sea bass were targeted but not successfully caught by March 15 of the current calendar year. Any permittee who did not participate in the recreational black sea bass season during February shall notify the commission of his lack of participation by March 15 of the current calendar year.

F. It shall be unlawful for any permittee to fail to contact the Law Enforcement Operations at 1-800-541-4646 before or immediately after the start of each fishing trip. The permittee shall provide the Law Enforcement Operations with his name, MRC ID number, the point of landing, a description of the vessel, estimated return to shore time, and a contact phone number. Any authorized permittee shall allow commission staff to sample the catch to obtain biological information for scientific and management purposes only.

4VAC20-950-46. Directed fishery and bycatch fishery permits.

A. It shall be unlawful for any person to participate in the commercial black sea bass fishery or to possess, harvest, or sell black sea bass, except as described in 4VAC20-950-60 and 4VAC20-950-70, without first qualifying for and obtaining either a directed fishery permit or a bycatch fishery permit from the commission, as described, respectively, in subsections B ~~and~~, C, and D of this section, unless that person meets the requirements described in 4VAC20-950-48.2.

B. ~~A~~ Any person ~~shall be considered eligible for a directed commercial black sea bass fishery permit~~ who qualified for a directed commercial black sea bass fishery permit, as of January 1, 2003, by satisfying all ~~of~~ the ~~following~~ eligibility criteria~~:~~ listed in this subsection shall remain eligible for that permit, unless that person permanently transferred all his shares of the directed fishery quota.

1. That person shall hold either a Commercial Fisherman Registration License or a Seafood Landing License in addition to a federal Black Sea Bass Moratorium Permit; and

2. That person shall have landed and sold in Virginia at least 10,000 pounds of black sea bass from July 1, 1997, through December 31, 2001.

C. Any person who meets the eligibility criteria of subsection B of this section but no longer meets the requirements of subdivision B 1 of this section shall remain eligible to transfer shares of his quota in accordance with 4VAC20-950-48.1.

~~C.~~ D. A person shall be considered eligible for a bycatch commercial black sea bass fishery permit by satisfying all of the following eligibility criteria:

1. That person shall hold either a Commercial Fisherman Registration License or a Seafood Landing License, in addition to a federal Black Sea Bass Moratorium Permit; and

2. That person shall have landed and sold in Virginia at least one pound of black sea bass from July 1, 1997, through December 31, 2001.

4VAC20-950-48.1. Individual transferable quotas.

A. Shares of the directed fishery quota, in pounds, held by any permitted fisherman in the directed fishery may be transferred to another person, and such transfer shall allow the transferee to harvest, possess and land black sea bass in Virginia in a quantity equal to the shares of the directed fishery quota transferred, provided that transferee satisfies the eligibility requirements described in 4VAC20-950-46 B 1.

B. Any transfer of black sea bass shall be limited by the following conditions.

1. Commercial black sea bass shares of the directed fishery quota shall not be transferred in any quantity less than 200 pounds.

2. No person permitted for the directed fishery may hold more than 20% of the annual directed fishery quota.

3. No transfer of shares of the black sea bass directed fishery quota shall be authorized unless such transfer is documented on a form provided by the commission and approved by the commissioner.

4. Any person who receives a permanent transfer of quota but does not satisfy the eligibility requirements described in 4VAC20-950-46 B 1 shall remain eligible to transfer shares of his quota in accordance with this section.

~~B.~~ C. Transfers of all or a portion of any person's share of the directed fishery quota may be permanent or temporary. Transferred quota shall only be used by the transferee for black sea bass landed in Virginia. Permanent transfers of shares of directed fishery quota shall grant to the transferee that transferred share of the quota for future years, and the transferor loses that same transferred share of the directed fishery quota in future years. Temporary transfers of shares of the directed fishery quota shall allow the transferee to harvest that transferred share of the directed fishery quota during the year in which the transfer is approved. Thereafter, any

transferred share of the directed fishery quota reverts back to the transferor.

4VAC20-950-49. Reporting requirements.

A. It shall be unlawful for any person permitted for the directed fishery, the bycatch fishery, or for an authorized alternate landing vessel to fail to contact, within one hour of landing, the ~~Marine Resources Commission's~~ Law Enforcement Operations ~~Division~~ to report his name and the name of the vessel, his permit number, the location where catch will be offloaded, and the estimated weight of the landing of black sea bass.

B. It shall be unlawful for any person permitted for the directed fishery, the bycatch fishery, or for an authorized alternate landing vessel to fail to contact, within 24 hours of landing, the Marine Resources Commission's Interactive Voice Recording System to report the name of the permit holder and the name of the vessel that landed the black sea bass, date of landing, the permit number and the weight of black sea bass landed.

C. Any buyer of black sea bass from a directed fishery permittee, a bycatch fishery permittee, or an authorized alternate landing vessel shall maintain records of all purchases for the current year and prior year and make those records available to the Marine Resources Commission upon request.

NOTICE: Forms used in administering the regulation have been 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 of a form with a hyperlink to access it. The form is also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (4VAC20-950)

2019 Recreational/Charter Reporting Form (rev. 12/2018)

VA.R. Doc. No. R19-5810; Filed January 23, 2019, 9:20 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Reproposed Regulation

Title of Regulation: **9VAC5-140. Regulation for Emissions Trading Programs (Rev. C17) (adding 9VAC5-140-6010 through 9VAC5-140-6440).**

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia; §§ 108, 109, 110, and 302 of the Clean Air Act; 40 CFR Part 51.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 6, 2019.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Basis: Section 10.1-1308 of the Code of Virginia authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare.

State Requirements: Executive Directive 11 (2017), "Reducing Carbon Dioxide Emissions from the Electric Power Sector and Growing Virginia's Clean Energy Economy," directs the Director of the Department of Environmental Quality, in coordination with the Secretary of Natural Resources, to take the following actions in accordance with the provisions and requirements of Chapter 13 (§ 10.1-1300 et seq.) of Title 10 of the Code of Virginia and Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia:

1. Develop a proposed regulation for the State Air Pollution Control Board's consideration to abate, control, or limit CO_2 from electric power facilities that:

a. Includes provisions to ensure that Virginia's regulation is "trading-ready" to allow for the use of market-based mechanisms and the trading of CO_2 allowances through a multistate trading program; and

b. Establishes abatement mechanisms providing for a corresponding level of stringency to limits on CO_2 emissions imposed in other states with such limits.

2. By no later than December 31, 2017, present the proposed regulation to the State Air Pollution Control Board for consideration for approval for public comment in accordance with the board's authority pursuant to § 10.1-1308 of the Code of Virginia.

Additionally, on May 12, 2017, the Attorney General issued an official advisory opinion that concluded the board is legally authorized to regulate greenhouse gas (GHG): "The Board has the authority to establish a statewide cap on GHG emissions for all new and existing fossil fuel electric generating plants as a means of abating and controlling such emissions."

Purpose: The regulation is needed to control CO_2 emissions in order to protect the public's health and welfare. The reproposed regulation is being developed in order to meet the direction of Governor McAuliffe's Executive Directive 11 (2017), "Reducing Carbon Dioxide Emissions from the

Electric Power Sector and Growing Virginia's Clean Energy Economy," which states:

"There is no denying the science and the real-world evidence that climate change threatens the Commonwealth of Virginia, from our homes and businesses to our critical military installations and ports. Rising storm surges and flooding could impact as many as 420,000 properties along Virginia's coast that would require $92 billion of reconstruction costs.

The challenges and costs of bolstering resilience and minimizing risk are too great for any locality to bear alone. While the impacts are significant, there are technologies in the clean energy sector that could help mitigate these impacts while simultaneously creating jobs in twenty-first century industries. The number of solar jobs in Virginia has grown by 65 percent in the last year alone, and Virginia is now the ninth fastest growing solar jobs market in the country. Revenue for clean energy businesses in Virginia has increased from $300 million in 2014 to $1.5 billion in 2016. Through state leadership, Virginia can face the threats of climate change head on and do so in a way that makes clean energy a pillar of our future economic growth and a meaningful part of our energy portfolio.

With these considerations in mind, I issued Executive Order 57 (EO 57) on June 28, 2016. Under EO 57, I directed the Secretary of Natural Resources to convene a work group to study and recommend methods to reduce carbon dioxide emissions from electric power facilities and grow the clean energy economy within existing state authority. The group consisted of the Secretary of Natural Resources, the Secretary of Commerce and Trade, the Director of the Virginia Department of Environmental Quality, the Director of the Virginia Department of Mines, Minerals and Energy, and the Deputy Attorney General for Commerce, Environment, and Technology. This group facilitated extensive stakeholder engagement over the last year, including six in-person meetings and a ninety-day public comment period, before compiling its recommendations and submitting a final report to me on May 12, 2017.

Among the most significant recommendations from the group is the need to develop regulations limiting the total amount of carbon dioxide emitted from electric power facilities. Given the nature of the climate change threat and the promise of clean energy solutions, I agree with this recommendation.

Accordingly, pursuant to the authority vested in me as the Chief Executive Officer of the Commonwealth, and pursuant to Article V of the Constitution and the laws of Virginia, I hereby direct the Director of the Department of Environmental Quality, in coordination with the Secretary of Natural Resources, to take the following actions in accordance with the provisions and requirements of Virginia Code § 10. 1-1300, et seq. and Virginia Code § 2.2-4000, et seq.:

1. Develop a proposed regulation for the State Air Pollution Control Board's consideration to abate, control, or limit carbon dioxide emissions from electric power facilities that:

a. Includes provisions to ensure that Virginia's regulation is "trading-ready" to allow for the use of market-based mechanisms and the trading of carbon dioxide allowances through a multi-state trading program; and

b. Establishes abatement mechanisms providing for a corresponding level of stringency to limits on carbon dioxide emissions imposed in other states with such limits.

2. By no later than December 31, 2017, present the proposed regulation to the State Air Pollution Control Board for consideration for approval for public comment in accordance with the Board's authority pursuant to Virginia Code § 10. 1-1308."

Additionally, Executive Order 57 Work Group's "Report and Final Recommendations to the Governor" states that:

"The Work Group received a number of presentations and written comments from stakeholders advocating for a regulation to limit carbon dioxide from power plants. These comments included recommendations that the Commonwealth join or participate in the Regional Greenhouse Gas Initiative (RGGI) or another regional trading program, that a price be put on carbon, and that Virginia strive to reduce its greenhouse gases by 30 to 40 percent by the year 2030. . . . Although many stakeholders provided feedback focused on specific in-state targets (such as 30x30), the Work Group believes that it is important and necessary that Virginia work through a regional model, like the established and successful RGGI, in order to achieve lower compliance costs and address the interstate nature of the electric grid."

The Work Group recommends that the Governor consider taking action via a regulatory process to establish a "trading-ready" carbon emissions reduction program for fossil fuel fired electric generating facilities that will enable participation in a broader, multi-state carbon market.

Substance:

1. The primary purpose of the regulation is to implement a declining cap on carbon emissions. The administrative means of accomplishing this will be effected by linking Virginia to the Regional Greenhouse Gas Initiative (RGGI), which is an established emissions trading program. An allowance will be issued for each ton of carbon emitted by an electricity generating facility. The company must then decide if it will

reduce carbon emissions and sell the resulting additional allowances, or if it will not reduce carbon emissions and make up the difference with purchased allowances. The original proposal included two options on the base budgets, 33 million tons and 34 million tons. The board selected 28 million tons, which will determine, based on a 3.0% annual reduction, the annual budgets and allocations for future years.

2. The mechanism for determining the cost of allowances will be a consignment auction.

3. A cost containment reserve allowance will be offered for sale at an auction for the purpose of containing the cost of CO_2 allowances in the event of higher than anticipated emission reduction costs. An emission containment reserve allowance will be withheld from sale at an auction for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs.

4. Monitoring, recording, and recordkeeping requirements will be implemented to track compliance.

5. Conditional allowances will be allocated to the Department of Mines, Minerals and Energy in order to assist the department for the abatement and control of air pollution, specifically CO_2.

6. In conjunction with program monitoring and review, impacts specific to Virginia will be evaluated, including economic, energy, and environmental impacts and impacts on vulnerable and environmental justice communities.

Issues: The primary advantage to the public would be health and welfare benefits associated with controlling carbon pollution. The program is designed to avoid any significant economic impacts. There are no disadvantages to the public or the Commonwealth. No significant advantages or disadvantages to the department have been identified. There may be a minor impact in terms of administering a new program.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Air Pollution Control Board (Board) proposes to establish the CO_2 Budget Trading Program in regulation. The original proposed regulatory language for the CO_2 Budget Trading Program was published in the Virginia Register of Regulations on January 18, 2018.[1] An economic impact analysis of that proposal was published in the Virginia Regulatory Town Hall on December 13, 2017.[2] The Board has submitted a revised proposal.[3] This report addresses changes from the original proposal. For more detail on the impact of the program see the economic impact analysis of the original proposal.

Estimated Economic Impact.

Lower CO_2 Allowances: Under the revised proposal the initial (year 2020) Virginia base budget of CO_2 emission allowances is 28 million tons rather than the 33 (or 34) million tons under the original proposal. In both proposals the base budget is reduced by 3% each year up until 2030. According to the Department of Environmental Quality (DEQ), this is because new information acquired over the past year reduced the forecast for CO_2 emitted by Virginia sources in 2020 to 28 million tons and further for subsequent years. Lower expected demand for electricity, reduced expected prices for lower-emitting natural gas, and renewable energy production from wind and solar coming online faster than previously expected all contribute to the change.

All states within the Regional Greenhouse Gas Initiative (RGGI),[4] as well as Virginia, have reported significant reductions in forecasted demand for electricity. As pointed out by DEQ, Virginia's reduction in forecasted demand is partially due to energy efficiency provisions within Chapter 296 of the 2018 Acts of Assembly.[5]

Also, over the past year, the federal Energy Information Administration[6] has lowered their forecasts for future natural gas prices considerably. This provides for a reduced cost for switching to natural gas from higher CO_2-emitting sources than was anticipated when the initial proposal was developed.

Provisions of Chapter 296 also encourage wind and solar energy production. This, coupled with faster than expected development of this type of energy production that has already occurred, provides the potential for renewable energy available for lower cost than anticipated before. As with natural gas, this provides a lower cost than previously anticipated for switching to energy production with much lower CO_2 emission.

Impact: Electricity Consumers. A consulting firm called ICF models the RGGI CO_2 Budget Trading Program. ICF modelled the impact of Virginia joining RGGI under the parameters included in the original proposal and the revised proposal. Among other outputs, the ICF model produces projected power prices in each state. A different firm called the Analysis Group uses the results of ICF's modelling to estimate the impact on monthly electricity bills for Virginia residential, commercial, and industrial consumers. DEQ has the results of their modelling and analysis on their website.[7]

DEQ believes that for Virginia the "revenue received by CO_2 Budget Sources owned by regulated electric utilities flow to rate payers pursuant to State Corporation Commission (SCC) requirements."[8] While not described in the proposed regulation, this action is predicated upon anticipated actions of the SCC, which it may or may not take. Pursuant to DEQ's instructions, the Analysis Group does assume for the purpose of their estimates that all revenue from the sale of CO_2 emission allowances that were allocated to Virginia sources is

passed on to consumers. The ICF model does not account for this information.

The table below compares the estimated average monthly electricity bills for Virginia residential, commercial, and industrial consumers over the 2020 to 2030 period with the Commonwealth not establishing the CO_2 Budget Trading Program in regulation and joining RGGI (Reference) to if Virginia does promulgate the revised proposed regulation and joins RGGI (Policy).

Customer Type	Reference ($2017)	Policy ($2017)	% Difference
Residential	$153.20	$152.65	-0.4%
Commercial	$882.47	$877.23	-0.6%
Industrial	$29,671.14	$29,472.39	-0.7%

Note: The estimates in this Table were produced by the Analysis Group, using the Integrated Planning Model developed by ICF. This was the only model available during the time period for this review, and DPB lacked the resources to verify the model or its assumptions. If the SCC resumes rate reviews, these assumptions should be reconsidered.

As can be seen, the model results provided by DEQ projects that electricity bills will be lower with the Commonwealth establishing the CO_2 Budget Trading Program in regulation and joining RGGI.

Running ICF's model with the new projections and revised parameters produces firm power prices in Virginia moderately higher under Policy versus Reference. For example, running the model indicates Virginia firm power prices of $34.90 per megawatt hour in 2025 under Policy, and $34.50 under Reference. The projected revenue from the sale of CO_2 emission allowances (that is passed on to consumers by assumption) is large enough that it outweighs this difference and results in estimated net lower electricity bills to consumers.

Year 2031 to Year 2040: The original proposal had the base budget for 2031 and each succeeding year equal to the 2031 base budget. The revised proposal states that:

> "the department [DEQ] will review the Virginia CO_2 Budget Trading Program base budget and recommend to the board appropriate adjustments in the base budget for such succeeding years. The department will consider the best available science and all relevant information and policies available from any CO_2 multi-state trading program in which Virginia is participating when considering further reductions. Absent any adjustment, the Virginia CO_2 Budget Trading Program base budget for each year of the decade 2031-2040 shall be reduced by 840,000 tons from the preceding year."

If no action is taken in the next 12 years, this change in the proposal would result in a base budget of 11.2 million tons by 2040. It seems likely that DEQ and the Board would choose to adjust the base budget differently as conditions change over time. Based on future events, technical advances, and actual emissions in practice, a different level (either higher or lower) would likely be more appropriate.

Program Monitoring and Review: In the revised proposal the Board proposes to add that DEQ must:

> "evaluate impacts of the program specific to Virginia, including, but not limited to economic, energy and environmental impacts, and impacts on vulnerable and environmental justice and underserved communities. The department will, in evaluating the impacts on environmental justice communities, including low income, minority and tribal communities, develop and implement a plan to ensure increased participation of environmental justice communities in the review."

DEQ believes that this is consistent with current program review requirements and that the agency would evaluate the impacts of the program whether through RGGI program review, normal periodic review, or reviews mandated by Governor Northam's Executive Order Six (EO-6).[9] Thus, this revised proposal addition would not likely significantly add to required DEQ staff time or other costs but may be beneficial in specifying to the public which information and efforts would be pursued.

Clarifications: In response to comments and questions, the revised proposal includes several clarifying changes from the original proposal, particularly concerning exemptions. These proposed changes are beneficial in improving clarity but otherwise have no effect.

Businesses and Entities Affected. The proposed changes from the original proposal particularly affect the 12 companies that operate the 32 electric power facilities with a capacity of greater than 25 MW in the Commonwealth. All entities that use electricity, including industrial and commercial firms, farms, residences, government offices, schools and colleges, etc., are affected as well. All entities and people in Virginia would also likely experience the impact of environmental improvement.

Localities Particularly Affected. The proposal to require the development and implementation of a plan to ensure increased participation of environmental justice communities would particularly affect the localities that contain those communities.

Projected Impact on Employment. Based on the new information over the past year, such as lower expected demand for electricity, reduced expected prices for lower-emitting natural gas, and renewable energy production from wind and solar coming online faster than previously expected, keeping the base budget at the levels in the original proposal

would likely result in nonbinding CO_2 emission caps. In other words, the originally proposed regulation would have very little or no impact on CO_2 emissions.

In contrast, based upon the projections discussed in this report, the revised proposed base budget levels would likely be binding and affect firms' choices in type of power production and CO_2 emissions. The proposed reduction in allowed emissions of CO_2 over time may reduce employment associated with electricity production that is high in CO_2 emission such as coal and may increase employment in electricity production that is lower in CO_2 emission, such as natural gas, and very low in emissions such as wind and solar.

Effects on the Use and Value of Private Property. As discussed above, based upon the projections discussed in this report, the revised proposed base budget levels would likely be binding, and promulgation of this regulation would likely result in reduced CO_2 emissions. It is difficult to estimate the effects of the proposed regulation on the value of property. To the extent that the proposed amendments decrease flooding risk, and thus limit loss of use, the value of private property near bodies of water and other low-lying properties could become more valuable, or they could decline since it could cause the inventory of usable land to increase. Further, land values could increase in some areas as the demand for solar farms increases.

Real Estate Development Costs. The revised proposed amendments do not appear to significantly affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. Based upon the assumptions used for the consulting firms' modeling and analysis, electricity costs for small businesses would moderately decrease.

Alternative Method that Minimizes Adverse Impact. If the assumption that all revenue from the sale of CO_2 emission allowances that were allocated to Virginia sources is passed on to consumers is accurate, then based upon that and the other assumptions used for the consulting firms' modeling and analysis there would be no adverse impact on small businesses.

Adverse Impacts:

Businesses. The revised proposed reductions in base budget levels would increase electricity production costs for at least some electric power producing firms.

Localities. Based upon the assumptions used for the consulting firms' modeling and analysis, the proposed changes from the original proposal would not likely have adverse impacts for localities.

Other Entities. Based upon the assumptions used for the consulting firms' modeling and analysis, the proposed changes from the original proposal would not likely have adverse impacts for other entities.

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[1]See "9VAC5-140. Regulation for Emissions Trading Programs (Proposed)" at http://register.dls.virginia.gov/vol34/iss10/v34i10.pdf

[2]See http://townhall.virginia.gov/l/GetFile.cfm?File=1\4818\8130\EIA_DEQ_8130_v2.pdf

[3]See http://townhall.virginia.gov/L/ViewStage.cfm?stageid=8476

[4]RGGI is a cooperative effort among the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont to cap and reduce power sector CO_2 emissions. RGGI is composed of individual CO_2 Budget Trading Programs in each participating state. Through independent regulations, each state's CO_2 Budget Trading Program limits emissions of CO_2 from electric power plants, issues CO_2 allowances and establishes participation in regional CO_2 allowance auctions. Regulated power plants can use a CO_2 allowance issued by any participating state to demonstrate compliance with an individual state program. In this manner, the state programs, in aggregate, function as a single regional compliance market for CO_2 emissions.

[5]See http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0296

[6]See https://www.eia.gov/analysis/

[7]See https://www.deq.virginia.gov/Programs/Air/GreenhouseGasPlan.aspx

[8]DEQ November 16, 2017 presentation before the Board, p. 24:
http://www.deq.virginia.gov/Portals/0/DEQ/Air/GHG/C17-pro.pdf?ver=2017-11-20-153710-670
DEQ December 4, 2017 presentation to the Commission on Electric Utility Regulation, p. 15.
http://leg5.state.va.us/User_db/frmView.aspx?ViewId=5094&s=7

[9]See https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/eo-6-executive-order-supporting-the-critical-role-of-the-virginia-department-of-environmental-quality-in-protection-of-virginia-s-air-water-and-public-health.pdf

Agency's Response to Economic Impact Analysis: The board has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The State Air Pollution Control Board adopted a proposed regulation to establish the Virginia CO_2 Budget Trading Program. The regulation, as originally proposed, included provisions to (i) implement a declining cap on carbon emissions and establish an allowance that will be issued for each ton of carbon emitted by an electricity generating facility, which can then decide whether to reduce carbon emissions and sell the resulting additional allowances or not reduce carbon emissions and make up the difference with purchased allowances; (ii) establish a consignment auction as the mechanism for determining the cost of allowances; (iii) provide that a cost containment reserve allowance will be offered for sale at an auction for the purpose of containing the cost of CO_2 allowances in the

event of higher than anticipated emission reduction costs and that an emission containment reserve allowance will be withheld from sale at an auction for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs; (iv) implement monitoring, recording, and recordkeeping requirements; and (v) allocate conditional allowances to the Department of Mines, Minerals and Energy.

Since publication of the proposed regulation in 34:10 VA.R. 924-959 January 8, 2018, the board made certain revisions to the original proposal, which included two options on the base budget of 33 and 34 million tons. The board approved a new base budget of 28 million tons based on new modeling and other information. The new base budget of 28 million tons will determine, based on a 3.0% annual reduction, the annual budgets and allocations for future years. These requirements apply to fossil fuel-fired electric generating facilities.

Other substantive changes in the reproposed action include (i) the recognition of offsets from other participating states, (ii) exemption of fossil fuel units that co-fire with biomass from CO_2 accounting, (iii) a more detailed description of exempt industrial sources, (iv) a more detailed description of how the cost containment reserve will be managed, (v) a new section allowing for participation in a nonconsignment auction, and (vi) a new section requiring program monitoring and review. The reproposed action reflects the latest version of the Regional Greenhouse Gas Initiative model rule.

Part VII
CO_2 Budget Trading Program

Article 1
CO_2 Budget Trading Program General Provisions

9VAC5-140-6010. Purpose.

This part establishes the Virginia component of the CO_2 Budget Trading Program, which is designed to reduce anthropogenic emissions of CO_2, a greenhouse gas, from CO_2 budget sources in [~~an economically efficient manner~~ a manner that is protective of human health and the environment and is economically efficient].

9VAC5-140-6020. Definitions.

A. As used in this part, all words or terms not defined here shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by the context.

B. For the purpose of this part and any related use, the words or terms shall have the meanings given them in this section.

C. Terms defined.

"Account number" means the identification number given by the department or its agent to each COATS account.

"Acid rain emission limitation" means, as defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide (SO_2) or nitrogen oxides (NO_X) under the Acid Rain Program under Title IV of the CAA.

"Acid Rain Program" means a multistate SO_2 and NO_X air pollution control and emission reduction program established by the administrator under Title IV of the CAA and 40 CFR Parts 72 through 78.

"Adjustment for banked allowances" means an adjustment applied to the Virginia CO_2 Budget Trading Program base budget for allocation years 2021 through 2025 to address allowances held in general and compliance accounts, including compliance accounts established pursuant to the CO_2 Budget Trading Program, but not including accounts opened by participating states, that are in addition to the aggregate quantity of emissions from all CO_2 budget sources in all of the participating states at the end of the control period in 2020 and as reflected in the CO_2 Allowance Tracking System on March 17, 2021.

"Administrator" means the administrator of the U.S. Environmental Protection Agency or the administrator's authorized representative.

"Allocate" or "allocation" means the determination by the department of the number of CO_2 conditional allowances allocated to a CO_2 budget unit or [to] the Department of Mines, Minerals and Energy (DMME) [pursuant to 9VAC5-140-6211].

"Allocation year" means a calendar year for which the department allocates CO_2 conditional allowances pursuant to Article 5 (9VAC5-140-6190 et seq.) of this part. The allocation year of each CO_2 conditional allowance is reflected in the unique identification number given to the allowance pursuant to 9VAC5-140-6250 C.

[~~"Allowance" means an allowance up to one ton of CO_2 purchased from the consignment auction in accordance with Article 9 (9VAC5-140-6410 et seq.) of this part and that may be deposited in the compliance account of a CO_2 budget source.~~]

"Allowance auction" or "auction" means an auction in which the department or its agent offers CO_2 allowances for sale.

[~~"Alternate CO_2 authorized account representative" means, for a CO_2 budget source and each CO_2 budget unit at the source, the alternate natural person who is authorized by the owners and operators of the source and all CO_2 budget units at the source, in accordance with Article 2 (9VAC5-140-6080 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the CO_2 Budget Trading Program or, for a general account, the alternate natural person who is authorized, under Article 6 (9VAC5-140-6220 et seq.) of this part, to transfer or~~

~~otherwise dispose of CO_2 allowances held in the general account. If the CO_2 budget source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program then, for a CO_2 Budget Trading Program compliance account, this alternate natural person shall be the same person as the alternate designated representative as defined in the respective program.~~]

"Attribute" means a characteristic associated with electricity generated using a particular renewable fuel, such as its generation date, facility geographic location, unit vintage, emissions output, fuel, state program eligibility, or other characteristic that can be identified, accounted for, and tracked.

"Attribute credit" means a credit that represents the attributes related to one megawatt-hour of electricity generation.

"Automated Data Acquisition and Handling System" or "DAHS" means that component of the Continuous Emissions Monitoring System (CEMS), or other emissions monitoring system approved for use under Article 8 (9VAC5-140-6330 et seq.) of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Article 8 (9VAC5-140-6330 et seq.) of this part.

"Billing meter" means a measurement device used to measure electric or thermal output for commercial billing under a contract. The facility selling the electric or thermal output shall have different owners from the owners of the party purchasing the electric or thermal output.

"Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

["CO_2 allowance" means a limited authorization by the department or another participating state under the CO_2 Budget Trading Program to emit up to one ton of CO_2, subject to all applicable limitations contained in this part. CO_2 offset allowances generated by other participating states will be recognized by the department.]

"CO_2 allowance deduction" or "deduct CO_2 allowances" means the permanent withdrawal of CO_2 allowances by the department or its agent from a COATS compliance account to account for the number of tons of CO_2 emitted from a CO_2 budget source for a control period or an interim control period, determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, or for the forfeit or retirement of CO_2 allowances as provided by this part.

"CO_2 Allowance Tracking System" or "COATS" means the system by which the department or its agent records allocations, deductions, and transfers of CO_2 allowances under the CO_2 Budget Trading Program. The tracking system may also be used to track CO_2 allowance prices and emissions from affected sources.

"CO_2 Allowance Tracking System account" means an account in COATS established by the department or its agent for purposes of recording the allocation, holding, transferring, or deducting of CO_2 allowances.

"CO_2 allowance transfer deadline" means midnight of March 1 occurring after the end of the relevant control period and each relevant interim control period or, if that March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which CO_2 allowances shall be submitted for recordation in a CO_2 budget source's compliance account for the source to meet the CO_2 requirements of 9VAC5-140-6050 C for the control period and each interim control period immediately preceding such deadline.

"CO_2 allowances held" or "hold CO_2 allowances" means the CO_2 allowances recorded by the department or its agent, or submitted to the department or its agent for recordation, in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 7 (9VAC5-140-6300 et seq.) of this part, in a COATS account.

"CO_2 authorized account representative" means, for a CO_2 budget source and each CO_2 budget unit at the source, the natural person who is authorized by the owners and operators of the source and all CO_2 budget units at the source, in accordance with Article 2 (9VAC5-140-6080 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the CO_2 Budget Trading Program or, for a general account, the natural person who is authorized, under Article 6 (9VAC5-140-6220 et seq.) of this part, to transfer or otherwise dispose of CO_2 allowances held in the general account. If the CO_2 budget source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, then for a CO_2 Budget Trading Program compliance account, this natural person shall be the same person as the designated representative as defined in the respective program.

["CO_2 authorized alternate account representative" means, for a CO_2 budget source and each CO_2 budget unit at the source, the alternate natural person who is authorized by the owners and operators of the source and all CO_2 budget units at the source, in accordance with Article 2 (9VAC5-140-6080 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the CO_2 Budget Trading Program or, for a general account, the

alternate natural person who is authorized, under Article 6 (9VAC5-140-6220 et seq.) of this part, to transfer or otherwise dispose of CO_2 allowances held in the general account. If the CO_2 budget source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program then, for a CO_2 Budget Trading Program compliance account, this alternate natural person shall be the same person as the alternate designated representative as defined in the respective program.]

"CO_2 budget emissions limitation" means, for a CO_2 budget source, the tonnage equivalent, in CO_2 emissions in a control period or an interim control period, of the CO_2 allowances available for compliance deduction for the source for a control period or an interim control period.

"CO_2 budget permit" means the portion of the legally binding permit issued by the department pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) to a CO_2 budget source or CO_2 budget unit that specifies the CO_2 Budget Trading Program requirements applicable to the CO_2 budget source, to each CO_2 budget unit at the CO_2 budget source, and to the owners and operators and the CO_2 authorized account representative of the CO_2 budget source and each CO_2 budget unit.

"CO_2 budget source" means a source that includes one or more CO_2 budget units.

"CO_2 Budget Trading Program" means [~~the Regional Greenhouse Gas Initiative (RGGI).~~] a multistate CO_2 air pollution control and emissions reduction program [established according to this part and corresponding regulations in other states] as a means of reducing emissions of CO_2 from CO_2 budget sources.

"CO_2 budget unit" means a unit that is subject to the CO_2 Budget Trading Program requirements under 9VAC5-140-6040.

"CO_2 cost containment reserve allowance" or "CO_2 CCR allowance" means a [conditional] CO_2 allowance that is offered for sale at an auction for the purpose of containing the cost of CO_2 allowances. CO_2 CCR allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the Virginia CO_2 Budget Trading Program base and adjusted budgets. CO_2 CCR allowances are subject to all applicable limitations contained in this part.

"CO_2 cost containment reserve trigger price" or "CCR trigger price" means the minimum price at which CO_2 CCR allowances are offered for sale at an auction. [~~Beginning in 2020 and each calendar year thereafter, the CCR trigger price shall be 1.025 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent.~~ The CCR trigger price in calendar year 2020 shall be $10.77.] The CCR trigger price in calendar year 2021 shall be $13. Each calendar year thereafter, the CCR trigger price shall be 1.07 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 140-1A.

Table 140-1A

CO_2 CCR Trigger Price

2020	$10.77
2021	$13.00
2022	$13.91
2023	$14.88
2024	[~~$15.93~~ $15.92]
2025	[~~$17.04~~ $17.03]
2026	[~~$18.23~~ $18.22]
2027	[~~$19.51~~ $19.50]
2028	[~~$20.88~~ $20.87]
2029	[~~$22.34~~ $22.33]
2030	[~~$23.90~~ $23.89]

"CO_2 emission containment reserve allowance" or "CO_2 ECR allowance" means a CO_2 allowance that is withheld from sale at an auction by the department for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs.

"CO_2 emission containment reserve trigger price" or "ECR trigger price" means the price below which CO_2 allowances will be withheld from sale by the department or its agent at an auction. The ECR trigger price in calendar year 2021 shall be $6.00. Each calendar year thereafter, the ECR trigger price shall be 1.07 multiplied by the ECR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 140-1B.

Table 140-1B

CO_2 ECR Trigger Price

2021	$ 6.00
2022	$ 6.42
2023	$ 6.87
2024	$ 7.35
2025	$ 7.86
2026	[~~$ 8.42~~ $8.41]
2027	$ 9.00

2028	$ 9.63
2029	[~~$10.31~~ $10.30]
2030	[~~$11.03~~ $11.02]

["CO_2 offset allowance" means a CO_2 allowance that is awarded to the sponsor of a CO_2 emissions offset project by a participating state and is subject to the relevant compliance deduction limitations of the participating state's corresponding offset regulations as a means of reducing CO_2 from CO_2 budget sources.]

"Combined cycle system" means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

"Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor (if applicable), a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

"Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. For a unit that is a CO_2 budget unit under 9VAC5-140-6040 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO_2 budget unit under 9VAC5-140-6040 on the date the unit commences commercial operation, the date the unit becomes a CO_2 budget unit under 9VAC5-140-6040 shall be the unit's date of commencement of commercial operation.

"Commence operation" means to begin any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. For a unit that is a CO_2 budget unit under 9VAC5-140-6040 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO_2 budget unit under 9VAC5-140-6040 on the date of commencement of operation, the date the unit becomes a CO_2 budget unit under 9VAC5-140-6040 shall be the unit's date of commencement of operation.

"Compliance account" means a COATS account, established by the department or its agent for a CO_2 budget source under Article 6 (9VAC5-140-6220 et seq.) of this part, in which are held CO_2 allowances available for use by the source for a control period and each interim control period for the purpose of meeting the CO_2 requirements of 9VAC5-140-6050 C.

"Conditional allowance" means an allowance allocated by the department to CO_2 budget sources [~~and~~ or] to DMME. Such conditional allowance shall be consigned by the entity to whom it is allocated to the consignment auction as specified under Article 9 (9VAC5-140-6410 et seq.) of this part, after which the conditional allowance becomes [~~an allowance to be used for compliance purposes.~~ a CO_2 allowance once it is sold to an auction participant. A conditional allowance may also be contained in the CCR and may be auctioned.]

["Conditional CCR allowance" means a CCR allowance that may be offered for sale when the CCR is triggered. If any CCR allowances are unsold, they shall be returned to the CCR account and may be offered for sale in future auctions during the same year.]

"Consignment auction" or "auction" means the CO_2 auction conducted on a quarterly basis by [~~RGGI, Inc.~~ the CO_2 Budget Trading Program], in which CO_2 budget sources and DMME are allocated a share of allowances by the department that CO_2 budget sources and the holder of a public contract with DMME consign into the auction, and auction revenue is returned to CO_2 budget sources and the holder of a public contract with DMME in accordance with procedures established by the department.

"Continuous Emissions Monitoring System" or "CEMS" means the equipment required under Article 8 (9VAC5-140-6330 et seq.) of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated DAHS), a permanent record of stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75 and Article 8 (9VAC5-140-6330 et seq.) of this part. The following systems are types of CEMS required under Article 8 (9VAC5-140-6330 et seq.) of this part:

a. A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour [~~(scf)~~];

b. A NO_X emissions rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated DAHS and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X emissions rate, in pounds per million British thermal units (lb/MMBtu);

c. A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

d. A CO_2 monitoring system, consisting of a CO_2 pollutant concentration monitor (or an O_2 monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated DAHS and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

e. An O_2 monitoring system, consisting of an O_2 concentration monitor and an automated DAHS and providing a permanent, continuous record of O_2, in percent O_2.

"Control period" means a three-calendar-year time period. The first control period is from January 1, 2021, to December 31, 2023, inclusive. Each subsequent compliance control period shall be a sequential three-calendar-year period. The first two compliance years of each control period are each defined as an interim control period, beginning on January 1, 2022.

"Cross State Air Pollution Rule (CSAPR) NO_X Annual Trading Program" means a multistate NO_X air pollution control and emission reduction program established in accordance with Subpart AAAAA of 40 CFR Part 97 and 40 CFR 52.38(a), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.38(a)(3) or (4) or that is established in a SIP revision approved by the administrator under 40 CFR 52.38(a)(5), as a means of mitigating interstate transport of fine particulates and NO_X.

"Cross State Air Pollution Rule (CSAPR) NO_X Ozone Season Trading Program" means a multistate NO_X air pollution control and emission reduction program established in accordance with Subpart BBBBB of 40 CFR Part 97 and 40 CFR 52.38(b), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.38(b)(3) or (4) or that is established in a SIP revision approved by the administrator under 40 CFR 52.38(b)(5), as a means of mitigating interstate transport of ozone and NO_X.

"Cross State Air Pollution Rule (CSAPR) SO_2 Group 1 Trading Program" means a multistate SO_2 air pollution control and emission reduction program established in accordance with Subpart CCCCC of 40 CFR Part 97 and 40 CFR 52.39(a), (b), (d) through (f), (j), and (k), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.39(d) or (e) or that is established in a SIP revision approved by the administrator under 40 CFR 52.39(f), as a means of mitigating interstate transport of fine particulates and SO_2.

"Cross State Air Pollution Rule (CSAPR) SO_2 Group 2 Trading Program" means a multistate SO_2 air pollution control and emission reduction program established in accordance with Subpart DDDDD of 40 CFR Part 97 and 40 CFR 52.39(a), (c), and (g) through (k), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.39(g) or (h) or that is established in a SIP revision approved by the administrator under 40 CFR 52.39(i), as a means of mitigating interstate transport of fine particulates and SO_2.

"Department" means the Virginia Department of Environmental Quality.

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

"Excess emissions" means any tonnage of CO_2 emitted by a CO_2 budget source during a control period that exceeds the CO_2 budget emissions limitation for the source.

"Excess interim emissions" means any tonnage of CO_2 emitted by a CO_2 budget source during an interim control period multiplied by 0.50 that exceeds the CO_2 budget emissions limitation for the source.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fossil fuel-fired" means the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or is projected to comprise, more than [~~10%~~ 5.0%] of the annual heat input on a Btu basis during any year.

"General account" means a COATS account, established under Article 6 (9VAC5-140-6220 et seq.) of this part that is not a compliance account.

"Gross generation" means the electrical output in MWe at the terminals of the generator.

"Initial control period" means the period beginning January 1, 2020, and ending December 31, 2020.

"Interim control period" means a one-calendar-year time period, during each of the first and second calendar years of each three-year control period. The first interim control period starts January 1, 2021, and ends December 31, 2021, inclusive. The second interim control period starts January 1, 2022, and ends December 31, 2022, inclusive. Each successive three-year control period will have two interim control periods, comprised of each of the first two calendar years of that control period.

"Life-of-the-unit contractual arrangement" means a unit participation power sales agreement under which a customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity or associated energy from any specified unit pursuant to a contract:

a. For the life of the unit;

b. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

c. For a period equal to or greater than 25 years or 70% of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

[~~"Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.~~]

"Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR Part 75 to report heat input, this value shall be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value shall be reported, in accordance with 40 CFR Part 75, using the maximum potential flow rate and either the maximum CO_2 concentration in percent CO_2 or the minimum O_2 concentration in percent O_2.

"Minimum reserve price" means, in calendar year 2020, [~~$2.00~~ $2.32]. Each calendar year thereafter, the minimum reserve price shall be 1.025 multiplied by the minimum reserve price from the previous calendar year, rounded to the nearest whole cent.

"Monitoring system" means any monitoring system that meets the requirements of Article 8 (9VAC5-140-6330 et seq.) of this part, including a CEMS, an excepted monitoring system, or an alternative monitoring system.

"Nameplate capacity" means the maximum electrical output in MWe that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the U.S. Department of Energy standards.

"Net-electric output" means the amount of gross generation in MWh the generators produce, including output from steam turbines, combustion turbines, and gas expanders, as measured at the generator terminals, less the electricity used to operate the plant (i.e., auxiliary loads); such uses include fuel handling equipment, pumps, fans, pollution control equipment, other electricity needs, and transformer losses as measured at the transmission side of the step up transformer (e.g., the point of sale).

"Non-CO_2 budget unit" means a unit that does not meet the applicability criteria of 9VAC5-140-6040.

"Operator" means any person who operates, controls, or supervises a CO_2 budget unit or a CO_2 budget source and shall include any holding company, utility system, or plant manager of such a unit or source.

"Owner" means any of the following persons:

a. Any holder of any portion of the legal or equitable title in a CO_2 budget unit;

b. Any holder of a leasehold interest in a CO_2 budget unit, other than a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the CO_2 budget unit;

c. Any purchaser of power from a CO_2 budget unit under a life-of-the-unit contractual arrangement in which the purchaser controls the dispatch of the unit; or

d. With respect to any general account, any person who has an ownership interest with respect to the CO_2 allowances held in the general account and who is subject to the binding agreement for the CO_2 authorized account representative to represent that person's ownership interest with respect to the CO_2 allowances.

"Participating state" means a state that [~~has established a corresponding regulation as part of~~ participates in] the CO_2 Budget Trading Program.

"Receive" or "receipt of" means, [~~with regard to CO_2 allowances, the movement of CO_2 allowances by the department or its agent from one COATS account to another, for purposes of allocation, transfer, or deduction~~ when referring to the department or its agent, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission) as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence by the department or its agent in the regular course of business].

"Recordation," "record," or "recorded" means, with regard to CO_2 allowances, the movement of CO_2 allowances by the department or its agent from one COATS account to another, for purposes of allocation, transfer, or deduction.

[~~"RGGI, Inc." means the 501(c)(3) nonprofit corporation created to support development and implementation of the Regional Greenhouse Gas Initiative (RGGI). Participating RGGI states use RGGI, Inc., as their agent to conduct the consignment auction and to operate and manage COATS.~~]

"Reserve price" means the minimum acceptable price for each CO_2 allowance in a specific auction. The reserve price at an auction is either the minimum reserve price or the CCR trigger price, as specified in Article 9 (9VAC5-140-6410 et seq.) of this part.

"Serial number" means, when referring to CO_2 allowances, the unique identification number assigned to each CO_2 allowance by the department or its agent under 9VAC5-140-6250 C.

"Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any air pollutant. A source, including a source with multiple units, shall be considered a single facility.

[~~"State" means the Commonwealth of Virginia. The term "state" shall have its conventional meaning where such meaning is clear from the context.~~]

"Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

a. In person;

b. By [~~U.S.~~ United States] Postal Service; or

c. By other means of dispatch or transmission and delivery.

Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Ton" or "tonnage" means any short ton, or 2,000 pounds. For the purpose of determining compliance with the CO_2 requirements of 9VAC5-140-6050 C, total tons for a control period shall be calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons. A short ton is equal to 0.9072 metric tons.

["Total useful energy" means the sum of gross electrical generation and useful net thermal energy.]

"Undistributed CO_2 allowances" means CO_2 allowances originally allocated to a set aside account as pursuant to 9VAC5-140-6210 that were not distributed.

"Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

"Unit operating day" means a calendar day in which a unit combusts any fuel.

"Unsold CO_2 allowances" means CO_2 allowances that have been made available for sale in an auction conducted by the department or its agent, but not sold.

["Useful net thermal energy" means energy:

1. In the form of direct heat, steam, hot water, or other thermal form that is used in the production and beneficial measures for heating, cooling, humidity control, process use, or other thermal end use energy requirements, excluding thermal energy used in the power production process (e.g., house loads and parasitic loads); and

2. For which fuel or electricity would otherwise be consumed.]

"Virginia CO_2 Budget Trading Program adjusted budget" means an adjusted budget determined in accordance with 9VAC5-140-6210 and is the annual amount of CO_2 tons available in Virginia for allocation in a given allocation year, in accordance with the CO_2 Budget Trading Program. CO_2 CCR allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the Virginia CO_2 Budget Trading Program adjusted budget.

"Virginia CO_2 Budget Trading Program base budget" means the budget specified in 9VAC5-140-6190. CO_2 CCR allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the Virginia CO_2 Budget Trading Program base budget.

9VAC5-140-6030. Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu - British thermal unit.

CAA - federal Clean Air Act.

CCR - cost containment reserve.

CEMS - Continuous Emissions Monitoring System.

COATS - CO_2 Allowance Tracking System.

CO_2 - carbon dioxide.

DAHS - Data Acquisition and Handling System.

[~~EEM - efficiency measure.~~]

H_2O - water.

lb - pound.

LME - low mass emissions.

MMBtu - million British thermal units.

MW - megawatt.

MWe - megawatt electrical.

MWh - megawatt hour.

NO_X - nitrogen oxides.

O_2 - oxygen.

ORIS - Office of Regulatory Information Systems.

QA/QC - quality assurance/quality control.

ppm - parts per million.

[~~scf - standard cubic feet per hour.~~]

SO_2 - sulfur dioxide.

9VAC5-140-6040. Applicability.

A. Any fossil fuel-fired unit that serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe shall be a CO_2 budget unit, and any source that includes one or more such units shall be a CO_2 budget source, subject to the requirements of this part.

B. Exempt from the requirements of this part is any [~~fossil fuel power generating unit owned by an individual facility and located at that individual facility that generates electricity and heat from fossil fuel for the primary use of operation of the facility~~ CO_2 budget source located at or adjacent to and physically interconnected with a manufacturing facility that, prior to January 1, 2019, and in every subsequent calendar year, met either of the following requirements:

1. Supplies less than or equal to 10% of its annual net electrical generation to the electric grid; or

2. Supplies less than or equal to 15% of its annual total useful energy to any entity other than the manufacturing facility to which the CO_2 budget source is interconnected.

For the purpose of subdivision 1 of this subsection, annual net electrical generation shall be determined as follows:

(ES – EP) / EG x 100

Where:

ES = electricity sales to the grid from the CO_2 budget source

EP = electricity purchases from the grid by the CO_2 budget source and the manufacturing facility to which the CO_2 budget source is interconnected

EG = electricity generation

Such CO_2 budget source shall have an operating permit containing the applicable restrictions under this subsection].

9VAC5-140-6050. Standard requirements.

A. Permit requirements shall be as follows.

1. The CO_2 authorized account representative of each CO_2 budget source required to have an operating permit pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) and each CO_2 budget unit required to have an operating permit pursuant to 9VAC5-85 shall:

a. Submit to the department a complete CO_2 budget permit application under 9VAC5-140-6160 in accordance with the deadlines specified in 9VAC5-140-6150; and

b. Submit in a timely manner any supplemental information that the department determines is necessary in order to review the CO_2 budget permit application and issue or deny a CO_2 budget permit.

2. The owners and operators of each CO_2 budget source required to have an operating permit pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) and each CO_2 budget unit required to have an operating permit pursuant to 9VAC5-85 for the source shall have a CO_2 budget permit and operate the CO_2 budget source and the CO_2 budget unit at the source in compliance with such CO_2 budget permit.

B. Monitoring requirements shall be as follows.

1. The owners and operators and, to the extent applicable, the CO_2 authorized account representative of each CO_2 budget source and each CO_2 budget unit at the source shall comply with the monitoring requirements of Article 8 (9VAC5-140-6330 et seq.) of this part.

2. The emissions measurements recorded and reported in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part shall be used to determine compliance by the unit with the CO_2 requirements under subsection C of this section.

C. CO_2 requirements shall be as follows.

1. The owners and operators of each CO_2 budget source and each CO_2 budget unit at the source shall hold CO_2 allowances available for compliance deductions under 9VAC5-140-6260, as of the CO_2 allowance transfer deadline, in the source's compliance account in an amount not less than the total CO_2 emissions for the control period from all CO_2 budget units at the source, less the CO_2 allowances deducted to meet the requirements of subdivision 2 of this subsection, with respect to the previous two interim control periods as determined in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 8 (9VAC5-140-6330 et seq.) of this part.

2. The owners and operators of each CO_2 budget source and each CO_2 budget unit at the source shall hold CO_2 allowances available for compliance deductions under 9VAC5-140-6260, as of the CO_2 allowance transfer deadline, in the source's compliance account in an amount not less than the total CO_2 emissions for the interim control period from all CO_2 budget units at the source multiplied by 0.50, as determined in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 8 (9VAC5-140-6330 et seq.) of this part.

3. Each ton of CO_2 emitted in excess of the CO_2 budget emissions limitation for a control period shall constitute a separate violation of this part and applicable state law.

4. Each ton of excess interim emissions shall constitute a separate violation of this part and applicable state law.

5. A CO_2 budget unit shall be subject to the requirements under subdivision 1 of this subsection starting on the later of January 1, 2020, or the date on which the unit commences operation.

6. CO_2 allowances shall be held in, deducted from, or transferred among COATS accounts in accordance with Article 5 (9VAC5-140-6190 et seq.), Article 6 (9VAC5-140-6220 et seq.), and Article 7 (9VAC5-140-6300 et seq.) of this part.

7. A CO_2 allowance shall not be deducted, to comply with the requirements under subdivision 1 or 2 of this subsection, for a control period that ends prior to the year for which the CO_2 allowance was allocated.

8. A CO_2 allowance under the CO_2 Budget Trading Program is a limited authorization by the department to emit one ton of CO_2 in accordance with the CO_2 Budget Trading Program. No provision of the CO_2 Budget Trading Program, the CO_2 budget permit application, or the CO_2 budget permit or any provision of law shall be construed to limit the authority of the department or a participating state to terminate or limit such authorization.

9. A CO_2 allowance under the CO_2 Budget Trading Program does not constitute a property right.

D. The owners and operators of a CO_2 budget source that has excess emissions in any control period shall:

1. Forfeit the CO_2 allowances required for deduction under 9VAC5-140-6260 D 1; and

2. Pay any fine, penalty, or assessment or comply with any other remedy imposed under 9VAC5-140-6260 D 2.

E. Recordkeeping and reporting requirements shall be as follows:

1. Unless otherwise provided, the owners and operators of the CO_2 budget source and each CO_2 budget unit at the source shall keep on site at the source each of the following documents for a period of 10 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 10 years, in writing by the department.

a. The account certificate of representation for the CO_2 authorized account representative for the source and each CO_2 budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with 9VAC5-140-6110, provided that the certificate and documents shall be retained on site at the source beyond such 10-year period until such documents are superseded because of the submission of a new account certificate of representation changing the CO_2 authorized account representative.

b. All emissions monitoring information, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part and 40 CFR 75.57.

c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the CO_2 Budget Trading Program.

d. Copies of all documents used to complete a CO_2 budget permit application and any other submission under the CO_2 Budget Trading Program or to demonstrate compliance with the requirements of the CO_2 Budget Trading Program.

2. The CO_2 authorized account representative of a CO_2 budget source and each CO_2 budget unit at the source shall submit the reports and compliance certifications required under the CO_2 Budget Trading Program, including those under Article 4 (9VAC5-140-6170 et seq.) of this part.

F. Liability requirements shall be as follows.

1. No permit revision shall excuse any violation of the requirements of the CO_2 Budget Trading Program that occurs prior to the date that the revision takes effect.

2. Any provision of the CO_2 Budget Trading Program that applies to a CO_2 budget source, including a provision applicable to the CO_2 authorized account representative of a CO_2 budget source, shall also apply to the owners and operators of such source and of the CO_2 budget units at the source.

3. Any provision of the CO_2 Budget Trading Program that applies to a CO_2 budget unit, including a provision applicable to the CO_2 authorized account representative of a CO_2 budget unit, shall also apply to the owners and operators of such unit.

G. No provision of the CO_2 Budget Trading Program, a CO_2 budget permit application, or a CO_2 budget permit shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CO_2 authorized account representative of the CO_2 budget source or CO_2 budget unit from compliance with any other provisions of applicable state and federal law or regulations.

9VAC5-140-6060. Computation of time.

A. Unless otherwise stated, any time period scheduled, under the CO_2 Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

B. Unless otherwise stated, any time period scheduled, under the CO_2 Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

C. Unless otherwise stated, if the final day of any time period, under the CO_2 Budget Trading Program, falls on a

weekend or a state or federal holiday, the time period shall be extended to the next business day.

9VAC5-140-6070. Severability.

If any provision of this part, or its application to any particular person or circumstances, is held invalid, the remainder of this part, and the application thereof to other persons or circumstances, shall not be affected thereby.

Article 2
CO_2 Authorized Account Representative for CO_2 Budget Sources

9VAC5-140-6080. Authorization and responsibilities of the CO_2 authorized account representative.

A. Except as provided under 9VAC5-140-6090, each CO_2 budget source, including all CO_2 budget units at the source, shall have one and only one CO_2 authorized account representative, with regard to all matters under the CO_2 Budget Trading Program concerning the source or any CO_2 budget unit at the source.

B. The CO_2 authorized account representative of the CO_2 budget source shall be selected by an agreement binding on the owners and operators of the source and all CO_2 budget units at the source and must act in accordance with the certificate of representation under 9VAC5-140-6110.

C. Upon receipt by the department or its agent of a complete account certificate of representation under 9VAC5-140-6110, the CO_2 authorized account representative of the source shall represent and, by his representations, actions, inactions, or submissions, legally bind each owner and operator of the CO_2 budget source represented and each CO_2 budget unit at the source in all matters pertaining to the CO_2 Budget Trading Program, notwithstanding any agreement between the CO_2 authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CO_2 authorized account representative by the department or a court regarding the source or unit.

D. No CO_2 budget permit shall be issued, and no COATS account shall be established for a CO_2 budget source, until the department or its agent has received a complete account certificate of representation under 9VAC5-140-6110 for a CO_2 authorized account representative of the source and the CO_2 budget units at the source.

E. Each submission under the CO_2 Budget Trading Program shall be submitted, signed, and certified by the CO_2 authorized account representative for each CO_2 budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CO_2 authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the CO_2 budget sources or CO_2 budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

F. The department or its agent will accept or act on a submission made on behalf of owners or operators of a CO_2 budget source or a CO_2 budget unit only if the submission has been made, signed, and certified in accordance with subsection E of this section.

9VAC5-140-6090. [~~Alternate~~] CO_2 authorized [alternate] account representative.

A. An account certificate of representation may designate one and only one [~~alternate~~] CO_2 authorized [alternate] account representative who may act on behalf of the CO_2 authorized account representative. The agreement by which the [~~alternate~~] CO_2 authorized [alternate] account representative is selected shall include a procedure for authorizing the [~~alternate~~] CO_2 authorized [alternate] account representative to act in lieu of the CO_2 authorized account representative.

B. Upon receipt by the department or its agent of a complete account certificate of representation under 9VAC5-140-6110, any representation, action, inaction, or submission by the [~~alternate~~] CO_2 authorized [alternate] account representative shall be deemed to be a representation, action, inaction, or submission by the CO_2 authorized account representative.

C. Except in this section and 9VAC5-140-6080 A, 9VAC5-140-6100, 9VAC5-140-6110, and 9VAC5-140-6230, whenever the term "CO_2 authorized account representative" is used in this part, the term shall be construed to include the [~~alternate~~] CO_2 authorized [alternate] account representative.

9VAC5-140-6100. Changing the CO_2 authorized account representatives and the [~~alternate~~] CO_2 authorized [alternate] account representative; changes in the owners and operators.

A. The CO_2 authorized account representative may be changed at any time upon receipt by the department or its agent of a superseding complete account certificate of representation under 9VAC5-140-6110. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative prior to the time and date when the department or its agent receives the superseding account

certificate of representation shall be binding on the new CO_2 authorized account representative and the owners and operators of the CO_2 budget source and the CO_2 budget units at the source.

B. The [~~alternate~~] CO_2 authorized [alternate] account representative may be changed at any time upon receipt by the department or its agent of a superseding complete account certificate of representation under 9VAC5-140-6110. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous [~~or alternate~~] CO_2 authorized [alternate] account representative or [~~alternate~~] CO_2 authorized [alternate] account representative prior to the time and date when the department or its agent receives the superseding account certificate of representation shall be binding on the new [~~alternate~~] CO_2 authorized [alternate] account representative and the owners and operators of the CO_2 budget source and the CO_2 budget units at the source.

C. Changes in the owners and operators shall be addressed as follows.

1. In the event a new owner or operator of a CO_2 budget source or a CO_2 budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the CO_2 authorized account representative and any [~~alternate~~] CO_2 authorized [alternate] account representative of the source or unit, and the decisions, orders, actions, and inactions of the department, as if the new owner or operator were included in such list.

2. Within 30 days following any change in the owners and operators of a CO_2 budget source or a CO_2 budget unit, including the addition of a new owner or operator, the CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

9VAC5-140-6110. Account certificate of representation.

A. A complete account certificate of representation for a CO_2 authorized account representative or [~~an alternate~~ a] CO_2 authorized [alternate] account representative shall include the following elements in a format prescribed by the department or its agent:

1. Identification of the CO_2 budget source and each CO_2 budget unit at the source for which the account certificate of representation is submitted;

2. The name, address, email address, telephone number, and facsimile transmission number of the CO_2 authorized account representative and any [~~alternate~~] CO_2 authorized [alternate] account representative;

3. A list of the owners and operators of the CO_2 budget source and of each CO_2 budget unit at the source;

4. The following certification statement by the CO_2 authorized account representative and any [~~alternate~~] CO_2 authorized [alternate] account representative: "I certify that I was selected as the CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative, as applicable, by an agreement binding on the owners and operators of the CO_2 budget source and each CO_2 budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO_2 Budget Trading Program on behalf of the owners and operators of the CO_2 budget source and of each CO_2 budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department or a court regarding the source or unit."; and

5. The signature of the CO_2 authorized account representative and any [~~alternate~~] CO_2 authorized [alternate] account representative and the dates signed.

B. Unless otherwise required by the department or its agent, documents of agreement referred to in the account certificate of representation shall not be submitted to the department or its agent. Neither the department nor its agent shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

9VAC5-140-6120. Objections concerning the CO_2 authorized account representative.

A. Once a complete account certificate of representation under 9VAC5-140-6110 has been submitted and received, the department and its agent will rely on the account certificate of representation unless and until the department or its agent receives a superseding complete account certificate of representation under 9VAC5-140-6110.

B. Except as provided in 9VAC5-140-6100 A or B, no objection or other communication submitted to the department or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO_2 authorized account representative shall affect any representation, action, inaction, or submission of the CO_2 authorized account representative or the finality of any decision or order by the department or its agent under the CO_2 Budget Trading Program.

C. Neither the department nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CO_2 authorized account representative, including private legal disputes concerning the proceeds of CO_2 allowance transfers.

9VAC5-140-6130. Delegation by CO_2 authorized account representative and [~~alternate~~] CO_2 authorized [alternate] account representative.

A. A CO_2 authorized account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent under this part.

B. [~~An alternate~~ A] CO_2 authorized [alternate] account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent under this part.

C. To delegate authority to make an electronic submission to the department or its agent in accordance with subsections A and B of this section, the CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative, as appropriate, shall submit to the department or its agent a notice of delegation, in a format prescribed by the department that includes the following elements:

1. The name, address, email address, telephone number, and facsimile transmission number of such CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative;

2. The name, address, email address, telephone number, and facsimile transmission number of each such natural person, referred to as the "electronic submission agent";

3. For each such natural person, a list of the type of electronic submissions under subsection A or B of this section for which authority is delegated to him; and

4. The following certification statement by such CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative: "I agree that any electronic submission to the department or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6130 D shall be deemed to be an electronic submission by me. Until this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6130 D, I agree to maintain an email account and to notify the department or its agent immediately of any change in my email address unless all delegation authority by me under 9VAC5-140-6130 is terminated."

D. A notice of delegation submitted under subsection C of this section shall be effective, with regard to the CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative identified in such notice, upon receipt of such notice by the department or its agent and until receipt by the department or its agent of a superseding notice of delegation by such CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative as appropriate. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.

E. Any electronic submission covered by the certification in subdivision C 4 of this section and made in accordance with a notice of delegation effective under subsection D of this section shall be deemed to be an electronic submission by the CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative submitting such notice of delegation.

F. A CO_2 authorized account representative may delegate, to one or more natural persons, his authority to review information in the CO_2 allowance tracking system under this part.

G. [~~An alternate~~ A] CO_2 authorized [alternate] account representative may delegate, to one or more natural persons, his authority to review information in the CO_2 allowance tracking system under this part.

H. To delegate authority to review information in the CO_2 allowance tracking system in accordance with subsections F and G of this section, the CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative, as appropriate, [~~must~~ shall] submit to the department or its agent a notice of delegation, in a format prescribed by the department that includes the following elements:

1. The name, address, email address, telephone number, and facsimile transmission number of such CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative;

2. The name, address, email address, telephone number, and facsimile transmission number of each such natural person, referred to as the "reviewer";

3. For each such natural person, a list of the type of information under subsection F or G of this section for which authority is delegated to him; and

4. The following certification statement by such CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative: "I agree that any information that is reviewed by a natural person identified in this notice of delegation and of a type listed for such information accessible by the reviewer in this notice of delegation and that is made when I am a CO_2 authorized account representative or [~~alternate~~] CO_2

authorized [alternate] account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subsection I of this section shall be deemed to be a reviewer by me. Until this notice of delegation is superseded by another notice of delegation under subsection I of this section, I agree to maintain an email account and to notify the department or its agent immediately of any change in my email address unless all delegation authority by me under this section is terminated."

I. A notice of delegation submitted under subsection H of this section shall be effective, with regard to the CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative identified in such notice, upon receipt of such notice by the department or its agent and until receipt by the department or its agent of a superseding notice of delegation by such CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative as appropriate. The superseding notice of delegation may replace any previously identified reviewer, add a new reviewer, or eliminate entirely any delegation of authority.

Article 3
Permits

9VAC5-140-6140. CO_2 budget permit requirements.

A. Each CO_2 budget source shall have a permit issued by the department pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

B. Each CO_2 budget permit shall contain all applicable CO_2 Budget Trading Program requirements and shall be a complete and distinguishable portion of the permit under subsection A of this section.

9VAC5-140-6150. Submission of CO_2 budget permit applications.

For any CO_2 budget source, the CO_2 authorized account representative shall submit a complete CO_2 budget permit application under 9VAC5-140-6160 covering such CO_2 budget source to the department by the later of January 1, 2020, or 12 months before the date on which the CO_2 budget source, or a new unit at the source, commences operation.

9VAC5-140-6160. Information requirements for CO_2 budget permit applications.

A complete CO_2 budget permit application shall include the following elements concerning the CO_2 budget source for which the application is submitted, in a format prescribed by the department:

1. Identification of the CO_2 budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration of the U.S. Department of Energy if applicable;

2. Identification of each CO_2 budget unit at the CO_2 budget source; and

3. The standard requirements under 9VAC5-140-6050.

Article 4
Compliance Certification

9VAC5-140-6170. Compliance certification report.

A. For each control period in which a CO_2 budget source is subject to the CO_2 requirements of 9VAC5-140-6050 C, the CO_2 authorized account representative of the source shall submit to the department by March 1 following the relevant control period, a compliance certification report. A compliance certification report is not required as part of the compliance obligation during an interim control period.

B. The CO_2 authorized account representative shall include in the compliance certification report under subsection A of this section the following elements, in a format prescribed by the department:

1. Identification of the source and each CO_2 budget unit at the source;

2. At the CO_2 authorized account representative's option, the serial numbers of the CO_2 allowances that are to be deducted from the source's compliance account under 9VAC5-140-6260 for the control period; and

3. The compliance certification under subsection C of this section.

C. In the compliance certification report under subsection A of this section, the CO_2 authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the CO_2 budget units at the source in compliance with the CO_2 Budget Trading Program, whether the source and each CO_2 budget unit at the source for which the compliance certification is submitted was operated during the calendar years covered by the report in compliance with the requirements of the CO_2 Budget Trading Program, including:

1. Whether the source was operated in compliance with the CO_2 requirements of 9VAC5-140-6050 C;

2. Whether the monitoring plan applicable to each unit at the source has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute CO_2 emissions to the unit, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part;

3. Whether all the CO_2 emissions from the units at the source were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data

were reported in the quarterly reports in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

4. Whether the facts that form the basis for certification under Article 8 (9VAC5-140-6330 et seq.) of this part of each monitor at each unit at the source, or for using an excepted monitoring method or alternative monitoring method approved under Article 8 (9VAC5-140-6330 et seq.) of this part, if any, have changed; and

5. If a change is required to be reported under subdivision 4 of this subsection, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

9VAC5-140-6180. Action on compliance certifications.

A. The department or its agent may review and conduct independent audits concerning any compliance certification or any other submission under the CO_2 Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

B. The department or its agent may deduct CO_2 allowances from or transfer CO_2 allowances to a source's compliance account based on the information in the compliance certifications or other submissions, as adjusted under subsection A of this section.

Article 5
CO_2 Allowance Allocations

[~~Editor's Note: Two versions of 9VAC5-140-6190 are provided for comment. The board seeks comment on whether the base budget should be 33 million tons or 34 million tons, with corresponding 3.0% per year reductions. The first version (Version 1) represents a 33 million ton base budget, and the second version (Version 2) represents a 34 million ton base budget.~~]

9VAC5-140-6190. Base budgets.

[~~Version 1, 33 million ton base budget:~~]

A. The Virginia CO_2 Budget Trading Program base budget shall be as follows:

1. For 2020, the Virginia CO_2 Budget Trading Program base budget is [~~33~~ 28] million tons.

2. For 2021, the Virginia CO_2 Budget Trading Program base budget is [~~32.01~~ 27.16] million tons.

3. For 2022, the Virginia CO_2 Budget Trading Program base budget is [~~31.02~~ 26.32] million tons.

4. For 2023, the Virginia CO_2 Budget Trading Program base budget is [~~30.03~~ 25.48] million tons.

5. For 2024, the Virginia CO_2 Budget Trading Program base budget is [~~29.04~~ 24.64] million tons.

6. For 2025, the Virginia CO_2 Budget Trading Program base budget is [~~28.05~~ 23.80] million tons.

7. For 2026, the Virginia CO_2 Budget Trading Program base budget is [~~27.06~~ 22.96] million tons.

8. For 2027, the Virginia CO_2 Budget Trading Program base budget is [~~26.07~~ 22.12] million tons.

9. For 2028, the Virginia CO_2 Budget Trading Program base budget is [~~25.08~~ 21.28] million tons.

10. For 2029, the Virginia CO_2 Budget Trading Program base budget is [~~24.09~~ 20.44] million tons.

11. For 2030, the Virginia CO_2 Budget Trading Program base budget is [~~23.10~~ 19.60] million tons.

B. The department will allocate conditional allowances to CO_2 budget units and to DMME. After a conditional allowance has been consigned in an auction by a CO_2 budget unit and the holder of a public contract with DMME as specified under Article 9 (9VAC5-140-6410 et seq.) of this part, the conditional allowance becomes an allowance to be used for compliance purposes.

C. For 2031 and each succeeding calendar year, [~~the Virginia CO_2 Budget Trading Program base budget is 23.10 million tons~~ the department will review the Virginia CO_2 Budget Trading Program base budget and recommend to the board appropriate adjustments in the base budget for such succeeding years. The department will consider the best available science and all relevant information and policies available from any CO_2 multistate trading program in which Virginia is participating when considering further reductions. Absent any adjustment, the Virginia CO_2 Budget Trading Program base budget for each year of the decade 2031-2040 shall be reduced by 840,000 tons from the preceding year].

[~~Version 2, 34 million ton base budget:~~

~~A. The Virginia CO_2 Budget Trading Program base budget shall be as follows:~~

~~1. For 2020, the Virginia CO_2 Budget Trading Program base budget is 34 million tons.~~

~~2. For 2021, the Virginia CO_2 Budget Trading Program base budget is 32.98 million tons.~~

~~3. For 2022, the Virginia CO_2 Budget Trading Program base budget is 31.96 million tons.~~

~~4. For 2023, the Virginia CO_2 Budget Trading Program base budget is 30.94 million tons.~~

~~5. For 2024, the Virginia CO_2 Budget Trading Program base budget is 29.92 million tons.~~

~~6. For 2025, the Virginia CO_2 Budget Trading Program base budget is 28.90 million tons.~~

~~7. For 2026, the Virginia CO_2 Budget Trading Program base budget is 27.88 million tons.~~

~~8. For 2027, the Virginia CO_2 Budget Trading Program base budget is 26.86 million tons.~~

~~9. For 2028, the Virginia CO_2 Budget Trading Program base budget is 25.84 million tons.~~

~~10. For 2029, the Virginia CO_2 Budget Trading Program base budget is 24.82 million tons.~~

~~11. For 2030, the Virginia CO_2 Budget Trading Program base budget is 23.80 million tons.~~

~~B. The department will allocate conditional allowances to CO_2 budget units and to DMME. After a conditional allowance has been consigned in an auction by a CO_2 budget unit and the holder of a public contract with DMME as specified under Article 9 (9VAC5-140-6410 et seq.) of this part, the conditional allowance becomes an allowance to be used for compliance purposes.~~

~~C. For 2031 and each succeeding calendar year, the Virginia CO_2 Budget Trading Program base budget is 23.80 million tons.~~]

9VAC5-140-6200. Undistributed and unsold [~~CO_2~~ conditional] allowances.

A. The department [~~may~~ will] retire undistributed [~~CO_2~~ conditional] allowances at the end of each control period.

B. The department [~~may~~ will] retire unsold [~~CO_2~~ conditional] allowances at the end of each control period.

[~~Editor's Note: Two versions of 9VAC5-140-6210 are provided for comment. The board seeks comment on whether the base budget should be 33 million tons or 34 million tons, with corresponding 3.0% per year reductions. The first version (Version 1) represents a 33 million ton base budget, and the second version (Version 2) represents a 34 million ton base budget.~~]

9VAC5-140-6210. CO_2 allowance allocations.

[~~Version 1, 33 million ton base budget:~~]

A. The department will allocate [~~95% of~~] the Virginia CO_2 Budget Trading Program base budget [allowances] to CO_2 budget sources to be consigned to auction to the Virginia Consignment Auction Account.

[~~B. The department will allocate 5.0% of the Virginia CO_2 Budget Trading Program base budget to DMME to be consigned to auction by DMME to assist the department for the abatement and control of air pollution, specifically, CO_2.~~

~~C.~~ B.] For allocation years 2020 through 2031, the Virginia CO_2 Budget Trading Program adjusted budget shall be the maximum number of allowances available for allocation in a given allocation year, except for CO_2 CCR allowances.

[~~D.~~ C.] The cost containment reserve (CCR) allocation shall be managed as follows. The department will allocate CO_2 CCR allowances, separate from and additional to the Virginia CO_2 Budget Trading Program base budget set forth in 9VAC5-140-6190, to the Virginia Auction Account. The CCR allocation is for the purpose of containing the cost of CO_2 allowances. The department will allocate CO_2 CCR allowances as follows [~~:~~]

1. [~~The~~ Beginning in calendar year 2020, the] department will initially allocate [~~3.3 million~~, on a pro rata basis to CO_2 budget sources, 2.8 million] CO_2 CCR allowances [~~for calendar year 2020~~].

2. On or before January 1, 2021, and each year thereafter, the department will allocate [, on a pro rata basis to CO_2 budget sources,] current vintage year CCR allowances equal to the quantity in Table 140-5A, and withdraw the number of CO_2 CCR allowances that remain in the Virginia Auction Account at the end of the prior calendar year.

Table 140-5A
CCR Allowances from 2021 Forward

2021	[~~3.201~~ 2.716] million tons
2022	[~~3.102~~ 2.632] million tons
2023	[~~3.003~~ 2.548] million tons
2024	[~~2.904~~ 2.464] million tons
2025	[~~2.805~~ 2.380] million tons
2026	[~~2.706~~ 2.296] million tons
2027	[~~2.607~~ 2.212] million tons
2028	[~~2.508~~ 2.128] million tons
2029	[~~2.409~~ 2.044] million tons
2030 and each year thereafter	[~~2.310~~ 1.960] million tons

[3. The pro rata calculation to be used for the distribution of CO_2 CCR allowances is as follows:

SAA/TAA * CCR = SCCR

Where:

SAA = source adjusted allocation

TAA = total adjusted allocation

SCCR = source CCR

~~E. Annual base budgets as described in subsections A and B of this section may be decreased in any year as necessary to account for transfers to the Virginia Emission Containment Reserve (ECR) account and adjustments for banked allowances~~ D. In the event that the ECR is triggered during an auction, the department will authorize its agent to withhold conditional allowances as needed.] The department will [further authorize its agent to] convert and transfer any [~~CO_2~~ conditional] allowances that have been withheld from any auction [~~in the prior year~~] into the Virginia ECR account. The ECR withholding is for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs. The [~~department~~ department's agent] will withhold CO_2 ECR allowances as follows:

1. If the condition in 9VAC5-140-6420 D 1 is met at an auction, then the maximum number of CO_2 ECR allowances that will be withheld from that auction will be equal to the quantity shown in Table 140-5B minus the total quantity of CO_2 ECR allowances that have been withheld from any prior auction in that calendar year. Any CO_2 ECR allowances withheld from an auction will be transferred into the Virginia ECR account.

Table 140-5B
ECR Allowances from 2021 Forward

2021	[~~3.201~~ 2.716] million tons
2022	[~~3.102~~ 2.632] million tons
2023	[~~3.003~~ 2.548] million tons
2024	[~~2.904~~ 2.464] million tons
2025	[~~2.805~~ 2.380] million tons
2026	[~~2.706~~ 2.296] million tons
2027	[~~2.607~~ 2.212] million tons
2028	[~~2.508~~ 2.128] million tons
2029	[~~2.409~~ 2.044] million tons
2030 and each year thereafter	[~~2.310~~ 1.960] million tons

2. Allowances that have been transferred into the Virginia ECR account shall not be withdrawn.

[~~F.~~ E.] The adjustment for banked allowances [~~shall~~ will] be as follows. On March [~~15~~ 17], 2021, the department [~~will~~ may] determine the [~~third~~] adjustment for banked allowances quantity for allocation years 2021 through 2025 through the application of the following formula:

TABA = ((TA – TAE)/5) x RS%

Where:

TABA is the adjustment for banked allowances quantity in tons.

TA, adjustment, is the total quantity of allowances of vintage years prior to 2021 held in general and compliance accounts, including compliance accounts established pursuant to the CO_2 Budget Trading Program but not including accounts opened by participating states, as reflected in the CO_2 Allowance Tracking System on March 15, 2021.

TAE, adjustment emissions, is the total quantity of 2018, 2019, and 2020 emissions from all CO_2 budget sources in all participating states, reported pursuant to CO_2 Budget Trading Program as reflected in the CO_2 Allowance Tracking System on March [~~15~~ 17], 2021.

RS% is Virginia budget divided by the regional budget.

[~~G.~~ F.] CO_2 Budget Trading Program adjusted budgets for 2021 through 2025 shall be determined as follows. On April 15, 2021, the department will determine the Virginia CO_2 Budget Trading Program adjusted budgets for the 2021 through 2025 allocation years by the following formula:

AB = BB – TABA

Where:

AB is the Virginia CO_2 Budget Trading Program adjusted budget.

BB is the Virginia CO_2 Budget Trading Program base budget.

TABA is the adjustment for banked allowances quantity in tons.

[~~H.~~ G.] The department or its agent will publish the CO_2 trading program adjusted budgets for the 2021 through 2025 allocation years.

[~~I.~~ H.] Timing requirements for CO_2 allowance allocations shall be as follows [~~:~~ :]

1. By May 1, 2019, the department will submit to [~~RGGI, Inc.,~~ its agent] the [~~CO_2~~] conditional allowance allocations [~~, in a format prescribed by RGGI, Inc., and~~] in accordance with 9VAC5-140-6215 A and B, for the initial control period, 2020.

2. [By May 1, 2020, the department will submit to its agent 50% of the conditional allowance allocations in accordance with 9VAC5-140-6215 A and B, for the 2021 control period. By April 1, 2021, the department will submit to its agent the remainder of the conditional allowance allocations in accordance with 9VAC5-140-6215 A and B, for 2021.

3.] By May 1, [~~2020~~ 2021], and May 1 of every [~~third~~ subsequent] year thereafter, the department will submit to [~~RGGI, Inc.,~~ its agent] the CO_2 allowance allocations [~~,~~ ~~in a format prescribed by RGGI, Inc.,~~] for the applicable control period [~~, and~~] in accordance with 9VAC5-140-6215 A and B.

[I. Implementation of the CCR (subsection C of this section), the ECR (subsection D of this section) and the banking adjustment (subsection E of this section) shall be determined based on the extent of the CO_2 trading program.]

[Version 2, 34 million ton base budget:

~~A. The department will allocate 95% of the Virginia CO_2 Budget Trading Program base budget to CO_2 budget sources to be consigned to auction to the Virginia Consignment Auction Account.~~

~~B. The department will allocate 5.0% of the Virginia CO_2 Budget Trading Program base budget to DMME to be consigned to auction by the holder of a public contract with DMME to assist the department for the abatement and control of air pollution, specifically CO_2.~~

~~C. For allocation years 2020 through 2031, the Virginia CO_2 Budget Trading Program adjusted budget shall be the maximum number of allowances available for allocation in a given allocation year, except for CO_2 CCR allowances.~~

~~D. The cost containment reserve (CCR) allocation shall be managed as follows. The department will allocate CO_2 CCR allowances, separate from and additional to the Virginia CO_2 Budget Trading Program base budget set forth in 9VAC5-140-6190, to the Virginia Auction Account. The CCR allocation is for the purpose of containing the cost of CO_2 allowances. The department will allocate CO_2 CCR allowances as follows.~~

~~1. The department will initially allocate 3.4 million CO_2 CCR allowances for calendar year 2020.~~

~~2. On or before January 1, 2021, and each year thereafter, the department will allocate current vintage year CCR allowances equal to the quantity in Table 140-5A, and withdraw the number of CO_2 CCR allowances that remain in the Virginia Auction Account at the end of the prior calendar year.~~

~~Table 140-5A CCR Allowances from 2021 Forward~~	
~~2021~~	~~3.298 million tons~~
~~2022~~	~~3.196 million tons~~
~~2023~~	~~3.094 million tons~~
~~2024~~	~~2.992 million tons~~
~~2025~~	~~2.890 million tons~~
~~2026~~	~~2.788 million tons~~
~~2027~~	~~2.686 million tons~~
~~2028~~	~~2.584 million tons~~
~~2029~~	~~2.482 million tons~~
~~2030 and each year thereafter~~	~~2.390 million tons~~

~~E. Annual base budgets as described in subsections A and B of this section may be decreased in any year as necessary to account for transfers to the Virginia Emission Containment Reserve (ECR) account and adjustments for banked allowances. The department will convert and transfer any CO_2 allowances that have been withheld from any auction in the prior year into the Virginia ECR account. The ECR withholding is for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs. The department will withhold CO_2 ECR allowances as follows:~~

~~1. If the condition in 9VAC5-140-6420 D 1 is met at an auction, then the maximum number of CO_2 ECR allowances that will be withheld from that auction will be equal to the quantity shown in Table 140-5B minus the total quantity of CO_2 ECR allowances that have been withheld from any prior auction in that calendar year. Any CO_2 ECR allowances withheld from an auction will be transferred into the Virginia ECR account.~~

~~Table 140-5B ECR Allowances from 2021 Forward~~	
~~2021~~	~~3.298 million tons~~
~~2022~~	~~3.196 million tons~~
~~2023~~	~~3.094 million tons~~
~~2024~~	~~2.992 million tons~~
~~2025~~	~~2.890 million tons~~
~~2026~~	~~2.788 million tons~~
~~2027~~	~~2.686 million tons~~

2028	2.584 million tons
2029	2.482 million tons
2030 and each year thereafter	2.390 million tons

2. Allowances that have been transferred into the Virginia ECR account shall not be withdrawn.

F. The adjustment for banked allowances shall be as follows. On March 15, 2021, the department will determine the third adjustment for banked allowances quantity for allocation years 2021 through 2025 through the application of the following formula:

TABA = ((TA – TAE)/5) x RS%

Where:

TABA is the adjustment for banked allowances quantity in tons.

TA, adjustment, is the total quantity of allowances of vintage years prior to 2021 held in general and compliance accounts, including compliance accounts established pursuant to the CO_2 Budget Trading Program but not including accounts opened by participating states, as reflected in the CO_2 Allowance Tracking System on March 15, 2021.

TAE, adjustment emissions, is the total quantity of 2018, 2019, and 2020 emissions from all CO_2 budget sources in all participating states, reported pursuant to CO_2 Budget Trading Program as reflected in the CO_2 Allowance Tracking System on March 15, 2021.

RS% is Virginia budget divided by the regional budget.

G. CO_2 Budget Trading Program adjusted budgets for 2021 through 2025 shall be determined as follows. On April 15, 2021, the department will determine the Virginia CO_2 Budget Trading Program adjusted budgets for the 2021 through 2025 allocation years by the following formula:

AB = BB – TABA

Where:

AB is the Virginia CO_2 Budget Trading Program adjusted budget.

BB is the Virginia CO_2 Budget Trading Program base budget.

TABA is the adjustment for banked allowances quantity in tons.

H. The department or its agent will publish the CO_2 trading program adjusted budgets for the 2021 through 2025 allocation years.

I. Timing requirements for CO_2 allowance allocations shall be as follows:

1. By May 1, 2019, the department will submit to RGGI, Inc., the CO_2 conditional allowance allocations, in a format prescribed by RGGI, Inc., and in accordance with 9VAC5-140-6215 A and B, for the initial control period, 2020.

2. By May 1, 2020, and May 1 of every third year thereafter, the department will submit to RGGI, Inc., the CO_2 allowance allocations, in a format prescribed by RGGI, Inc., for the applicable control period, and in accordance with 9VAC5-140-6215 A and B.]

[9VAC5-140-6211. CO2 allowance allocations, DMME allowances.

Notwithstanding 9VAC5-140-6210, the department will allocate 5.0% of the Virginia CO_2 Budget Trading Program base or adjusted budget allowances, as applicable, to DMME to be consigned to auction by the holder of a public contract with DMME to assist the department for the abatement and control of air pollution, specifically CO_2, by the implementation of programs that lower base and peak electricity demand and reduce the cost of the program to consumers and budget sources.]

9VAC5-140-6215. CO_2 allocation methodology.

A. The net-electric output in MWh used with respect to CO_2 allowance allocations under subsection B of this section for each CO_2 budget unit shall be:

1. For units operating on or before January 1, 2020, the average of the three amounts of the unit's net-electric output during 2016, 2017, and 2018 to determine allocations for the initial control period.

2. For all units operating in each control period after 2020, the average of the three amounts of the unit's total net-electric output during the three most recent years for which data are available prior to the start of the control period.

B. 1. For each control period beginning in 2020 and thereafter, the department will allocate to all CO_2 budget units that have a net-electric output, as determined under subsection A of this section, a total amount of CO_2 conditional allowances equal to the CO_2 base budget.

2. The department will allocate CO_2 conditional allowances to each CO_2 budget unit under subdivision 1 of this subsection in an amount determined by multiplying the total amount of CO_2 allowances allocated under subdivision 1 of this subsection by the ratio of the baseline electrical output of such CO_2 budget unit to the total amount of baseline electrical output of all such CO_2 budget units and rounding to the nearest whole allowance as appropriate.

3. New CO_2 budget units will be allocated CO_2 conditional allowances once they have established electrical output data to be used in the conditional allowance allocation process.

C. For the purpose of the allocation process as described in subsections A and B of this section, CO_2 budget units shall report the unit's net-electric output to the department on a yearly basis as follows:

1. By March 1, 2019, each CO_2 budget unit shall report yearly net-electric output data during 2016, 2017, and 2018.

2. By March 1, 2020, and each year thereafter, each CO_2 budget unit shall report yearly net-electric output data for the previous year.

Article 6
CO_2 Allowance Tracking System

9VAC5-140-6220. CO_2 Allowance Tracking System accounts.

A. Consistent with 9VAC5-140-6230 A, the department or its agent will establish one compliance account for each CO_2 budget source. Allocations of CO_2 conditional allowances pursuant to Article 5 (9VAC5-140-6190 et seq.) of this part and deductions or transfers of CO_2 conditional allowances pursuant to 9VAC5-140-6180, 9VAC5-140-6260, 9VAC5-140-6280, or Article 7 (9VAC5-140-6300 et seq.) of this part will be recorded in the compliance accounts in accordance with this section.

B. Consistent with 9VAC5-140-6230 B, the department or its agent will establish, upon request, a general account for any person. Transfers of CO_2 allowances pursuant to Article 7 (9VAC5-140-6300 et seq.) of this part will be recorded in the general account in accordance with this article.

9VAC5-140-6230. Establishment of accounts.

A. Upon receipt of a complete account certificate of representation under 9VAC5-140-6110, the department or its agent will establish a conditional allowance account and a compliance account for each CO_2 budget source and a conditional compliance account for DMME for which the account certificate of representation was submitted.

B. General accounts shall operate as follows.

1. Any person may apply to open a general account for the purpose of holding and transferring CO_2 allowances. An application for a general account may designate one and only one CO_2 authorized account representative and one and only one [~~alternate~~] CO_2 authorized [alternate] account representative who may act on behalf of the CO_2 authorized account representative. The agreement by which the [~~alternate~~] CO_2 authorized [alternate] account representative is selected shall include a procedure for authorizing the [~~alternate~~] CO_2 authorized [alternate] account representative to act in lieu of the CO_2 authorized account representative. A complete application for a general account shall be submitted to the department or its agent and shall include the following elements in a format prescribed by the department or its agent:

a. Name, address, email address, telephone number, and facsimile transmission number of the CO_2 authorized account representative and any [~~alternate~~] CO_2 authorized [alternate] account representative;

b. At the option of the CO_2 authorized account representative, organization name and type of organization;

c. A list of all persons subject to a binding agreement for the CO_2 authorized account representative or any [~~alternate~~] CO_2 authorized [alternate] account representative to represent their ownership interest with respect to the CO_2 allowances held in the general account;

d. The following certification statement by the CO_2 authorized account representative and any [~~alternate~~] CO_2 authorized [alternate] account representative: "I certify that I was selected as the CO_2 authorized account representative or the CO_2 [~~alternate~~] authorized [alternate] account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CO_2 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO_2 Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the department or its agent or a court regarding the general account.";

e. The signature of the CO_2 authorized account representative and any [~~alternate~~] CO_2 authorized [alternate] account representative and the dates signed; and

f. Unless otherwise required by the department or its agent, documents of agreement referred to in the application for a general account shall not be submitted to the department or its agent. Neither the department nor its agent shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

2. Authorization of the CO_2 authorized account representative shall be as follows:

a. Upon receipt by the department or its agent of a complete application for a general account under subdivision 1 of this subsection:

(1) The department or its agent will establish a general account for the person for whom the application is submitted.

(2) The CO_2 authorized account representative and any [~~alternate~~] CO_2 authorized [alternate] account representative for the general account shall represent and, by his representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CO_2 allowances held in the general account in all matters pertaining to the CO_2 Budget Trading Program, notwithstanding any agreement between the CO_2 authorized account representative or any [~~alternate~~] CO_2 authorized [alternate] account representative and such person. Any such person shall be bound by any order or decision issued to the CO_2 authorized account representative or any [~~alternate~~] CO_2 authorized [alternate] account representative by the department or its agent or a court regarding the general account.

(3) Any representation, action, inaction, or submission by any [~~alternate~~] CO_2 authorized [alternate] account representative shall be deemed to be a representation, action, inaction, or submission by the CO_2 authorized account representative.

b. Each submission concerning the general account shall be submitted, signed, and certified by the CO_2 authorized account representative or any [~~alternate~~] CO_2 authorized [alternate] account representative for the persons having an ownership interest with respect to CO_2 allowances held in the general account. Each such submission shall include the following certification statement by the CO_2 authorized account representative or any [~~alternate~~] CO_2 authorized [alternate] account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CO_2 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

c. The department or its agent will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subdivision 2 b of this subsection.

3. Changing CO_2 authorized account representative and [~~alternate~~] CO_2 authorized [alternate] account representative, and changes in persons with ownership interest, shall be accomplished as follows:

a. The CO_2 authorized account representative for a general account may be changed at any time upon receipt by the department or its agent of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative, or the previous [~~alternate~~] CO_2 authorized [alternate] account representative, prior to the time and date when the department or its agent receives the superseding application for a general account shall be binding on the new CO_2 authorized account representative and the persons with an ownership interest with respect to the CO_2 allowances in the general account.

b. The [~~alternate~~] CO_2 authorized [alternate] account representative for a general account may be changed at any time upon receipt by the department or its agent of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative, or the previous [~~alternate~~] CO_2 authorized [alternate] account representative, prior to the time and date when the department or its agent receives the superseding application for a general account shall be binding on the new alternate CO_2 authorized account representative and the persons with an ownership interest with respect to the CO_2 allowances in the general account.

c. In the event a new person having an ownership interest with respect to CO_2 allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representations, actions, inactions, and submissions of the CO_2 authorized account representative and any [~~alternate~~] CO_2 authorized [alternate] account representative, and the decisions, orders, actions, and inactions of the department or its agent, as if the new person were included in such list.

d. Within 30 days following any change in the persons having an ownership interest with respect to CO_2 allowances in the general account, including the addition or deletion of persons, the CO_2 authorized account representative or any [~~alternate~~] CO_2 authorized [alternate] account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CO_2 allowances in the general account to include the change.

4. Objections concerning CO_2 authorized account representative shall be governed as follows:

a. Once a complete application for a general account under subdivision 1 of this subsection has been submitted and received, the department or its agent will rely on the application unless and until a superseding complete application for a general account under subdivision 1 of this subsection is received by the department or its agent.

b. Except as provided in subdivisions 3 a and 3 b of this subsection, no objection or other communication submitted to the department or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO_2 authorized account representative or any [~~alternate~~] CO_2 authorized [alternate] account representative for a general account shall affect any representation, action, inaction, or submission of the CO_2 authorized account representative or any [~~alternate~~] CO_2 authorized [alternate] account representative or the finality of any decision or order by the department or its agent under the CO_2 Budget Trading Program.

c. Neither the department nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CO_2 authorized account representative or any [~~alternate~~] CO_2 authorized [alternate] account representative for a general account, including private legal disputes concerning the proceeds of CO_2 allowance transfers.

5. Delegation by CO_2 authorized account representative and [~~alternate~~] CO_2 authorized [alternate] account representative shall be accomplished as follows:

a. A CO_2 authorized account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent provided for under this article and Article 7 (9VAC5-140-6300 et seq.) of this part.

b. [~~An alternate~~ A] CO_2 authorized [alternate] account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent provided for under this article and Article 7 (9VAC5-140-6300 et seq.) of this part.

c. To delegate authority to make an electronic submission to the department or its agent in accordance with subdivisions 5 a and 5 b of this subsection, the CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative, as appropriate, shall submit to the department or its agent a notice of delegation, in a format prescribed by the department that includes the following elements:

(1) The name, address, email address, telephone number, and facsimile transmission number of such CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative;

(2) The name, address, email address, telephone number, and facsimile transmission number of each such natural person, referred to as "electronic submission agent";

(3) For each such natural person, a list of the type of electronic submissions under subdivision 5 c (1) or 5 c (2) of this subsection for which authority is delegated to him; and

(4) The following certification statement by such CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative: "I agree that any electronic submission to the department or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6230 B 5 d shall be deemed to be an electronic submission by me. Until this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6230 B 5 d, I agree to maintain an email account and to notify the department or its agent immediately of any change in my email address unless all delegation authority by me under 9VAC5-140-6230 B 5 is terminated."

d. A notice of delegation submitted under subdivision 5 c of this subsection shall be effective, with regard to the CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative identified in such notice, upon receipt of such notice by the department or its agent and until receipt by the department or its agent of a superseding notice of delegation by such CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative as appropriate. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.

e. Any electronic submission covered by the certification in subdivision 5 c (4) of this subsection and made in accordance with a notice of delegation effective under subdivision 5 d of this subsection shall be deemed to be an electronic submission by the CO_2 authorized account representative or [~~alternate~~] CO_2 authorized [alternate] account representative submitting such notice of delegation.

C. The department or its agent will assign a unique identifying number to each account established under subsection A or B of this section.

9VAC5-140-6240. CO_2 Allowance Tracking System responsibilities of CO_2 authorized account representative.

Following the establishment of a COATS account, all submissions to the department or its agent pertaining to the account, including submissions concerning the deduction or transfer of CO_2 allowances in the account, shall be made only by the CO_2 authorized account representative for the account.

9VAC5-140-6250. Recordation of CO_2 allowance allocations.

A. By January 1 of each calendar year, the department or its agent will record in the following accounts:

1. In each CO_2 budget source's and DMME's conditional allowance account, the CO_2 conditional allowances allocated to those sources and DMME by the department prior to being consigned to auction; and

2. In each CO_2 budget source's compliance account, the CO_2 allowances purchased at auction by CO_2 budget units at the source under 9VAC5-140-6210 A.

B. Each year the department or its agent will record CO_2 allowances, as allocated to the unit under Article 5 (9VAC5-140-6190 et seq.) of this part, in the compliance account for the year after the last year for which CO_2 allowances were previously allocated to the compliance account. Each year, the department or its agent will also record CO_2 allowances, as allocated under Article 5 (9VAC5-140-6190 et seq.) of this part, in an allocation set-aside for the year after the last year for which CO_2 allowances were previously allocated to an allocation set-aside.

C. Serial numbers for allocated CO_2 allowances shall be managed as follows. When allocating CO_2 allowances to and recording them in an account, the department or its agent will assign each CO_2 allowance a unique identification number that will include digits identifying the year for which the CO_2 allowance is allocated.

9VAC5-140-6260. Compliance.

A. CO_2 allowances that meet the following criteria are available to be deducted for a CO_2 budget source to comply with the CO_2 requirements of 9VAC5-140-6050 C for a control period or an interim control period.

1. The CO_2 allowances are of allocation years that fall within a prior control period, the same control period, or the same interim control period for which the allowances will be deducted.

2. The CO_2 allowances are held in the CO_2 budget source's compliance account as of the CO_2 allowance transfer deadline for that control period or interim control period or are transferred into the compliance account by a CO_2 allowance transfer correctly submitted for recordation under 9VAC5-140-6300 by the CO_2 allowance transfer deadline for that control period or interim control period.

[3. For CO_2 offset allowances generated by other participating states, the number of CO_2 offset allowances that are available to be deducted in order for a CO_2 budget source to comply with the CO_2 requirements of 9VAC5-140-6050 C for a control period, initial control period, or an interim control period shall not exceed 3.3% of the CO_2 budget source's CO_2 emissions for that control period, or may not exceed 3.3% of 0.50 times the CO_2 budget source's CO_2 emissions for an interim control period, as determined in accordance with this article and Article 8 (9VAC5-140-6330 et seq.) of this part.

~~3.~~ 4.] The CO_2 allowances are not necessary for deductions for excess emissions for a prior control period under subsection D of this section.

B. Following the recordation, in accordance with 9VAC5-140-6310, of CO_2 allowance transfers submitted for recordation in the CO_2 budget source's compliance account by the CO_2 allowance transfer deadline for a control period or interim control period, the department or its agent will deduct CO_2 allowances available under subsection A of this section to cover the source's CO_2 emissions, as determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, for the control period or interim control period, as follows:

1. Until the amount of CO_2 allowances deducted equals the number of tons of total CO_2 emissions, or 0.50 times the number of tons of total CO_2 emissions for an interim control period, determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, from all CO_2 budget units at the CO_2 budget source for the control period or interim control period; or

2. If there are insufficient CO_2 allowances to complete the deductions in subdivision 1 of this subsection, until no more CO_2 allowances available under subsection A of this section remain in the compliance account.

C. Identification of available CO_2 allowances by serial number and default compliance deductions shall be managed as follows:

1. The CO_2 authorized account representative for a source's compliance account may request that specific CO_2 allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period or interim control period in accordance with subsection B or D of this section. Such identification shall be made in the compliance certification report submitted in accordance with 9VAC5-140-6170.

2. The department or its agent will deduct CO_2 allowances for a control period from the CO_2 budget source's compliance account, in the absence of an identification or in the case of a partial identification of available CO_2 allowances by serial number under subdivision 1 of this subsection, as follows: Any CO_2 allowances that are

available for deduction under subdivision 1 of this subsection. CO_2 allowances shall be deducted in chronological order (i.e., CO_2 allowances from earlier allocation years shall be deducted before CO_2 allowances from later allocation years). In the event that some, but not all, CO_2 allowances from a particular allocation year are to be deducted, CO_2 allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

D. Deductions for excess emissions shall be managed as follows.

1. After making the deductions for compliance under subsection B of this section, the department or its agent will deduct from the CO_2 budget source's compliance account a number of CO_2 allowances equal to three times the number of the source's excess emissions. In the event that a source has insufficient CO_2 allowances to cover three times the number of the source's excess emissions, the source shall be required to immediately transfer sufficient allowances into its compliance account.

2. Any CO_2 allowance deduction required under subdivision 1 of this subsection shall not affect the liability of the owners and operators of the CO_2 budget source or the CO_2 budget units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under applicable state law. The following guidelines will be followed in assessing fines, penalties, or other obligations:

a. For purposes of determining the number of days of violation, if a CO_2 budget source has excess emissions for a control period, each day in the control period constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

b. Each ton of excess emissions is a separate violation.

c. For purposes of determining the number of days of violation, if a CO_2 budget source has excess interim emissions for an interim control period, each day in the interim control period constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

d. Each ton of excess interim emissions is a separate violation.

3. The propriety of the department's determination that a CO_2 budget source had excess emissions and the concomitant deduction of CO_2 allowances from that CO_2 budget source's account may be later challenged in the context of the initial administrative enforcement, or any civil or criminal judicial action arising from or encompassing that excess emissions violation. The commencement or pendency of any administrative enforcement, or civil or criminal judicial action arising from or encompassing that excess emissions violation will not act to prevent the department or its agent from initially deducting the CO_2 allowances resulting from the department's original determination that the relevant CO_2 budget source has had excess emissions. Should the department's determination of the existence or extent of the CO_2 budget source's excess emissions be revised either by a settlement or final conclusion of any administrative or judicial action, the department will act as follows:

a. In any instance where the department's determination of the extent of excess emissions was too low, the department will take further action under subdivisions 1 and 2 of this subsection to address the expanded violation.

b. In any instance where the department's determination of the extent of excess emissions was too high, the department will distribute to the relevant CO_2 budget source a number of CO_2 allowances equaling the number of CO_2 allowances deducted which are attributable to the difference between the original and final quantity of excess emissions. Should such CO_2 budget source's compliance account no longer exist, the CO_2 allowances will be provided to a general account selected by the owner or operator of the CO_2 budget source from which they were originally deducted.

E. The department or its agent will record in the appropriate compliance account all deductions from such an account pursuant to subsections B and D of this section.

F. Action by the department on submissions shall be as follows:

1. The department may review and conduct independent audits concerning any submission under the CO_2 Budget Trading Program and make appropriate adjustments of the information in the submissions.

2. The department may deduct CO_2 allowances from or transfer CO_2 allowances to a source's compliance account based on information in the submissions, as adjusted under subdivision 1 of this subsection.

9VAC5-140-6270. Banking.

Each CO_2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CO_2 allowance is deducted or transferred under 9VAC5-140-6180, 9VAC5-140-6260, 9VAC5-140-6280, or Article 7 (9VAC5-140-6300 et seq.) of this part.

9VAC5-140-6280. Account error.

The department or its agent may, at its sole discretion and on its own motion, correct any error in any COATS account. Within 10 business days of making such correction, the

department or its agent will notify the CO_2 authorized account representative for the account.

9VAC5-140-6290. Closing of general accounts.

A. A CO_2 authorized account representative of a general account may instruct the department or its agent to close the account by submitting a statement requesting deletion of the account from the COATS and by correctly submitting for recordation under 9VAC5-140-6300 a CO_2 allowance transfer of all CO_2 allowances in the account to one or more other COATS accounts.

B. If a general account shows no activity for a period of one year or more and does not contain any CO_2 allowances, the department or its agent may notify the CO_2 authorized account representative for the account that the account will be closed in the COATS 30 business days after the notice is sent. The account will be closed after the 30-day period unless before the end of the 30-day period the department or its agent receives a correctly submitted transfer of CO_2 allowances into the account under 9VAC5-140-6300 or a statement submitted by the CO_2 authorized account representative demonstrating to the satisfaction of the department or its agent good cause as to why the account should not be closed. The department or its agent will have sole discretion to determine if the owner or operator of the unit demonstrated that the account should not be closed.

Article 7
CO_2 Allowance Transfers

9VAC5-140-6300. Submission of CO_2 allowance transfers.

The CO_2 authorized account representatives seeking recordation of a CO_2 allowance transfer shall submit the transfer to the department or its agent. To be considered correctly submitted, the CO_2 allowance transfer shall include the following elements in a format specified by the department or its agent:

1. The numbers identifying both the transferor and transferee accounts;

2. A specification by serial number of each CO_2 allowance to be transferred;

3. The printed name and signature of the CO_2 authorized account representative of the transferor account and the date signed;

4. The date of the completion of the last sale or purchase transaction for the allowance, if any; and

5. The purchase or sale price of the allowance that is the subject of a sale or purchase transaction under subdivision 4 of this section.

9VAC5-140-6310. Recordation.

A. Within five business days of receiving a CO_2 allowance transfer, except as provided in subsection B of this section, the department or its agent will record a CO_2 allowance transfer by moving each CO_2 allowance from the transferor account to the transferee account as specified by the request, provided that:

1. The transfer is correctly submitted under 9VAC5-140-6300; and

2. The transferor account includes each CO_2 allowance identified by serial number in the transfer.

B. A CO_2 allowance transfer into or out of a compliance account that is submitted for recordation following the CO_2 allowance transfer deadline and that includes any CO_2 allowances that are of allocation years that fall within a control period prior to or the same as the control period to which the CO_2 allowance transfer deadline applies will not be recorded until after completion of the process pursuant to 9VAC5-140-6260 B.

C. Where a CO_2 allowance transfer submitted for recordation fails to meet the requirements of subsection A of this section, the department or its agent will not record such transfer.

9VAC5-140-6320. Notification.

A. Within five business days of recordation of a CO_2 allowance transfer under 9VAC5-140-6310, the department or its agent will notify each party to the transfer. Notice will be given to the CO_2 authorized account representatives of both the transferor and transferee accounts.

B. Within 10 business days of receipt of a CO_2 allowance transfer that fails to meet the requirements of 9VAC5-140-6310 A, the department or its agent will notify the CO_2 authorized account representatives of both accounts subject to the transfer of (i) a decision not to record the transfer and (ii) the reasons for such nonrecordation.

C. Nothing in this section shall preclude the submission of a CO_2 allowance transfer for recordation following notification of nonrecordation.

Article 8
Monitoring, Reporting, and Recordkeeping

9VAC5-140-6330. General requirements.

A. The owners and operators, and to the extent applicable, the CO_2 authorized account representative of a CO_2 budget unit shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this section and all applicable sections of 40 CFR Part 75. Where referenced in this article, the monitoring requirements of 40 CFR Part 75 shall be adhered to in a manner consistent with the purpose of monitoring and reporting CO_2 mass emissions pursuant to this part. For purposes of complying with such requirements, the definitions in 9VAC5-140-6020 and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "CEMS" in 40 CFR Part 75 shall be

replaced by the terms "CO_2 budget unit," "CO_2 authorized account representative," and "CEMS," respectively, as defined in 9VAC5-140-6020. For units not subject to an acid rain emissions limitation, the term "administrator" in 40 CFR Part 75 shall be replaced with "the department or its agent." Owners or operators of a CO_2 budget unit who monitor a non-CO_2 budget unit pursuant to the common, multiple, or bypass stack procedures in 40 CFR 75.72(b)(2)(ii), or 40 CFR 75.16 (b)(2)(ii)(B) pursuant to 40 CFR 75.13, for purposes of complying with this part, shall monitor and report CO_2 mass emissions from such non-CO_2 budget [~~unit~~ units] according to the procedures for CO_2 budget units established in this article.

B. The owner or operator of each CO_2 budget unit shall meet the following general requirements for installation, certification, and data accounting.

1. Install all monitoring systems necessary to monitor CO_2 mass emissions in accordance with 40 CFR Part 75, except for equation G-1. Equation G-1 in Appendix G shall not be used to determine CO_2 emissions under this part. This may require systems to monitor CO_2 concentration, stack gas flow rate, O_2 concentration, heat input, and fuel flow rate.

2. Successfully complete all certification tests required under 9VAC5-140-6340 and meet all other requirements of this section and 40 CFR Part 75 applicable to the monitoring systems under subdivision 1 of this subsection.

3. Record, report, and quality-assure the data from the monitoring systems under subdivision 1 of this subsection.

C. The owner or operator shall meet the monitoring system certification and other requirements of subsection B of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under subdivision B 1 of this section on and after the following dates:

1. The owner or operator of a CO_2 budget unit, except for a CO_2 budget unit under subdivision 2 of this subsection, shall comply with the requirements of this section by January 1, 2020.

2. The owner or operator of a CO_2 budget unit that commences commercial operation July 1, 2020, shall comply with the requirements of this section by (i) January 1, 2021, or (ii) the earlier of 90 unit operating days after the date on which the unit commences commercial operation [~~,~~] or 180 calendar days after the date on which the unit commences commercial operation.

3. For the owner or operator of a CO_2 budget unit for which construction of a new stack or flue installation is completed after the applicable deadline under subdivision 1 or 2 of this subsection by the earlier of (i) 90 unit operating days after the date on which emissions first exit to the atmosphere through the new stack or flue or (ii) 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue.

D. Data shall be reported as follows:

1. Except as provided in subdivision 2 of this subsection, the owner or operator of a CO_2 budget unit that does not meet the applicable compliance date set forth in subsection C of this section for any monitoring system under subdivision B 1 of this section shall, for each such monitoring system, determine, record, and report maximum potential, or as appropriate minimum potential, values for CO_2 concentration, CO_2 emissions rate, stack gas moisture content, fuel flow rate, heat input, and any other parameter required to determine CO_2 mass emissions in accordance with 40 CFR 75.31(b)(2) or (c)(3) or Section 2.4 of Appendix D of 40 CFR Part 75 as applicable.

2. The owner or operator of a CO_2 budget unit that does not meet the applicable compliance date set forth in subdivision C 3 of this section for any monitoring system under subdivision B 1 of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in Subpart D, or Appendix D of 40 CFR Part 75, in lieu of the maximum potential, or as appropriate minimum potential, values for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under subdivision C 3 of this section.

a. CO_2 budget units subject to an acid rain emissions limitation or CSAPR NO_X Ozone Season Trading Program that qualify for the optional SO_2, NO_X, and CO_2 (for acid rain) or NO_X (for CSAPR NO_X Ozone Season Trading Program) emissions calculations for low mass emissions (LME) units under 40 CFR 75.19 and report emissions for such programs using the calculations under 40 CFR 75.19, shall also use the CO_2 emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with these regulations.

b. CO_2 budget units subject to an acid rain emissions limitation that do not qualify for the optional SO_2, NO_X, and CO_2 (for acid rain) or NO_X (for CSAPR NO_X Ozone Season Trading Program) emissions calculations for LME units under 40 CFR 75.19 shall not use the CO_2 emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with these regulations.

c. CO_2 budget units not subject to an acid rain emissions limitation shall qualify for the optional CO_2 emissions calculation for LME units under 40 CFR 75.19, provided that they emit less than 100 tons of NO_X annually and no more than 25 tons of SO_2 annually.

3. The owner or operator of a CO_2 budget unit shall report net-electric output data to the department as required by Article 5 (9VAC5-140-6190 et seq.) of this part.

E. Prohibitions shall be as follows.

1. No owner or operator of a CO_2 budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required CEMS without having obtained prior written approval in accordance with 9VAC5-140-6380.

2. No owner or operator of a CO_2 budget unit shall operate the unit so as to discharge, or allow to be discharged, CO_2 emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this article and 40 CFR Part 75.

3. No owner or operator of a CO_2 budget unit shall disrupt the CEMS, any portion thereof, or any other approved emissions monitoring method, and thereby avoid monitoring and recording CO_2 mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this article and 40 CFR Part 75.

4. No owner or operator of a CO_2 budget unit shall retire or permanently discontinue use of the CEMS, any component thereof, or any other approved emissions monitoring system under this article, except under any one of the following circumstances:

a. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this article and 40 CFR Part 75, by the department for use at that unit that provides emissions data for the same pollutant or parameter as the retired or discontinued monitoring system; or

b. The CO_2 authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with 9VAC5-140-6340 D 3 a.

9VAC5-140-6340. Initial certification and recertification procedures.

A. The owner or operator of a CO_2 budget unit shall be exempt from the initial certification requirements of this section for a monitoring system under 9VAC5-140-6330 B 1 if the following conditions are met:

1. The monitoring system has been previously certified in accordance with 40 CFR Part 75; and

2. The applicable quality-assurance and quality-control requirements of 40 CFR 75.21 and Appendix B and Appendix D of 40 CFR Part 75 are fully met for the certified monitoring system described in subdivision 1 of this subsection.

B. The recertification provisions of this section shall apply to a monitoring system under 9VAC5-140-6330 B 1 exempt from initial certification requirements under subsection A of this section.

C. Notwithstanding subsection A of this section, if the administrator has previously approved a petition under 40 CFR 75.72(b)(2)(ii), or 40 CFR 75.16(b)(2)(ii)(B) as pursuant to 40 CFR 75.13 for apportioning the CO_2 emissions rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative requirement in 40 CFR Part 75, the CO_2 authorized account representative shall submit the petition to the department under 9VAC5-140-6380 A to determine whether the approval applies under this program.

D. Except as provided in subsection A of this section, the owner or operator of a CO_2 budget unit shall comply with the following initial certification and recertification procedures for a CEMS and an excepted monitoring system under Appendix D of 40 CFR Part 75 and under 9VAC5-140-6330 B 1. The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology in 40 CFR 75.19 or that qualifies to use an alternative monitoring system under Subpart E of 40 CFR Part 75 shall comply with the procedures in subsection E or F of this section, respectively.

1. For initial certification, the owner or operator shall ensure that each CEMS required under 9VAC5-140-6330 B 1, which includes the automated DAHS, successfully completes all of the initial certification testing required under 40 CFR 75.20 by the applicable deadlines specified in 9VAC5-140-6330 C. In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this article in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.

2. For recertification, the following requirements shall apply.

a. Whenever the owner or operator makes a replacement, modification, or change in a certified CEMS under 9VAC5-140-6330 B 1 that the administrator or the department determines significantly affects the ability of the system to accurately measure or record CO_2 mass emissions or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21 or Appendix B to 40 CFR Part 75, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b).

b. For systems using stack measurements such as stack flow, stack moisture content, CO_2 or O_2 monitors, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the administrator or the department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the CEMS according to 40 CFR 75.20(b). Examples of changes that require recertification include

replacement of the analyzer, change in location or orientation of the sampling probe or site, or change of flow rate monitor polynomial coefficients.

3. The approval process for initial certifications and recertification shall be as follows: [~~Subdivisions~~ subdivisions] 3 a through 3 d of this subsection apply to both initial certification and recertification of a monitoring system under 9VAC5-140-6330 B 1. For recertifications, replace the words "certification" and "initial certification" with the word "recertification," replace the word "certified" with "recertified," and proceed in the manner prescribed in 40 CFR 75.20(b)(5) and (g)(7) in lieu of subdivision 3 e of this subsection.

a. The CO_2 authorized account representative shall submit to the department or its agent, the appropriate EPA Regional Office and the administrator a written notice of the dates of certification in accordance with 9VAC5-140-6360.

b. The CO_2 authorized account representative shall submit to the department or its agent a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63.

c. The provisional certification date for a monitor shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the CO_2 Budget Trading Program for a period not to exceed 120 days after receipt by the department of the complete certification application for the monitoring system or component thereof under subdivision 3 b of this subsection. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality-assured data, retroactive to the date and time of provisional certification, provided that the department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the department.

d. The department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under subdivision 3 b of this subsection. In the event the department does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the CO_2 Budget Trading Program.

(1) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the department will issue a written notice of approval of the certification application within 120 days of receipt.

(2) If the certification application is incomplete, then the department will issue a written notice of incompleteness that sets a reasonable date by which the CO_2 authorized account representative shall submit the additional information required to complete the certification application. If the CO_2 authorized account representative does not comply with the notice of incompleteness by the specified date, then the department may issue a notice of disapproval under subdivision 3 d (3) of this subsection. The 120-day review period shall not begin before receipt of a complete certification application.

(3) If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of 40 CFR Part 75, or if the certification application is incomplete and the requirement for disapproval under subdivision 3 d (2) of this subsection is met, then the department will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the department and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in subdivision 3 e of this subsection for each monitoring system or component thereof, which is disapproved for initial certification.

(4) The department may issue a notice of disapproval of the certification status of a monitor in accordance with 9VAC5-140-6350 B.

e. If the department issues a notice of disapproval of a certification application under subdivision 3 d (3) of this subsection or a notice of disapproval of certification status under subdivision 3 d (3) of this subsection, then:

(1) The owner or operator shall substitute the following values for each disapproved monitoring system, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i) or 40 CFR 75.20(g)(7): (i) for units using or intending to monitor for CO_2 mass emissions using heat input or for units using the low mass emissions excepted methodology under 40 CFR 75.19, the maximum potential hourly heat input of the unit; or (ii) for units intending to monitor for CO_2 mass emissions using a CO_2 pollutant concentration monitor and a flow monitor, the maximum potential concentration of CO_2 and the maximum potential flow rate of the unit under Section 2.1 of Appendix A of 40 CFR Part 75.

(2) The CO_2 authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subdivisions 3 a and 3 b of this subsection; and

(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

E. The owner or operator of a unit qualified to use the low mass emissions excepted methodology under 9VAC5-140-6330 D 3 shall meet the applicable certification and recertification requirements of 40 CFR 75.19(a)(2), 40 CFR 75.20(h), and this section. If the owner or operator of such a unit elects to certify a fuel flow meter system for heat input determinations, the owner or operator shall also meet the certification and recertification requirements in 40 CFR 75.20(g).

F. The CO_2 authorized account of each unit for which the owner or operator intends to use an alternative monitoring system approved by the administrator and, if applicable, the department under Subpart E of 40 CFR Part 75 shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).

9VAC5-140-6350. Out-of-control periods.

A. Whenever any monitoring system fails to meet the quality assurance/quality control (QA/QC) requirements or data validation requirements of 40 CFR Part 75, data shall be substituted using the applicable procedures in Subpart D or Appendix D of 40 CFR Part 75.

B. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under 9VAC5-140-6340 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the department or administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the department or the administrator. By issuing the notice of disapproval, the department or administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the initial certification or recertification procedures in 9VAC5-140-6340 for each disapproved monitoring system.

9VAC5-140-6360. Notifications.

The CO_2 authorized account representative for a CO_2 budget unit shall submit written notice to the department and the administrator in accordance with 40 CFR 75.61.

9VAC5-140-6370. Recordkeeping and reporting.

A. The CO_2 authorized account representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under 40 CFR 75.73, and the requirements of 9VAC5-140-6080 E.

B. The owner or operator of a CO_2 budget unit shall submit a monitoring plan in the manner prescribed in 40 CFR 75.62.

C. The CO_2 authorized account representative shall submit an application to the department within 45 days after completing all CO_2 monitoring system initial certification or recertification tests required under 9VAC5-140-6340, including the information required under 40 CFR 75.63 and 40 CFR 75.53(e) and (f).

D. The CO_2 authorized account representative shall submit quarterly reports, as follows:

1. The CO_2 authorized account representative shall report the CO_2 mass emissions data for the CO_2 budget unit, in an electronic format prescribed by the department unless otherwise prescribed by the department for each calendar quarter.

2. The CO_2 authorized account representative shall submit each quarterly report to the department or its agent within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in Subpart H of 40 CFR Part 75 and 40 CFR 75.64. Quarterly reports shall be submitted for each CO_2 budget unit, or group of units using a common stack, and shall include all of the data and information required in Subpart G of 40 CFR Part 75, except for opacity, heat input, NO_X, and SO_2 provisions.

3. The CO_2 authorized account representative shall submit to the department or its agent a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

a. The monitoring data submitted were recorded in accordance with the applicable requirements of this article and 40 CFR Part 75, including the quality assurance procedures and specifications;

b. For a unit with add-on CO_2 emissions controls and for all hours where data are substituted in accordance with

40 CFR 75.34(a)(1), the add-on emissions controls were operating within the range of parameters listed in the QA/QC program under Appendix B of 40 CFR Part 75 and the substitute values do not systematically underestimate CO_2 emissions; and

c. The CO_2 concentration values substituted for missing data under Subpart D of 40 CFR Part 75 do not systematically underestimate CO_2 emissions.

9VAC5-140-6380. Petitions.

A. Except as provided in subsection C of this section, the CO_2 authorized account representative of a CO_2 budget unit that is subject to an acid rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 and to the department requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this article only to the extent that the petition is approved in writing by the administrator, and subsequently approved in writing by the department.

B. Petitions for a CO_2 budget unit that is not subject to an acid rain emissions limitation shall meet the following requirements.

1. The CO_2 authorized account representative of a CO_2 budget unit that is not subject to an acid rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 and to the department requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this article only to the extent that the petition is approved in writing by the administrator and subsequently approved in writing by the department.

2. In the event that the administrator declines to review a petition under subdivision 1 of this subsection, the CO_2 authorized account representative of a CO_2 budget unit that is not subject to an acid rain emissions limitation may submit a petition to the department requesting approval to apply an alternative to any requirement of this article. That petition shall contain all of the relevant information specified in 40 CFR 75.66. Application of an alternative to any requirement of this article is in accordance with this article only to the extent that the petition is approved in writing by the department.

C. The CO_2 authorized account representative of a CO_2 budget unit that is subject to an acid rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 and to the department requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a CO_2 concentration CEMS used under 40 CFR 75.71(a)(2). Application of an alternative to any such requirement is in accordance with this article only to the extent the petition is approved in writing by the administrator and subsequently approved in writing by the department.

9VAC5-140-6390. (Reserved.)

9VAC5-140-6400. (Reserved.)

Article 9
Auction of CO_2 CCR and ECR Allowances

9VAC5-140-6410. Purpose.

The following requirements shall apply to each allowance auction. The department or its agent may specify additional information in the auction notice for each auction. Such additional information may include the time and location of the auction, auction rules, registration deadlines, and any additional information deemed necessary or useful.

9VAC5-140-6420. General requirements.

A. The department's agent will include the following information in the auction notice for each auction:

1. The number of CO_2 allowances offered for sale at the auction, not including any CO_2 CCR allowances;

2. The number of CO_2 CCR allowances that will be offered for sale at the auction if the condition of subdivision 1 of this subsection is met;

3. The minimum reserve price for the auction;

4. The CCR trigger price for the auction;

5. The maximum number of CO_2 allowances that may be withheld from sale at the auction if the condition of subdivision D 1 of this section is met; and

6. The ECR trigger price for the auction.

B. The department's agent will follow these rules for the sale of CO_2 CCR allowances.

1. CO_2 CCR allowances shall only be sold at an auction in which total demand for allowances, above the CCR trigger price, exceeds the number of CO_2 allowances available for purchase at the auction, not including any CO_2 CCR allowances.

2. If the condition of subdivision 1 of this subsection is met at an auction, then the number of CO_2 CCR allowances offered for sale by the department or its agent at the auction shall be equal to the number of CO_2 CCR allowances in the Virginia auction account at the time of the auction.

3. After all of the CO_2 CCR allowances in the Virginia auction account have been sold in a given calendar year, no additional CO_2 CCR allowances will be sold at any auction for the remainder of that calendar year, even if the condition of subdivision 1 of this subsection is met at an auction.

4. At an auction in which CO_2 CCR allowances are sold, the reserve price for the auction shall be the CCR trigger price.

5. If the condition of subdivision 1 of this subsection is not satisfied, no CO_2 CCR allowances shall be offered for sale at the auction, and the reserve price for the auction shall be equal to the minimum reserve prices.

C. The department's agent shall implement the reserve price as follows: (i) no allowances shall be sold at any auction for a price below the reserve price for that auction and (ii) if the total demand for allowances at an auction is less than or equal to the total number of allowances made available for sale in that auction, then the auction clearing price for the auction shall be the reserve price.

D. The department's agent will meet the following rules for the withholding of CO_2 ECR allowances from an auction.

1. CO_2 ECR allowances shall only be withheld from an auction if the demand for allowances would result in an auction clearing price that is less than the ECR trigger price prior to the withholding from the auction of any ECR allowances.

2. If the condition in subdivision 1 of this subsection is met at an auction, then the maximum number of CO_2 ECR allowances that may be withheld from that auction will be equal to the quantity shown in Table 140-5B of 9VAC5-140-6210 E minus the total quantity of CO_2 ECR allowances that have been withheld from any prior auction in that calendar year. Any CO_2 ECR allowances withheld from an auction will be transferred into the Virginia ECR Account.

9VAC5-140-6430. Consignment auction.

In accordance with Article 5 (9VAC5-140-6190 et seq.) of this part, [one quarter of the annual] conditional [~~allowances~~ allowance allocation] shall be consigned by the CO_2 budget source to whom they are allocated or [the holder of a public contract with] DMME to each auction [~~on a quarterly pro rata basis~~] in accordance with procedures specified by the department. At the completion of the consignment auction, a conditional allowance [sold at auction] shall become [~~an allowance to be used for compliance purposes~~ a CO_2 allowance].

[9VAC5-140-6435. Other auction.

Notwithstanding the requirements of 9VAC5-140-6430, the department may participate in a direct auction of allowances without consignment in accordance with requirements established by the Virginia General Assembly. A "direct auction" means a CO_2 auction conducted by a CO_2 Budget Trading Program in which Virginia is a participating state.]

[Article 10
Program Monitoring and Review

9VAC5-140-6440. Program monitoring and review.

In conjunction with the CO_2 Budget Trading Program program monitoring and review process, the department will evaluate impacts of the program specific to Virginia, including economic, energy, and environmental impacts and impacts on vulnerable and environmental justice and underserved communities. The department will, in evaluating the impacts on environmental justice communities, including low income, minority, and tribal communities, develop and implement a plan to ensure increased participation of environmental justice communities in the review.]

VA.R. Doc. No. R17-5140; Filed January 16, 2019, 8:27 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC20-81. Solid Waste Management Regulations (amending 9VAC20-81-10, 9VAC20-81-95, 9VAC20-81-250).**

9VAC20-130. Solid Waste Planning and Recycling Regulations (amending 9VAC20-130-10).

Statutory Authority: 9VAC02-81-10, 9VAC20-81-95, and 9VAC20-81-250: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Parts 257 and 258.

9VAC20-130-10: § 10.1-1411 of the Code of Virginia; 42 USC § 6942(b); 40 CFR Parts 255 and 256.

Effective Date: March 6, 2019.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4319, or email melissa.porterfield@deq.virginia.gov.

Summary:

The amendments replace the term "conditionally exempt small quantity generator" with the term "very small quantity generator" for consistency with 40 CFR 260.10, which was modified by the U.S. Environmental Protection Agency's Hazardous Waste Generator Improvements Rule.

Part I
Definitions

9VAC20-81-10. Definitions.

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

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities required by this chapter.

"Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with this chapter.

"Agricultural waste" means all solid waste produced from farming operations.

"Airport" means, for the purpose of this chapter, a military airfield or a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

"Aquifer" means a geologic formation, group of formations, or a portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

"Ash" means the fly ash or bottom ash residual waste material produced from incineration or burning of solid waste or from any fuel combustion.

"Base flood" see "Hundred-year flood."

"Bedrock" means the rock that underlies soil or other unconsolidated, superficial material at a site.

"Benchmark" means a permanent monument constructed of concrete and set in the ground surface below the frostline with identifying information clearly affixed to it. Identifying information will include the designation of the benchmark as well as the elevation and coordinates on the local or Virginia state grid system.

"Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or environment.

"Beneficial use of CCR" means the CCR meet all of the following conditions:

1. The CCR must provide a functional benefit;

2. The CCR must substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction;

3. The use of the CCR must meet relevant product specifications, regulatory standards, or design standards when available, and when such standards are not available, the CCR is not used in excess quantities; and

4. When unencapsulated use of CCR involving placement on the land of 12,400 tons or more in nonroadway applications, the user must demonstrate and keep records, and provide such documentation upon request, that environmental releases to groundwater, surface water, soil, and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil, and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.

"Bioremediation" means remediation of contaminated media by the manipulation of biological organisms to enhance the degradation of contaminants.

"Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

"Board" means the Virginia Waste Management Board.

"Bottom ash" means ash or slag that has been discharged from the bottom of the combustion unit after combustion.

"Capacity" means the maximum permitted volume of solid waste, inclusive of daily and intermediate cover, that can be disposed in a landfill. This volume is measured in cubic yards.

"Captive industrial landfill" means an industrial landfill that is located on property owned or controlled by the generator of the waste disposed of in that landfill.

"CCR landfill" means an area of land or an excavation that receives CCR and that is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. For purposes of this chapter, a CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of a beneficial use of CCR.

"CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area that is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

"Clean wood" means solid waste consisting of untreated wood pieces and particles that do not contain paint, laminate, bonding agents, or chemical preservatives or are otherwise unadulterated.

"Closed facility" means a solid waste management facility that has been properly secured in accordance with the requirements of this chapter.

"Closure" means that point in time when a permitted landfill has been capped, certified as properly closed by a professional engineer, inspected by the department, and

closure notification is performed by the department in accordance with 9VAC20-81-160 D.

"Coal combustion byproducts" or "CCB" means residuals, including fly ash, bottom ash, boiler slag, and flue gas emission control waste produced by burning coal. CCB includes both CCR and other non-CCR wastes identified in this definition.

"Coal combustion residuals" or "CCR" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers. CCR is a specific type of CCB.

"Combustion unit" means an incinerator, waste heat recovery unit, or boiler.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, solid waste resulting from the operation of stores, markets, office buildings, restaurants, and shopping centers.

"Compliance schedule" means a time schedule for measures to be employed on a solid waste management facility that will ultimately upgrade it to conform to this chapter.

"Compost" means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

"Composting" means the manipulation of the natural process of decomposition of organic materials to increase the rate of decomposition.

~~"Conditionally exempt small quantity generator" means a generator of hazardous waste who has been so defined in 40 CFR 261.5, as amended. That section applies to the persons who generate in that calendar month no more than 100 kilograms of hazardous waste or one kilogram of acutely hazardous waste.~~

"Construction" means the initiation of permanent physical change at a property with the intent of establishing a solid waste management unit. This does not include land-clearing activities, excavation for borrow purposes, activities intended for infrastructure purposes, or activities necessary to obtain Part A siting approval (i.e., advancing of exploratory borings, digging of test pits, groundwater monitoring well installation, etc.).

"Construction/demolition/debris landfill" or "CDD landfill" means a land burial facility engineered, constructed and operated to contain and isolate construction waste, demolition waste, debris waste, split tires, and white goods or combinations of the above solid wastes.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not construction wastes.

"Contaminated soil" means, for the purposes of this chapter, a soil that, as a result of a release or human usage, has absorbed or adsorbed physical, chemical, or radiological substances at concentrations above those consistent with nearby undisturbed soil or natural earth materials.

"Container" means any portable device in which a material is stored, transported, treated, or otherwise handled and includes transport vehicles that are containers themselves (e.g., tank trucks) and containers placed on or in a transport vehicle.

"Containment structure" means a closed vessel such as a tank or cylinder.

"Convenience center" means a collection point for the temporary storage of solid waste provided for individual solid waste generators who choose to transport solid waste generated on their own premises to an established centralized point, rather than directly to a disposal facility. To be classified as a convenience center, the collection point may not receive waste from collection vehicles that have collected waste from more than one real property owner. A convenience center shall be on a system of regularly scheduled collections.

"Cover material" means compactable soil or other approved material that is used to blanket solid waste in a landfill.

"Daily disposal limit" means the amount of solid waste that is permitted to be disposed at the facility and shall be computed on the amount of waste disposed during any operating day.

"Debris waste" means wastes resulting from land-clearing operations. Debris wastes include, but are not limited to stumps, wood, brush, leaves, soil, and road spoils.

"Decomposed vegetative waste" means a stabilized organic product produced from vegetative waste by a controlled natural decay process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

"Demolition waste" means that solid waste that is produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality. For purposes of submissions to the director as specified in the Waste Management Act, submissions may be made to the department.

"Discard" means to abandon, dispose of, burn, incinerate, accumulate, store, or treat before or instead of being abandoned, disposed of, burned, or incinerated.

"Discarded material" means a material that is:

1. Abandoned by being:

a. Disposed of;

b. Burned or incinerated; or

c. Accumulated, stored, or treated (but not used, reused, or reclaimed) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

2. Recycled used, reused, or reclaimed material as defined in this part.

"Disclosure statement" means a sworn statement or affirmation as required by § 10.1-1400 of the Code of Virginia (see DEQ Form DISC-01 and 02 (Disclosure Statement)).

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.

"Disposal unit boundary" or "DUB" means the vertical plane located at the edge of the waste disposal unit. This vertical plane extends down into the uppermost aquifer. The DUB must be positioned within or coincident to the waste management boundary.

"EPA" means the U.S. Environmental Protection Agency.

"Exempt management facility" means a site used for activities that are conditionally exempt from management as a solid waste under this chapter. The facility remains exempt from solid waste management requirements provided it complies with the applicable conditions set forth in Parts II (9VAC20-81-20 et seq.) and IV (9VAC20-81-300 et seq.) of this chapter.

"Existing CCR landfill" means a CCR landfill that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015, and receives CCR on or after October 19, 2015. A CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun prior to October 19, 2015.

"Existing CCR surface impoundment" means a CCR surface impoundment that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015, and receives CCR on or after October 19, 2015. A CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun prior to October 19, 2015.

"Expansion" means a horizontal expansion of the waste management boundary as identified in the Part A application. If a facility's permit was issued prior to the establishment of the Part A process, an expansion is a horizontal expansion of the disposal unit boundary.

"Facility" means solid waste management facility unless the context clearly indicates otherwise.

"Facility boundary" means the boundary of the solid waste management facility. For landfills, this boundary encompasses the waste management boundary and all ancillary activities including, but not limited to scales, groundwater monitoring wells, gas monitoring probes, and maintenance facilities as identified in the facility's permit application. For facilities with a permit-by-rule (PBR) the facility boundary is the boundary of the property where the permit-by-rule activity occurs. For unpermitted solid waste management facilities, the facility boundary is the boundary of the property line where the solid waste is located.

"Facility structure" means any building, shed, or utility or drainage line on the facility.

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including low-lying areas of offshore islands where flooding occurs.

"Fly ash" means ash particulate collected from air pollution attenuation devices on combustion units.

"Food-chain crops" means crops grown for human consumption, tobacco, and crops grown for pasture and forage or feed for animals whose products are consumed by humans.

"Fossil fuel combustion products" means coal combustion byproducts as defined in this regulation, coal combustion byproducts generated at facilities with fluidized bed combustion technology, petroleum coke combustion byproducts, byproducts from the combustion of oil, byproducts from the combustion of natural gas, and

byproducts from the combustion of mixtures of coal and "other fuels" (i.e., co-burning of coal with "other fuels" where coal is at least 50% of the total fuel). For purposes of this definition, "other fuels" means waste-derived fuel product, auto shredder fluff, wood wastes, coal mill rejects, peat, tall oil, tire-derived fuel, deionizer resins, and used oil.

"Free liquids" means liquids that readily separate from the solid portion of a waste under ambient temperature and pressure as determined by the Paint Filter Liquids Test, Method 9095, U.S. Environmental Protection Agency, Publication SW-846.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Gas condensate" means the liquid generated as a result of gas control or recovery processes at the solid waste management facility.

"Governmental unit" means any department, institution, or commission of the Commonwealth and any public corporate instrumentality thereof, and any district, and shall include local governments.

"Ground rubber" means material processed from waste tires that is no larger than 1/4 inch in any dimension. This includes crumb rubber that is measured in mesh sizes.

"Groundwater" means water below the land surface in a zone of saturation.

"Hazardous constituent" means a constituent of solid waste found listed in Appendix VIII of 9VAC20-60-261.

"Hazardous waste" means a "hazardous waste" as described by the Virginia Hazardous Waste Management Regulations (9VAC20-60).

"Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

"Home use" means the use of compost for growing plants that is produced and used on a privately owned residential site.

"Host agreement" means any lease, contract, agreement, or land use permit entered into or issued by the locality in which the landfill is situated that includes terms or conditions governing the operation of the landfill.

"Household hazardous waste" means any waste material derived from households (including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas) which, except for the fact that it is derived from a household, would otherwise be classified as a hazardous waste in accordance with 9VAC20-60.

"Household waste" means any waste material, including garbage, trash, and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.

"Hundred-year flood" means a flood that has a 1.0% or greater chance of recurring in any given year or a flood of magnitude equaled or exceeded on the average only once in a hundred years on the average over a significantly long period.

"Inactive CCR surface impoundment" means a CCR surface impoundment that no longer receives CCR on or after October 19, 2015, and still contains both CCR and liquids on or after October 19, 2015.

"Incineration" means the controlled combustion of solid waste for disposal.

"Incinerator" means a facility or device designed for the treatment of solid waste by combustion.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Industrial waste landfill" means a solid waste landfill used primarily for the disposal of a specific industrial waste or a waste that is a byproduct of a production process.

"Injection well" means, for the purposes of this chapter, a well or bore hole into which fluids are injected into selected geological horizons.

"Institutional waste" means all solid waste emanating from institutions such as, but not limited to, hospitals, nursing homes, orphanages, and public or private schools. It can include regulated medical waste from health care facilities and research facilities that must be managed as a regulated medical waste.

"Interim cover systems" means temporary cover systems applied to a landfill area when landfilling operations will be temporarily suspended for an extended period (typically, longer than one year). At the conclusion of the interim period, the interim cover system may be removed and landfilling operations resume or final cover is installed.

"Karst topography" means areas where karst terrane, with its characteristic surface and subterranean features, is developed

as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of 5.0% or more of the equity or debt of the applicant. If any holder of 5.0% or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Lagoon" means a body of water or surface impoundment designed to manage or treat waste water.

"Land-clearing activities" means the removal of flora from a parcel of land.

"Land-clearing debris" means vegetative waste resulting from land-clearing activities.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill.

"Landfill gas" means gas generated as a byproduct of the decomposition of organic materials in a landfill. Landfill gas consists primarily of methane and carbon dioxide.

"Landfill mining" means the process of excavating solid waste from an existing landfill.

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials from such waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an offsite facility is regulated as septage, leachate discharged into a waste water collection system is regulated as industrial waste water and leachate that has contaminated groundwater is regulated as contaminated groundwater.

"Lead acid battery" means, for the purposes of this chapter, any wet cell battery.

"Lift" means the daily landfill layer of compacted solid waste plus the cover material.

"Liquid waste" means any waste material that is determined to contain "free liquids" as defined by this chapter.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock, that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

"Litter" means, for purposes of this chapter, any solid waste that is discarded or scattered about a solid waste management facility outside the immediate working area.

"Lower explosive limit" means the lowest concentration by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and at atmospheric pressure.

"Materials recovery facility" means a solid waste management facility for the collection, processing, and recovery of material such as metals from solid waste or for the production of a fuel from solid waste. This does not include the production of a waste-derived fuel product.

"Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

"Monitoring" means all methods, procedures, and techniques used to systematically analyze, inspect, and collect data on operational parameters of the facility or on the quality of air, groundwater, surface water, and soils.

"Monitoring well" means a well point below the ground surface for the purpose of obtaining periodic water samples from groundwater for quantitative and qualitative analysis.

"Mulch" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves and other clean wood waste that has undergone size reduction by grinding, shredding, or chipping, and is distributed to the general public for landscaping purposes or other horticultural uses except composting as defined and regulated under this chapter.

"Municipal solid waste" means that waste that is normally composed of residential, commercial, and institutional solid waste and residues derived from combustion of these wastes.

"New CCR landfill" means a CCR landfill or lateral expansion of a CCR landfill that first receives CCR or commences construction after October 19, 2015. A new CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun after October 19, 2015. Overfills are also considered new CCR landfills.

"New CCR surface impoundment" means a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 19, 2015. A new CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun after October 19, 2015.

"New solid waste management facility" means a facility or a portion of a facility that was not included in a previous determination of site suitability (Part A approval).

"Nuisance" means an activity that unreasonably interferes with an individual's or the public's comfort, convenience or enjoyment such that it interferes with the rights of others by causing damage, annoyance, or inconvenience.

"Offsite" means any site that does not meet the definition of onsite as defined in this part.

"Onsite" means the same or geographically contiguous property, which may be divided by public or private right-of-way, provided the entrance and exit to the facility are controlled by the owner or the operator of the facility. Noncontiguous properties owned by the same person, but connected by a right-of-way that he controls and to which the public does not have access, are also considered onsite property.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;

2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

3. Control of the combustion products' emission.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to present a threat of a release of harmful substances into the environment or present a hazard to human health. Such a site is subject to the Open Dump Criteria in 9VAC20-81-45.

"Operating record" means records required to be maintained in accordance with the facility permit or this part (see 9VAC20-81-530).

"Operation" means all waste management activities at a solid waste management facility beginning with the initial receipt of solid waste for treatment, storage, disposal, or transfer and ceasing with the initiation of final closure activities at the solid waste management facility subsequent to the final receipt of waste.

"Operator" means the person responsible for the overall operation and site management of a solid waste management facility.

"Owner" means the person who owns a solid waste management facility or part of a solid waste management facility.

"PCB" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances that contain such substance (see 40 CFR 761.3, as amended).

"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permit" means the written permission of the director to own, operate, or construct a solid waste management facility.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel, or other floating craft, from which pollutants are or may be discharged. Return flows from irrigated agriculture are not included.

"Pollutant" means any substance that causes or contributes to, or may cause or contribute to, environmental degradation when discharged into the environment.

"Poor foundation conditions" means those areas where features exist that indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a solid waste management facility.

"Postclosure" means the requirements placed upon solid waste disposal facilities after closure to ensure environmental and public health safety for a specified number of years after closure.

"Process rate" means the maximum rate of waste acceptance that a solid waste management facility can process for treatment and storage. This rate is limited by the capabilities of equipment, personnel, and infrastructure.

"Processing" means preparation, treatment, or conversion of waste by a series of actions, changes, or functions that bring about a desired end result.

"Professional engineer" means an engineer licensed to practice engineering in the Commonwealth as defined by the rules and regulations set forth by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (18VAC10-20).

"Professional geologist" means a geologist licensed to practice geology in the Commonwealth as defined by the rules and regulations set forth by the Board for Professional Soil Scientists, Wetland Professionals, and Geologists (18VAC145-40).

"Progressive cover" means cover material placed over the working face of a solid waste disposal facility advancing over the deposited waste as new wastes are added keeping the exposed area to a minimum.

"Putrescible waste" means solid waste that contains organic material capable of being decomposed by micro-organisms and cause odors.

"Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by professional certifications or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC § 6901 et seq.), the Hazardous and Solid Waste Amendments of 1984, and any other applicable amendments to these laws.

"Reclaimed material" means a material that is processed or reprocessed to recover a usable product or is regenerated to a usable form.

"Refuse" means all solid waste products having the character of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination, or other discarded materials.

"Refuse-derived fuel (RDF)" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including low-density fluff refuse-derived fuel through densified refuse-derived fuel and pelletized refuse-derived fuel.

"Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in the Virginia Hazardous Waste Management Regulations (9VAC20-60), that is not excluded from those regulations as a hazardous waste.

"Regulated medical waste" means solid wastes so defined by the Regulated Medical Waste Management Regulations (9VAC20-120) as promulgated by the Virginia Waste Management Board.

"Release" means, for the purpose of this chapter, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment solid wastes or hazardous constituents of solid wastes (including the abandonment or discarding of barrels, containers, and other closed receptacles containing solid waste). This definition does not include any release that results in exposure to persons solely within a workplace; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (68 Stat. 923); and the normal application of fertilizer. For the purpose of this chapter, release also means substantial threat of release.

"Remediation waste" means all solid waste, including all media (groundwater, surface water, soils, and sediments) and debris, that are managed for the purpose of remediating a site in accordance with 9VAC20-81-45 or Part III (9VAC20-81-100 et seq.) of this chapter or under the Voluntary Remediation Regulations (9VAC20-160) or other regulated remediation program under DEQ oversight. For a given facility, remediation wastes may originate only from within the boundary of that facility, and may include wastes managed as a result of remediation beyond the boundary of the facility. Hazardous wastes as defined in 9VAC20-60, as well as "new" or "as generated" wastes, are excluded from this definition.

"Remediation waste management unit" or "RWMU" means an area within a facility that is designated by the director for the purpose of implementing remedial activities required under this chapter or otherwise approved by the director. An RWMU shall only be used for the management of remediation wastes pursuant to implementing such remedial activities at the facility.

"Responsible official" means one of the following:

1. For a business entity, such as a corporation, association, limited liability company, or cooperative: a duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more operating facilities applying for or subject to a permit. The authority to sign documents must be assigned or delegated to such representative in accordance with procedures of the business entity;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

3. For a municipality, state, federal, or other public agency: a duly authorized representative of the locality if the representative is responsible for the overall operation of one or more operating facilities applying for or subject to a permit. The authority to sign documents must be assigned or delegated to such representative in accordance with procedures of the locality.

"Rubbish" means combustible or slowly putrescible discarded materials that include but are not limited to trees, wood, leaves, trimmings from shrubs or trees, printed matter, plastic and paper products, grass, rags and other combustible or slowly putrescible materials not included under the term "garbage."

"Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a solid waste management facility.

"Run-on" means any rainwater, wastewater, leachate, or other liquid that drains over land onto any part of the solid waste management facility.

"Salvage" means the authorized, controlled removal of waste materials from a solid waste management facility.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from ~~conditionally exempt~~ very small quantity generators, construction demolition debris, and nonhazardous industrial solid waste.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the unauthorized or uncontrolled removal of waste materials from a solid waste management facility.

"Scrap metal" means metal parts such as bars, rods, wire, empty containers, or metal pieces that are discarded material and can be used, reused, or reclaimed.

"Secondary containment" means an enclosure into which a container or tank is placed for the purpose of preventing discharge of wastes to the environment.

"Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

"Semiannual" means an interval corresponding to approximately 180 days. For the purposes of scheduling monitoring activities, sampling within 30 days of the 180-day interval will be considered semiannual.

"Site" means all land and structures, other appurtenances, and improvements on them used for treating, storing, and disposing of solid waste. This term includes adjacent land within the facility boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste.

"Sludge" means any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of treated effluent from a wastewater treatment plant.

"Small landfill" means a landfill that disposed of 100 tons/day or less of solid waste during a representative period prior to October 9, 1993, and did not dispose of more than an average of 100 tons/day of solid waste each month between October 9, 1993, and April 9, 1994.

"Solid waste" means any of those materials defined as "solid waste" in 9VAC20-81-95.

"Solid waste disposal facility" means a solid waste management facility at which solid waste will remain after closure.

"Solid waste management facility" or "SWMF" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Special wastes" means solid wastes that are difficult to handle, require special precautions because of hazardous properties, or the nature of the waste creates waste management problems in normal operations. (See Part VI (9VAC20-81-610 et seq.) of this chapter.)

"Speculatively accumulated material" means any material that is accumulated before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. Materials are not being accumulated speculatively when they can be used, reused, or reclaimed, have a feasible means of use, reuse, or reclamation available and 75% of the materials accumulated are being removed from the facility annually.

"State waters" means all water, on the surface and under the ground, wholly or partially within, or bordering the Commonwealth, or within its jurisdiction.

"Storage" means the holding of waste, at the end of which the waste is treated, disposed, or stored elsewhere.

"Structural fill" means an engineered fill with a projected beneficial end use, constructed using soil or fossil fuel combustion products, when done in accordance with this

chapter, spread and compacted with proper equipment, and covered with a vegetated soil cap.

"Sudden event" means a one-time, single event such as a sudden collapse or a sudden, quick release of contaminants to the environment. An example would be the sudden loss of leachate from an impoundment into a surface stream caused by failure of a containment structure.

"Surface impoundment" or "impoundment" means a facility or part of a facility that is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well.

"Surface waters" means all state waters that are not groundwater as defined in § 62.1-255 of the Code of Virginia.

"SW-846" means Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846, Second Edition, 1982 as amended by Update I (April, 1984), and Update II (April, 1985) and the third edition, November, 1986, as amended.

"Tank" means a stationary device, designed to contain an accumulation of liquid or semi-liquid components of solid waste that is constructed primarily of nonearthen materials that provide structural support.

"TEF" or "Toxicity Equivalency Factor" means a factor developed to account for different toxicities of structural isomers of polychlorinated dibenzodioxins and dibenzofurans and to relate them to the toxicity of 2,3,7,8-tetrachloro dibenzo-p-dioxin.

"Terminal" means the location of transportation facilities such as classification yards, docks, airports, management offices, storage sheds, and freight or passenger stations, where solid waste that is being transported may be loaded, unloaded, transferred, or temporarily stored.

"Thermal treatment" means the treatment of solid waste in a device that uses elevated temperature as the primary means to change the chemical, physical, or biological character, or composition of the solid waste.

"Tire chip" means a material processed from waste tires that is a nominal two square inches in size, and ranges from 1/4 inch to four inches in any dimension. Tire chips contain no wire protruding more than 1/4 inch.

"Tire shred" means a material processed from waste tires that is a nominal 40 square inches in size, and ranges from four inches to 10 inches in any dimension.

"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration, or resource recovery.

"Trash" means combustible and noncombustible discarded materials and is used interchangeably with the term rubbish.

"Treatment" means, for the purpose of this chapter, any method, technique, or process, including but not limited to incineration, designed to change the physical, chemical, or biological character or composition of any waste to render it more stable, safer for transport, or more amenable to use, reuse, reclamation, recovery, or disposal.

"Underground source of drinking water" means an aquifer or its portion:

1. Which contains water suitable for human consumption; or

2. In which the groundwater contains less than 10,000 mg/liter total dissolved solids.

"Unit" means a discrete area of land used for the disposal of solid waste.

"Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terranes.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility boundary.

"Used or reused material" means a material that is either:

1. Employed as an ingredient (including use as an intermediate) in a process to make a product, excepting those materials possessing distinct components that are recovered as separate end products; or

2. Employed in a particular function or application as an effective substitute for a commercial product or natural resources.

"Vector" means a living animal, insect, or other arthropod that transmits an infectious disease from one organism to another.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing activities and includes, but is not limited to, leaves, grass trimmings, woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps.

"Vermicomposting" means the controlled and managed process by which live worms convert organic residues into fertile excrement.

"Vertical design capacity" means the maximum design elevation specified in the facility's permit or if none is specified in the permit, the maximum elevation based on a 3:1 slope from the waste disposal unit boundary.

"Very small quantity generator" means a generator of hazardous waste as defined in 40 CFR 260.10 as incorporated by reference in 9VAC20-60-260 that generates less than or equal to the following amounts in a calendar month: (i) 100 kilograms of nonacute hazardous waste; (ii) one kilogram of acute hazardous waste; and (iii) 100 kilograms of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of acute hazardous waste.

"VPDES" (Virginia Pollutant Discharge Elimination System) means the Virginia system for the issuance of permits pursuant to the Permit Regulation (9VAC25-31), the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), and § 402 of the Clean Water Act (33 USC § 1251 et seq.).

"Washout" means carrying away of solid waste by waters of the base flood.

"Waste-derived fuel product" means a solid waste or combination of solid wastes that have been treated (altered physically, chemically, or biologically) to produce a fuel product with a minimum heating value of 5,000 BTU/lb. Solid wastes used to produce a waste-derived fuel product must have a heating value, or act as binders, and may not be added to the fuel for the purpose of disposal. Waste ingredients may not be listed or characteristic hazardous wastes. The fuel product must be stable at ambient temperature, and not degraded by exposure to the elements. This material may not be "refuse derived fuel (RDF)" as defined in 9VAC5-40-890.

"Waste management boundary" means the vertical plane located at the boundary line of the area approved in the Part A application for the disposal of solid waste and storage of leachate. This vertical plane extends down into the uppermost aquifer and is within the facility boundary.

"Waste pile" means any noncontainerized accumulation of nonflowing, solid waste that is used for treatment or storage.

"Waste tire" means a tire that has been discarded because it is no longer suitable for its original intended purpose because of wear, damage or defect. (See 9VAC20-150 for other definitions dealing with the waste tire program.)

"Wastewaters" means, for the purpose of this chapter, wastes that contain less than 1.0% by weight total organic carbon (TOC) and less than 1.0% by weight total suspended solids (TSS).

"Water pollution" means such alteration of the physical, chemical, or biological properties of any state water as will or is likely to create a nuisance or render such waters:

1. Harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life or plants;

2. Unsuitable, with reasonable treatment, for use as present or possible future sources of public water supply; or

3. Unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that:

a. An alteration of the physical, chemical, or biological properties of state waters or a discharge or deposit of sewage, industrial wastes, or other wastes to state waters by any owner that by itself is not sufficient to cause pollution but which in combination with such alteration or discharge or deposit to state waters by other persons is sufficient to cause pollution;

b. The discharge of untreated sewage by any person into state waters; and

c. The contribution to the degradation of water quality standards duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Water table" means the upper surface of the zone of saturation in groundwaters in which the hydrostatic pressure is equal to the atmospheric pressure.

"Waters of the United States" or "waters of the U.S." means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate "wetlands";

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mud flats, sand flats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including:

a. Any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes;

b. Any such waters from which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

c. Any such waters that are used or could be used for industrial purposes by industries in interstate commerce;

d. All impoundments of waters otherwise defined as waters of the United States under this definition;

e. Tributaries of waters identified in subdivisions 3 a through d of this definition;

f. The territorial sea; and

g. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 3 a through f of this definition.

"Wetlands" means those areas that are defined by the federal regulations under 33 CFR Part 328, as amended.

"White goods" means any stoves, washers, hot water heaters, and other large appliances.

"Working face" means that area within a landfill that is actively receiving solid waste for compaction and cover.

"Yard waste" means a subset of vegetative waste and means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed 12 inches in diameter.

9VAC20-81-95. Identification of solid waste.

A. Wastes identified in this section are solid wastes that are subject to this chapter unless regulated pursuant to other applicable regulations issued by the department.

B. Except as otherwise provided, the definition of solid waste per 40 CFR 261.2 as incorporated by 9VAC20-60-261, as amended, is also hereby incorporated as part of this chapter. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 9VAC20-60-261, as amended, are also hereby incorporated as part of this chapter as well.

C. Except as otherwise modified or excepted by 9VAC20-60, the materials listed in the regulations of the United States Environmental Protection Agency set forth in 40 CFR 261.4(a) are considered a solid waste for the purposes of this chapter. However, these materials are not regulated under the provisions of this chapter if all conditions specified therein are met. This list and all material definitions, reference materials and other ancillaries that are part of 40 CFR Part 261.4(a), as incorporated, modified or accepted by 9VAC20-60 are incorporated as part of this chapter. In addition, the following materials are not solid wastes for the purpose of this chapter:

1. Materials generated by any of the following, which are returned to the soil as fertilizers:

a. The growing and harvesting of agricultural crops.

b. The raising and husbanding of animals, including animal manures and used animal bedding.

2. Mining overburden returned to the mine site.

3. Recyclable materials used in manner constituting disposal per 9VAC20-60-266.

4. Wood wastes burned for energy recovery.

5. Materials that are:

a. Used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product, or as effective substitutes for commercial products or natural resources provided the materials are not being reclaimed or accumulated speculatively; or

b. Returned to the original process from which they are generated.

6. Materials that are beneficially used as determined by the department under this subsection. The department may consider other waste materials and uses to be beneficial in accordance with the provisions of 9VAC20-81-97.

7. The following materials and uses listed in this part are exempt from this chapter as long as they are managed so that they do not create an open dump, hazard, or public nuisance. These materials and the designated use are considered a beneficial use of waste materials:

a. Clean wood, wood chips, or bark from land clearing, logging operations, utility line clearing and maintenance operations, pulp and paper production, and wood products manufacturing, when these materials are placed in commerce for service as mulch, landscaping, animal bedding, erosion control, habitat mitigation, wetlands restoration, or bulking agent at a compost facility operated in compliance with Part IV (9VAC20-81-300 et seq.) of this chapter;

b. Clean wood combustion residues when used for pH adjustment in compost, liquid absorbent in compost, or as a soil amendment or fertilizer, provided the application rate of the wood ash is limited to the nutrient need of the crop grown on the land on which the wood combustion residues will be applied and provided that such application meets the requirements of the Virginia Department of Agriculture and Consumer Services (2VAC5-400 and 2VAC5-410);

c. Compost that satisfies the applicable requirements of the Virginia Department of Agriculture and Consumer Services (2VAC5-400 and 2VAC5-410);

d. Nonhazardous, contaminated soil that has been excavated as part of a construction project and that is used as backfill for the same excavation or excavations containing similar contaminants at the same site, at concentrations at the same level or higher. Excess contaminated soil from these projects is subject to the requirements of this chapter;

e. Nonhazardous petroleum contaminated soil that has been treated to the satisfaction of the department in accordance with 9VAC20-81-660;

f. Nonhazardous petroleum contaminated soil when incorporated into asphalt pavement products;

g. Solid wastes that are approved in advance of the placement, in writing, by the department or that are specifically mentioned in the facility permit for use as alternate daily cover material or other protective materials for landfill liner or final cover system components;

h. Fossil fuel combustion products that are not CCR when used as a material in the manufacturing of another product (e.g., concrete, concrete products, lightweight aggregate, roofing materials, plastics, paint, flowable fill) or as a substitute for a product or material resource (e.g., blasting grit, roofing granules, filter cloth pre-coat for sludge dewatering, pipe bedding);

i. Tire chips and tire shred when used as a sub-base fill for road base materials or asphalt pavements when approved by the Virginia Department of Transportation or by a local governing body;

j. Tire chips, tire shred, and ground rubber used in the production of commercial products such as mats, pavement sealers, playground surfaces, brake pads, blasting mats, and other rubberized commercial products;

k. Tire chips and tire shred when used as backfill in landfill gas or leachate collection pipes, recirculation lines, and drainage material in landfill liner and cover systems, and gas interception or remediation applications;

l. Waste tires, tire chips or tire shred when burned for energy recovery or when used in pyrolysis, gasification, or similar treatment process to produce fuel;

m. Waste-derived fuel product, as defined in 9VAC20-81-10, derived from nonhazardous solid waste;

n. Uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil, and rock placed in commerce for service as a substitute for conventional aggregate; and

o. Clean, ground gypsum wallboard when used as a soil amendment or fertilizer, provided the following conditions are met:

(1) No components of the gypsum wallboard have been glued, painted, or otherwise contaminated from manufacture or use (e.g., waterproof or fireproof drywall) unless otherwise processed to remove contaminants.

(2) The gypsum wallboard shall be processed so that 95% of the gypsum wallboard is less than 1/4 inch by 1/4 inch in size, unless an alternate size is approved by the department.

(3) The gypsum wallboard shall be applied only to agricultural, silvicultural, landscaped, or mined lands or roadway construction sites that need fertilization.

(4) The application rate for the ground gypsum wallboard shall not exceed the following rates.

Region	Rate
Piedmont, Mountains, and Ridge and Valley	250 lbs/1,000 ft^2
Coastal Plain	50 lbs/1,000 ft^2

Note: These weights are for dry ground gypsum wallboard.

D. The following activities are conditionally exempt from this chapter provided no open dump, hazard, or public nuisance is created:

1. Composting of sewage sludge at the sewage treatment plant of generation without addition of other types of solid wastes.

2. Composting of household waste generated at a residence and composted at the site of generation.

3. Composting activities performed for educational purposes as long as no more than 100 cubic yards of materials are onsite at any time. Greater quantities will be allowed with suitable justification presented to the department. For quantities greater than 100 cubic yards, approval from the department will be required prior to composting.

4. Composting of animal carcasses onsite at the farm of generation.

5. Composting of vegetative waste or yard waste generated onsite by owners or operators of agricultural operations or owners of the real property or those authorized by the owners of the real property provided:

a. All decomposed vegetative waste and compost produced is utilized on said property;

b. No vegetative waste or other waste material generated from other sources other than said property is received;

c. All applicable standards of local ordinances that govern or concern vegetative waste handling, composting, storage or disposal are satisfied; and

d. They pose no nuisance or present no potential threat to human health or the environment.

6. Composting of yard waste by owners or operators who accept yard waste generated offsite shall be exempt from all other provisions of this chapter as applied to the composting activities provided the requirements of 9VAC20-81-397 B are met.

7. Composting of preconsumer food waste and kitchen culls generated onsite and composted in containers designed to prohibit vector attraction and prevent nuisance odor generation.

8. Vermicomposting, when used to process Category I, Category II, or Category III feedstocks in containers designed to prohibit vector attraction and prevent nuisance odor generation. If offsite feedstocks are received no more than 100 cubic yards of materials may be onsite at any one time. For quantities greater than 100 cubic yards, approval from the department will be required prior to composting.

9. Composting of sewage sludge or combinations of sewage sludge with nonhazardous solid waste provided the composting facility is permitted under the requirements of a Virginia Pollution Abatement (VPA) or VPDES permit.

10. Management of solid waste in appropriate containers at the site of its generation, provided that:

a. Putrescible waste is not stored more than seven days between time of collection and time of removal for disposal;

b. Nonputrescible wastes are not stored more than 90 days between time of collection and time of removal for proper management; and

c. Treatment of waste is conducted in accordance with the following:

(1) In accordance with a waste analysis plan that:

(a) Contains a detailed chemical and physical analysis of a representative sample of the waste being treated and contains all records necessary to treat the waste in accordance with the requirements of this part, including the selected testing frequency; and

(b) Is kept in the facility's onsite file and made available to the department upon request.

(2) Notification is made to the receiving waste management facility that the waste has been treated.

11. Using rocks, brick, block, dirt, broken concrete, crushed glass, porcelain, and road pavement as clean fill.

12. Storage of less than 100 waste tires at the site of generation provided that no waste tires are accepted from offsite and that the storage will not present a hazard or a nuisance.

13. Storage in piles of land-clearing debris including stumps and brush, clean wood wastes, log yard scrapings consisting of a mixture of soil and wood, cotton gin trash, peanut hulls, and similar organic wastes that do not readily decompose, are exempt from this chapter if they meet the following conditions at a minimum:

a. The wastes are managed in the following manner:

(1) They do not cause discharges of leachate, or attract vectors.

(2) They cannot be dispersed by wind and rain.

(3) Fire is prevented.

(4) They do not become putrescent.

b. Any facility storing waste materials under the provisions of this subsection shall obtain a stormwater discharge permit if they are considered a significant source under the provisions of 9VAC25-31-120 A 1 c.

c. No more than a total of 1/3 acre of waste material is stored onsite and the waste pile does not exceed 15 feet in height above base grade.

d. Siting provisions.

(1) All log yard scrapings consisting of a mixture of soil and wood, cotton gin trash, peanut hulls, and similar organic wastes that do not readily decompose are stored at the site of the industrial activity that produces them;

(2) A 50-foot fire break is maintained between the waste pile and any structure or tree line;

(3) The slope of the ground within the area of the pile and within 50 feet of the pile does not exceed 4:1;

(4) No waste material may be stored closer than 50 feet to any regularly flowing surface water body or river, floodplain, or wetland; and

(5) No stored waste materials shall extend closer than 50 feet to any property line.

e. If activities at the site cease, any waste stored at the site must be properly managed in accordance with these regulations within 90 days. The director can approve longer timeframes with appropriate justification. Justification must be provided in writing no more than 30 days after ceasing activity at the site.

f. Waste piles that do not meet these provisions are required to obtain a permit in accordance with the permitting provisions in Part V (9VAC20-81-400 et seq.) of this chapter and meet all of the applicable waste pile requirements in Part IV (9VAC20-81-300 et seq.) of this chapter. Facilities that do not comply with the provisions of this subsection and fail to obtain a permit are subject to the provisions of 9VAC20-81-40.

14. Storage of nonhazardous solid wastes and hazardous wastes, or hazardous wastes from ~~conditionally exempt~~ very small quantity generators as defined in Virginia Hazardous Waste Management Regulations (9VAC20-60) at a transportation terminal or transfer station in closed containers meeting the U.S. Department of Transportation specifications is exempt from this section and the permitting provisions of Part V (9VAC20-81-400 et seq.) of this chapter provided such wastes are removed to a permitted storage or disposal facility within 10 days from the initial receipt from the waste generator. To be eligible for this exemption, each shipment must be properly

documented to show the name of the generator, the date of receipt by the transporter, and the date and location of the final destination of the shipment. The documentation shall be kept at the terminal or transfer station for at least three years after the shipment has been completed and shall be made available to the department upon request. All such activities shall comply with any local ordinances.

15. Open burning of solid wastes as provided in the following:

a. For forest management, agriculture practices, and highway construction and maintenance programs approved by the State Air Pollution Control Board.

b. For training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel with clearance from the local firefighting authority. Buildings that have not been demolished may be burned under the provisions of this subdivision only. Additionally, burning rubber tires, asphaltic materials, crankcase oil, impregnated wood, or other rubber-based or petroleum-based wastes is permitted when conducting bona fide firefighting instruction.

c. For the destruction of classified military documents under the supervision of the designated official.

d. For campfires or other fires using clean wood or vegetative waste that are used solely for recreational purposes, for ceremonial occasions, for outdoor preparation of food, and for warming of outdoor workers.

e. For the onsite destruction of vegetative waste located on the premises of private property, provided that no regularly scheduled collection service for such vegetative waste is available at the adjacent street or public road.

f. For the onsite destruction of household waste by homeowners or tenants, provided that no regularly scheduled collection service for such household waste is available at the adjacent street or public road.

g. For the onsite destruction of clean wood waste and debris waste resulting from property maintenance; from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills; or from any other clearing operations.

16. Open burning of vegetative waste is allowed at a closed landfill that has not been released from postclosure care. The activity shall be included in the text of the postclosure plan and conducted in accordance with § 10.1-1410.3 of the Code of Virginia.

17. Placement of trees, brush, or other vegetation from land used for agricultural or silvicultural purposes on the same property or other property of the same landowner.

18. Using fossil fuel combustion products that are not CCR in one or more of the following applications or when handled, processed, transported, or stockpiled for the following uses:

a. As a base, sub-base or fill material under a paved road, the footprint of a structure, a paved parking lot, sidewalk, walkway or similar structure, or in the embankment of a road. In the case of roadway embankments, materials will be placed in accordance with Virginia Department of Transportation specifications, and exposed slopes not directly under the surface of the pavement must have a minimum of 18 inches of soil cover over the fossil fuel combustion products, the top six inches of which must be capable of sustaining the growth of indigenous plant species or plant species adapted to the area. The use, reuse, or reclamation of unamended coal combustion byproduct shall not be placed in an area designated as a 100-year flood plain;

b. Processed with a cementitious binder to produce a stabilized structural fill product that is spread and compacted with proper equipment for the construction of a project with a specified end use; or

c. For the extraction or recovery of materials and compounds contained within the fossil fuel combustion products.

E. The following solid wastes are exempt from this chapter provided that they are managed in accordance with the requirements promulgated by other applicable state or federal agencies:

1. Management of wastes regulated by the State Board of Health, the State Water Control Board, the Air Pollution Control Board, the Department of Mines, Minerals and Energy, Department of Agriculture and Consumer Services, or any other state or federal agency with such authority.

2. Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.

3. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal.

4. Fossil fuel combustion products used for mine reclamation, mine subsidence, or mine refuse disposal on a mine site permitted by the Virginia Department of Mines, Minerals and Energy (DMME) when used in accordance with the standards.

5. Solid waste management practices that involve only the onsite placing of solid waste from mineral mining activities at the site of those activities and in compliance with a permit issued by the DMME, that do not include any municipal solid waste, are accomplished in an environmentally sound manner, and do not create an open

dump, hazard or public nuisance are exempt from all requirements of this chapter.

6. Waste or byproduct derived from an industrial process that meets the definition of fertilizer, soil amendment, soil conditioner, or horticultural growing medium as defined in § 3.2-3600 of the Code of Virginia, or whose intended purpose is to neutralize soil acidity (see § 3.2-3700 of the Code of Virginia), and that is regulated under the authority of the Virginia Department of Agriculture and Consumer Services.

7. Fossil fuel combustion products bottom ash or boiler slag used as a traction control material or road surface material if the use is consistent with Virginia Department of Transportation practices. This exemption does not apply to CCR used in this manner.

8. Waste tires generated by and stored at salvage yards licensed by the Department of Motor Vehicles provided that such storage complies with requirements set forth in § 10.1-1418.2 of the Code of Virginia and such storage does not pose a hazard or nuisance.

9. Tire chips used as the drainage material in construction of septage drain fields regulated under the authority of the Virginia Department of Health.

F. The following solid wastes are exempt from this chapter provided that they are reclaimed or temporarily stored incidentally to reclamation, are not accumulated speculatively, and are managed without creating an open dump, hazard, or a public nuisance:

1. Paper and paper products;

2. Clean wood waste that is to undergo size reduction in order to produce a saleable product, such as mulch;

3. Cloth;

4. Glass;

5. Plastics;

6. Tire chips, tire shred, ground rubber; and

7. Mixtures of above materials only. Such mixtures may include scrap metals excluded from regulation in accordance with the provisions of subsection C of this section.

9VAC20-81-250. Groundwater monitoring program.

A. General requirements.

1. Applicability.

a. Existing landfills. Owners or operators of all existing landfills shall be in compliance with the groundwater monitoring requirements specified in this section, except as provided for in subdivision 1 c of this subsection. Owners or operators of landfills that were permitted prior to December 21, 1988, but were closed in accordance with the requirements of their permit or existing regulation prior to December 21, 1988, are not required to be in compliance with the groundwater monitoring requirements specified in this section, unless conditions are recognized that classify the landfill as an Open Dump as defined under 9VAC20-81-45.

b. New landfills. Owners or operators of new facilities shall be in compliance with the groundwater monitoring requirements specified in this section before waste can be placed in the landfill except as provided for in subdivision 1 c of this subsection.

c. No migration potential exemption. Groundwater monitoring requirements under this section may be suspended by the director if the owner or operator can demonstrate that there is no potential for migration of any Table 3.1 constituents to the uppermost aquifer during the active life and the postclosure care period of the landfill. This demonstration shall be certified by a qualified groundwater scientist and shall be based upon:

(1) Site-specific field collected measurements including sampling and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

2. General requirements.

a. Purpose. Owners or operators shall install, operate, and maintain a groundwater monitoring system that is capable of determining the landfill's impact on the quality of groundwater in the uppermost aquifer at the disposal unit boundary during the active life and postclosure care period of the landfill.

b. Program requirements. The groundwater monitoring program shall meet the requirements of subdivision 3 of this subsection and comply with all other applicable requirements of this section.

c. Director authority. The groundwater monitoring and reporting requirements set forth here are minimum requirements. The director may require, by modifying the permit as allowed under 9VAC20-81-600 E, any owner or operator to install, operate, and maintain a groundwater monitoring system and conduct a monitoring program that contains requirements more stringent than this chapter imposes whenever it is determined that such requirements are necessary to protect human health and the environment.

3. Groundwater monitoring system.

a. System requirements. A groundwater monitoring system shall be installed consisting of a sufficient number of monitoring wells, at appropriate locations and depths, capable of yielding sufficient quantities of groundwater for sampling and analysis purposes from the uppermost aquifer that:

(1) Represent the quality of background groundwater that has not been affected by a release from the landfill; and

(2) Represent the quality of groundwater at the disposal unit boundary. The downgradient monitoring system shall be installed at the disposal unit boundary in a manner that ensures detection of groundwater contamination in the uppermost aquifer unless a variance has been granted by the director under 9VAC20-81-740.

(3) When physical obstacles preclude installation of groundwater monitoring wells at the disposal unit boundary, the downgradient monitoring wells may be installed at the closest practicable distance hydraulically downgradient from the boundary in locations that ensure detection of groundwater contamination in the uppermost aquifer.

b. Multiunit systems. The director may approve a groundwater monitoring system that covers multiple waste disposal units instead of requiring separate groundwater monitoring systems for each unit when the landfill has several units, provided the multiunit groundwater monitoring system meets the requirement of subdivision 3 of this subsection and can be demonstrated to be equally protective of human health and the environment as individual monitoring systems. The system for each waste disposal unit would be based on the following factors:

(1) Number, spacing, and orientation of the waste disposal units;

(2) Hydrogeologic setting;

(3) Site history;

(4) Engineering design of the waste disposal units; and

(5) Type of waste accepted at the waste disposal units.

c. Well construction. All monitoring wells shall be of a size adequate for sampling and shall be cased and grouted in a manner that maintains the integrity of the monitoring well bore hole. This casing shall be screened or perforated, and packed with gravel or sand where necessary, to enable sample collection at depths where appropriate aquifer flow zones exist. The annular space above the sampling depth shall be sealed with a suitable material to prevent contamination of samples and the groundwater.

d. Boring logs. A log shall be made of each newly installed monitoring well describing the soils or rock encountered, and the hydraulic conductivity of the geologic units (formations) encountered. A copy of the final log(s) with appropriate maps, including at a minimum a site plan showing the location of all monitoring wells, the total depth of monitoring well, the location of the screened interval, the top and bottom of sand or gravel pack, and the top and bottom of the seal shall be sent to the department with the certification required under subdivision 3 g of this subsection.

e. Well maintenance. The monitoring wells, piezometers, and other groundwater measurement, sampling, and analytical devices shall be operated and maintained in a manner that allows them to perform to design specifications throughout the duration of the groundwater monitoring program. Nonfunctioning monitoring wells must be replaced or repaired upon recognition of damage or nonperformance. Well repair or replacement shall be coordinated with the department prior to initiating the action.

f. Network specifics. The network shall include at least one upgradient monitoring well and at least three downgradient monitoring wells. The number, spacing, and depths of monitoring wells included in a landfill's network shall be determined based on:

(1) Site-specific technical information that shall include thorough characterization by the owner or operator of:

(a) The thickness of any unsaturated geologic units or fill materials that may overlay the uppermost aquifer;

(b) The thickness and description of materials comprising the uppermost aquifer;

(c) Materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to, thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities; and

(d) the calculated groundwater flow rate and direction within the uppermost aquifer including any seasonal and temporal fluctuations in groundwater flow.

(2) The lateral spacing between downgradient monitoring wells based on site-specific information supplied under subdivision 3 f (1) of this subsection.

g. Monitoring well certification. The groundwater monitoring well(s) shall, within 30 days of well(s) installation, be certified by a qualified groundwater scientist noting that all wells have been installed in accordance with the documentation submitted under subdivision 3 d of this subsection. Within 14 days of completing this certification, the owner or operator shall transmit the certification to the department.

4. The groundwater sampling and analysis requirements for the groundwater monitoring system are as follows:

a. Quality assurance and control. The groundwater monitoring program shall include consistent field sampling and laboratory analysis procedures that are designed to ensure monitoring results that provide an accurate representation of the groundwater quality at the background and downgradient wells. At a minimum the program shall include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

b. Analytical methods. The groundwater monitoring program shall include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure solid waste constituents in groundwater samples. Groundwater samples obtained pursuant to 9VAC20-81-250 B or C shall not be filtered prior to laboratory analysis. The sampling, analysis and quality control/quality assurance methods set forth in EPA document SW-846, as amended, shall be used. The department may require re-sampling if it believes the samples were not properly sampled or analyzed.

c. Groundwater rate and flow. Groundwater elevations at each monitoring well shall be determined immediately prior to purging each time a sample is obtained. The owner or operator shall determine the rate and direction of groundwater flow each time groundwater is sampled pursuant to subsection B or C of this section or 9VAC20-81-260. Groundwater elevations in wells that monitor the same waste disposal unit or units shall be measured within a period of time short enough to avoid temporal variations, which could preclude accurate determination of groundwater flow rate and direction.

d. Background data. The owner or operator shall establish background groundwater quality in a hydraulically upgradient or background well, or wells, for each of the monitoring parameters or constituents required in the particular groundwater monitoring program that applies to the landfill. Background groundwater quality may be established at wells that are not located hydraulically upgradient from the landfill if they meet the requirements of subdivision 4 e of this subsection.

e. Alternate well provision. A determination of background quality may be based on sampling of wells that are not upgradient from the waste disposal unit or units where:

(1) Hydrogeologic conditions do not allow the owner or operator to determine what wells are upgradient; and

(2) Sampling at these wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells.

f. Sampling and statistics. The number of samples collected to establish groundwater quality data shall be consistent with the appropriate statistical procedures determined pursuant to subdivision 4 g of this subsection.

g. Statistical methods. The owner or operator shall specify in the Groundwater Monitoring Plan the statistical method(s) listed in subsection D of this section that will be used in evaluating groundwater monitoring data for each monitoring constituent. The statistical test(s) chosen shall be applied separately for each groundwater constituent in each well after each individual sampling event required under subdivision B 2 or 3, C 2 or 3, or as required under 9VAC20-81-260 E 1.

h. Evaluation and response. After each sampling event required under subsection B or C of this section, the owner or operator shall determine whether or not there is a statistically significant increase over background values for each groundwater constituent required in the particular groundwater monitoring program by comparing the groundwater quality of each constituent at each monitoring well installed pursuant to subdivision 3 a of this subsection to the background value of that constituent. In determining whether a statistically significant increase has occurred, the owner or operator shall:

(1) Ensure the sampling result comparisons are made according to the statistical procedures and performance standards specified in subsection D of this section;

(2) Ensure that within 30 days of completion of sampling and laboratory analysis actions, the determination of whether there has been a statistically significant increase over background at each monitoring well has been completed; and

(3) If identified, the statistically significant increase shall be reported to the department within the notification timeframes identified in subsection B or C of this section and discussed in the quarterly or semi-annual report submission described under subdivision E 2 c of this section. Notifications qualified as being "preliminary," "suspect," "unverified," or otherwise not a final determination of a statistical exceedance will not be accepted.

i. Verification sampling. The owner or operator may at any time within the 30-day statistically significant increases determination period defined under subdivision

A 4 h (2) of this section, obtain verification samples if the initial review of analytical data suggests results that might not be an accurate reflection of groundwater quality at the disposal unit boundary. Undertaking verification sampling is a voluntary action on the part of the owner or operator and shall not alter the timeframes associated with determining or reporting a statistically significant increase as otherwise defined under subdivision A 4 h (2), B 2 or 3, or C 2 or 3 of this section.

j. Data validation. The owner or operator may at any time within the 30-day statistically significant increases determination period defined under subdivision A 4 h (2) of this subsection, undertake third-party data validation of the analytical data received from the laboratory. Undertaking such validation efforts is a voluntary action on the part of the owner or operator and shall not alter the timeframes associated with determining or reporting a statistically significant increase as otherwise defined under subdivision A 4 h (2), B 2 or 3, or C 2 or 3 of this section.

5. Alternate source demonstration allowance.

a. Allowance. As a result of any statistically significant increase identified while monitoring groundwater under subdivision B 2 or 3, or C 2 or 3 of this section, or at anytime within the Corrective Action process under 9VAC20-81-260, the owner or operator has the option of submitting an Alternate Source Demonstration report, certified by a qualified groundwater scientist, demonstrating:

(1) A source other than the landfill caused the statistical exceedance;

(2) The exceedance resulted from error in sampling, analysis, or evaluation; or

(3) The exceedance resulted from a natural variation in groundwater quality.

b. Timeframes. A successful demonstration must be made within 90 days of noting a statistically significant increase. The director may approve a longer timeframe for submittal and approval of the Alternate Source Demonstration with appropriate justification.

c. Evaluation and response. Based on the information submitted in accordance with subdivision 5 a of this subsection, the director will:

(1) In the case of the successful demonstration of an error in sampling, analysis, or evaluation, allow the owner or operator to continue monitoring groundwater in accordance with the monitoring program in place at the time of the statistical exceedance.

(2) In the case of a successful demonstration of an alternate source for the release or natural variability in the aquifer matrix:

(a) Require changes in the groundwater monitoring system as needed to accurately reflect the groundwater conditions and allow the owner or operator to continue monitoring groundwater in accordance with the monitoring program in place at the time of the statistical exceedance;

(b) Require any changes to the monitoring system be completed prior to the next regularly scheduled groundwater monitoring event or within 90 days (whichever is greater); and

(c) Require any changes to the monitoring system be approved via the modification process under 9VAC20-81-600 within 90 days of the approval of the alternate source demonstration.

(3) In the case of an unsuccessful Alternate Source Demonstration, require the owner or operator to initiate the actions that would otherwise be required as a result of the statistically significant increase noted under subdivision B 2 or 3, or C 2 or 3 of this section as appropriate.

6. Establishment of groundwater protection standards.

a. Requirement. Upon recognition of a statistically significant increase over background and while monitoring in the Assessment or Phase II monitoring programs defined under subdivision B 3 or C 3 of this section, the owner or operator shall propose a groundwater protection standard for all detected Table 3.1 Column B constituents. The proposed standards shall be submitted to the department by a qualified groundwater scientist and be accompanied by relevant historical groundwater sampling data to justify the proposed concentration levels.

b. Establishment process. The groundwater protection standards shall be established in the following manner:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under § 1412 of the Safe Drinking Water Act (40 CFR Part 141), the MCL for that constituent shall be automatically established as the groundwater protection standard upon submission of the proposed standards.

(2) If the owner or operator determines that a site-specific background concentration is greater than the MCL associated with that constituent under subdivision 6 b (1) of this subsection, the background value may be substituted for use as the groundwater protection standard in lieu of the MCL for that constituent upon receiving written department approval.

(3) For constituents for which no MCL has been promulgated, site-specific background concentration value(s) may be used upon receiving written department approval.

(4) For constituents for which no MCL has been promulgated, a risk-based alternate concentration levels may be used if approved by the director as long as:

(a) The owner or operator submits a request to the department asking for approval to use risk-based alternate concentration levels for a specific list of constituents and identifies that these constituents lack an MCL. In the request the owner or operator shall specify whether site-specific, independently calculated, risk-based alternate concentration levels will be applied, or if the facility will accept the default department-provided limits.

(b) The alternate concentration levels that may be provided as default values by the department and those independently calculated by the owner or operator are demonstrated to meet the following criteria or factors before they can be used as groundwater protection standards:

(i) Groundwater quality - The potential for adverse quality effects considering the physical and chemical characteristics of the waste in the landfill, its potential for migration in the aquifer; the hydrogeological characteristics of the facility and surrounding land; the rate and direction of groundwater flow; the proximity and withdrawal rates of groundwater users; the current and future uses of groundwater in the area; the existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality.

(ii) Human exposure - Potential for health risks caused by exposure to waste constituents released from the landfill using federal guidelines for assessing the health risks of environmental pollutants; scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR Part 792); or equivalent standards. For carcinogens, the alternate concentration levels must be set based on a lifetime cancer risk level due to continuous lifetime exposure within the $1x10^{-4}$ to $1x10^{-6}$ range. For systemic toxicants, alternate concentration levels must be demonstrated to be levels to which the human population (including sensitive subgroups) could be exposed to on a daily basis without the likelihood of appreciable risk of deleterious effects during a lifetime.

(iii) Surface water - The potential adverse effect on hydraulically connected surface water quality based on the volume, physical and chemical characteristics of the waste in the landfill; the hydrogeological characteristics of the facility and surrounding land; the rate and direction of groundwater flow; the patterns of rainfall in the region; the proximity of the landfill to surface waters; the current and future uses of surface waters in the area and any water quality standards established for those surface waters; the existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality.

(iv) Other adverse effects - Potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; the persistence and permanence of the potential adverse effects; and the potential for health risks caused by human exposure to waste constituents using factors shown in subdivision b (4) (b) (ii) of this subsection.

(5) In making any determination regarding the use of alternate concentration levels under this section, the director will:

(a) Consider any identification of underground sources of drinking water as identified by EPA under 40 CFR 144.7,

(b) Consider additional or modified monitoring requirements or control measures,

(c) Include a schedule for the periodic review of the alternate concentration levels, or

(d) Approve the alternate concentration levels as proposed or issue modified alternate concentration levels.

c. Implementation. Groundwater protection standards shall be considered established for the facility upon completion of the actions described under either subdivision A 6 b (1), (2), (3) or if necessary (4) and shall be placed in the facility Operating Record and shall be used during subsequent comparisons of groundwater sampling data consistent with the requirements of subdivision B 3 f or C 3 e of this section.

d. MCL and background revisions. After establishment of groundwater protection standards under subdivision B 6 b, if the standards are modified as a result of revisions to any MCL or department-approved background, the facility shall update its listing of groundwater protection standards and shall place the new list in the Operating Record and shall use the new values during subsequent comparisons of sampling data consistent with the requirements of subdivision B 3 f or C 3 e of this section.

e. Alternate concentration levels revisions. After establishment of groundwater protection standards under subdivision B 6 b of this section, if the department-approved alternate concentration levels change based on information released by EPA, to the extent practical, the department will issue revisions to the alternate concentration levels for facility use no more often than an annual basis. The facility shall use the alternate

concentration levels listing in effect at the time the sampling event takes place when comparing the results against the groundwater protection standards under subdivision B 3 f or C 3 e of this section.

B. Monitoring for sanitary landfills.

1. Applicability.

a. Existing facilities. Except for those sanitary landfills identified in subdivision C 1 of this section, existing sanitary landfill facilities and closed facilities that have accepted waste on or after October 9, 1993, and in the case of 'small' landfills on or after April 9, 1994, shall be in compliance with the detection monitoring requirements specified in subdivision 2 of this subsection unless existing sampling data requires a move to assessment monitoring described under subdivision 3 of this subsection.

b. New facilities. Facilities placed in operation to receive waste after October 9, 1993, shall be in compliance with the detection monitoring requirements specified in subdivision 2 of this section before waste can be placed in the landfill unless existing sampling data requires a move to assessment monitoring described under subdivision 3 of this subsection.

c. Closed facilities. Unless an extension to the deadline above has been granted by the director, closed facilities that have ceased to accept any waste on or before October 9, 1993, and in the case of a "small" landfill, before April 9, 1994, may comply with the "State Monitoring Program" monitoring requirements specified in subdivision C 2 or 3 of this section.

d. Other facilities. Owners or operators of disposal facilities not subject to the federal groundwater monitoring requirements prescribed under 40 CFR Parts 257 and 258 must perform the groundwater monitoring described in subdivision C 2 or 3 of this section.

e. Proximity to wetlands. Owners or operators of sanitary landfills that accepted waste after June 30, 1999, must:

(1) Perform quarterly groundwater monitoring unless the director determines that less frequent monitoring is necessary consistent with the requirements of the special provisions regarding wetlands in § 10.1-1408.5 of the Code of Virginia.

(2) The quarterly monitoring frequency shall remain in effect until the department is notified waste is no longer being accepted at the sanitary landfill.

(3) This requirement will not limit the authority of the Waste Management Board or the director to require more frequent groundwater monitoring if required to protect human health and the environment.

(4) For purposes of this subdivision "proximity to wetlands" shall be defined as landfills that were constructed on a wetland, have a potential hydrologic connection to such a wetland in the event of an escape of liquids from the facility, or are within a mile of such a wetland.

2. Detection monitoring program.

a. Sampling requirements. All sanitary landfills shall implement detection monitoring except as otherwise provided in subdivision 1 of this subsection. The monitoring frequency for all constituents listed in Table 3.1 Column A shall be as follows:

(1) Initial sampling period.

(a) For facilities that monitor groundwater on a semi-annual basis, a minimum of four independent samples from each well (background and downgradient) shall be collected and analyzed for the Table 3.1 Column A constituents during the first semi-annual sampling period. A semi-annual period is defined under 9VAC20-81-10.

(b) For facilities that monitor groundwater on a quarterly basis as a result of subdivision 1 e of this subsection, a minimum of four samples from each well (background and downgradient) shall be collected and analyzed for the Table 3.1 Column A constituents. The samples shall be collected within the first quarterly period, using a schedule that ensures, to the greatest extent possible, an accurate calculation of background concentrations.

(2) Subsequent sampling events. At least one sample from each well (background and downgradient) shall be collected and analyzed during subsequent semi-annual or quarterly events during the active life and postclosure period. Data from subsequent background sampling events may be added to the previously calculated background data so that the facility maintains the most accurate representation of background groundwater quality with which to carry out statistical analysis required under subdivision A 4 h of this section.

(3) Alternate sampling events. The director may specify an appropriate alternate frequency for repeated sampling and analysis during the active life (including closure) and the postclosure care period. The alternate frequency during the active life (including closure) and the postclosure period shall be no less than annual. The alternate frequency shall be based on consideration of the following factors:

(a) Lithology of the aquifer and unsaturated zone;

(b) Hydraulic conductivity of the aquifer and unsaturated zone;

(c) Groundwater flow rates;

(d) Minimum distance between upgradient edge of the disposal unit boundary and downgradient monitoring well screen (minimum distance of travel); and

(e) Resource value of the aquifer.

b. Evaluation and response. If the owner or operator determines under subdivision A 4 h of this section, that there is:

(1) A statistically significant increase over background as determined by a method meeting the requirements of subsection D of this section, for one or more of the constituents listed in Table 3.1 Column A at any of the monitoring wells at the disposal unit boundary during any detection monitoring sampling event, the owner or operator shall:

(a) Within 14 days of this finding, notify the department of this fact, indicating which constituents have shown statistically significant increases over background levels; and

(b) Within 90 days, (i) establish an assessment monitoring program meeting the requirements of subdivision 3 of this subsection, or (ii) submit an Alternate Source Demonstration as specified in subdivision A 5 of this section. If, after 90 days, a successful demonstration has not been made, the owner or operator shall initiate an assessment monitoring program as otherwise required in subdivision 3 of this subsection. The 90-day Alternate Source Demonstration period may be extended by the director for good cause.

(2) No statistically significant increase over background as determined by a method meeting the requirements of subsection D of this section, for any of the constituents listed in Table 3.1 Column A at any of the monitoring wells at the disposal unit boundary during any detection monitoring sampling event; the owner or operator may remain in detection monitoring and include a discussion of the sampling results and statistical analysis in the semi-annual or quarterly report required under subdivision E 2 c of this section.

3. Assessment monitoring program. The owner or operator shall implement the assessment monitoring program whenever a statistically significant increase over background has been detected during monitoring conducted under the detection monitoring program.

a. Sampling requirements. Within 90 days of recognizing a statistically significant increase over background for one or more of the constituents listed in Table 3.1 Column A, the owner or operator shall, unless in receipt of an approval to an Alternate Source Demonstration under subdivision A 5 of this section or a director-approved extension, conduct the initial assessment monitoring sampling event for the constituents found in Table 3.1 Column B. A minimum of one sample from each well installed under subdivision A 3 a of this section shall be collected and analyzed during the initial and all subsequent annual Table 3.1 Column B sampling events.

b. Director provisions:

(1) The owner or operator may request that the director approve an appropriate subset of monitoring wells that may remain in detection monitoring defined under subdivision 2 of this subsection, based on the results of the initial, or subsequent annual Table 3.1 Column B sampling events. Monitoring wells may be considered for the subset if:

(a) They show no detections of Table 3.1 Column B constituents other than those already previously detected in detection monitoring defined under subdivision 2 of this subsection; and

(b) They display no statistically significant increases over background for any constituents on the Table 3.1 Column A list. If an increase is subsequently recognized in a well approved for the subset, the well shall no longer be considered part of the detection monitoring subset.

(2) The owner or operator may request the director delete any of the Table 3.1 Column B monitoring constituents from the assessment monitoring program if the owner or operator demonstrates that the deleted constituents are not reasonably expected to be in or derived from the waste.

(3) The director may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of Table 3.1 Column B constituents required by subdivision 3 a of this subsection during the active life and postclosure care period based on the consideration of the following factors:

(a) Lithology of the aquifer and unsaturated zone;

(b) Hydraulic conductivity of the aquifer and unsaturated zone;

(c) Groundwater flow rates;

(d) Minimum distance between upgradient edge of the disposal unit boundary and downgradient monitoring well screen (minimum distance of travel);

(e) Resource value of the aquifer; and

(f) Nature (fate and transport) of any constituents detected in response to subdivision 3 f of this subsection.

c. Development of background. After obtaining the results from the initial or subsequent annual sampling events required in subdivision 3 a of this subsection, the owner or operator shall:

(1) Within 14 days, notify the department identifying the Table 3.1 Column B constituents that have been detected;

(2) Within 90 days, and on at least a semi-annual basis thereafter, resample all wells installed under subdivision A 3 a of this section, conduct analyses for all constituents in Table 3.1 Column A as well as those constituents in Column B that are detected in response to subdivision 3 a of this subsection and subsequent Table 3.1 Column B sampling events as may be required of this section, and report this data in the semi-annual or quarterly report defined under subdivision E 2 c of this section;

(3) Within 180 days of the initial sampling event, establish background concentrations for any Table 3.1 Column B constituents detected pursuant to subdivision B 3 a of this subsection. A minimum of four independent samples from each well (background and downgradient) shall be collected and analyzed to establish background for the detected constituents.

d. Establishment of groundwater protection standards. Within 30 days of establishing background under subdivision 3 c (3) of this subsection, submit proposed groundwater protection standards for all constituents detected under Assessment monitoring. The groundwater protection standards shall be approved by the director in accordance with the provisions of subdivision A 6 of this section.

e. Groundwater monitoring plan. No later than 60 days after approval of the groundwater protection standards in accordance with subdivision A 6 of this section, the owner or operator shall submit an updated Groundwater Monitoring Plan that details the site monitoring well network and sampling and analysis procedures undertaken during groundwater monitoring events. The owner or operator shall additionally:

(1) No later than 30 days after the submission of the Groundwater Monitoring Plan, request a permit modification to incorporate the plan and related groundwater monitoring modules into the landfill's permit in accordance with 9VAC20-81-600. The department may waive the requirement for a permit modification if the Groundwater Monitoring Plan included in the landfill's permit reflects current site conditions in accordance with the regulations.

(2) If the 30-day timeframe specified in subdivision 3 e (1) of this subsection is exceeded, the director will modify the permit in accordance with 9VAC20-81-600 E.

f. Evaluation and response.

(1) If the concentrations of all Table 3.1 Column B constituents are shown to be at or below background values, using the statistical procedures in subsection D of this section, for two consecutive Table 3.1 Column B sampling events, the owner or operator shall notify the director of this finding in the semi-annual or quarterly monitoring report and may return to detection monitoring defined under subdivision 2 of this subsection.

(2) If the concentrations of any Table 3.1 Column B constituents are found to be above background values, but below the groundwater protection standards established under subdivision A 6 of this section using the statistical procedures in subsection D of this section, the owner or operator shall continue in assessment monitoring in accordance with this section and present the findings to the department in the semi-annual or quarterly report.

(3) If one or more Table 3.1 Column B constituents are detected at statistically significant levels above the groundwater protection standard established under subdivision A 6 of this section using the statistical procedures in subsection D of this section, the owner or operator shall:

(a) Within 14 days of this finding, notify the department identifying the Table 3.1 Column B constituents that have exceeded the groundwater protection standard. The notification will include a statement that within 90 days the owner or operator will either:

(i) Undertake characterization and assessment actions required under 9VAC20-81-260 C 1; or

(ii) Submit an Alternate Source Demonstration as specified in subdivision A 5 of this section. If a successful demonstration is made within 90 days, the owner or operator may continue monitoring in accordance with the assessment monitoring program pursuant to subdivision 3 of this subsection. If the 90-day period passes without demonstration approval, the owner or operator shall comply with the actions under 9VAC20-81-260 C within the timeframes specified unless the director has granted an extension to those timeframes.

(b) Describe the results in the semi-annual or quarterly report.

C. Monitoring for CDD, industrial, and State Monitoring Program sanitary landfills.

1. Applicability.

a. Sanitary landfills. Owners or operators of sanitary disposal facilities that have ceased to accept solid waste prior to the federally imposed deadline of October 9, 1993, or in the case of a "small landfill" before April 9, 1994, are eligible, with the director's approval, to conduct the state groundwater monitoring program described in this section in lieu of the groundwater monitoring program required under subdivision B 2 or 3 of this section.

b. CDD and industrial landfills. Owners or operators of CDD and industrial landfills not subject to the federal groundwater monitoring requirements prescribed under 40 CFR Parts 257 and 258 shall perform the groundwater monitoring described in this section.

c. Other landfills. All other landfills excluding sanitary landfills, including those that accepted hazardous waste from ~~conditionally exempt~~ very small quantity generators after July 1, 1998, shall perform the groundwater monitoring described in this section.

2. First determination monitoring program.

a. Sampling requirements. A first determination monitoring program shall consist of a background-establishing period followed by semi-annual sampling and analysis for the constituents shown in Table 3.1 Column A at all wells installed under subdivision A 3 a of this section. Within 14 days of each event during first determination monitoring, notify the department identifying the Table 3.1 Column A constituents that have been detected.

b. Development of background. Within 360 days of the initial first determination sampling event:

(1) Establish background concentrations for any constituents detected pursuant to subdivision 2 a of this subsection.

(a) A minimum of four independent samples from each well (background and downgradient) shall be collected and analyzed to establish background concentrations for the detected constituents using the procedures in subsection D of this section.

(b) In those cases where new wells are installed downgradient of waste disposal units that already have received waste, but these wells have not yet undergone their initial sampling event, collection of four independent samples for background development will not be required.

(2) Within 30 days of completing the background calculations required under subdivision 2 b (1) (a) of this subsection, submit a first determination report, signed by a qualified groundwater scientist, to the department which must include a summary of the background concentration data developed during the background sampling efforts as well as the statistical calculations for each constituent detected in the groundwater during the background sampling events.

c. Semi-annual sampling and analysis. Within 90 days of the last sampling event during the background-establishing period and at least semi-annually thereafter, sample each monitoring well in the compliance network for analysis of the constituents in Table 3.1 Column A.

d. Evaluation and response. Upon determination of site background under subdivision 2 b (1) (a) of this subsection, the results of all subsequent first determination monitoring events shall be assessed as follows:

(1) If no Table 3.1 Column A constituents are found to have entered the groundwater at statistically significant levels over background, the owner or operator shall:

(a) Remain in first determination monitoring; and

(b) May request the director delete any Table 3.1 Column A constituents from the semi-annual sampling list if the owner or operator demonstrates that the proposed deleted constituents are not reasonably expected to be in or derived from the waste.

(2) If the owner or operator recognizes a statistically significant increase over background for any Table 3.1 Column A constituent, within 14 days of this finding, the owner or operator shall notify the department identifying the Table 3.1 Column A constituents that have exceeded background levels. The notification will include a statement that within 90 days the owner or operator shall:

(a) Initiate a Phase II sampling program; or

(b) Submit an Alternate Source Demonstration under subdivision A 5 of this section.

(3) If a successful demonstration is made and approved within the timeframes established under subdivision A 5 of this section, the owner or operator may remain in First Determination monitoring.

(4) If a successful demonstration is not made and approved within the timeframes established under subdivision A 5 of this section, the owner or operator shall initiate Phase II monitoring in accordance with the timeframes in subdivision C 3 of this section. The director may approve a longer timeframe with appropriate justification.

3. Phase II monitoring.

a. Sampling requirements. The owner or operator shall:

(1) Within 90 days of noting the exceedance over background determined under subdivision C 2 d of this section, sample the groundwater in all monitoring wells installed under subdivision A 3 a of this section for all Table 3.1 Column B constituents;

(2) After completing the initial Phase II sampling event, continue to sample and analyze groundwater on a semi-annual basis within the Phase II monitoring program;

b. Background development. If no additional Table 3.1 Column B constituents are detected other than those previously detected under Column A, which already have established their background levels, the owner or

operator shall follow the requirements under subdivision 3 c of this subsection regarding groundwater protection standard establishment while continuing to sample for the Table 3.1 Column A list on a semi-annual basis. If one or more additional Table 3.1 Column B constituents are detected during the initial Phase II sampling event:

(1) Within 360 days, establish a background value for each additional detected Table 3.1 Column B constituent.

(2) Submit a Phase II Background report within 30 days of completing the background calculations including a summary of the background concentration data for each constituent detected in the groundwater during the Table 3.1 Column B background sampling events.

(3) If any detected Table 3.1 Column B constituent is subsequently not detected for a period of two years, the owner or operator may petition the director to delete the constituent from the list of detected Table 3.1 Column B constituents that must be sampled semi-annually.

c. Establishment of groundwater protection standards. No later than:

(1) Thirty days after submitting the Phase II Background report required under the provisions of subdivision 3 b (2) of this subsection, or within 30 days of obtaining the results from the initial Table 3.1 Column B sampling event indicating no further sampling for background determination is necessary, the owner or operator shall propose a groundwater protection standard for all detected Table 3.1 constituents.

(2) The groundwater protection standard proposed shall be established in a manner consistent with the provisions in subdivision A 6 of this section.

d. Groundwater monitoring plan. No later than 60 days after establishment of groundwater protection standards in accordance with subdivision A 6 of this section, the owner or operator shall submit an updated Groundwater Monitoring Plan that details the site monitoring well network and sampling and analysis procedures undertaken during groundwater monitoring events. The department may waive the requirement for an updated plan if the Groundwater Monitoring Plan included in the landfill's permit reflects current site conditions in accordance with the regulations.

(1) No later than 30 days after the submission of the Groundwater Monitoring Plan, the owner or operator shall request a permit modification to incorporate the updated plan and related groundwater monitoring modules into the landfill's permit in accordance with 9VAC20-81-600.

(2) If the 30-day timeframe specified in subdivision 3 d (1) of this subsection is exceeded, the director will modify the permit in accordance with 9VAC20-81-600 E.

e. Evaluation and response. After each subsequent Phase II monitoring event following establishment of groundwater protection standards, the concentration of Table 3.1 Column B constituents found in the groundwater at each monitoring well installed pursuant to subdivision A 3 a of this section will be evaluated against the groundwater protection standards. The evaluation will be presented to the department in a semi-annual Phase II report. The evaluation will be as follows:

(1) If all Table 3.1 constituents are shown to be at or below background values, using the statistical procedures in subsection D of this section, for two consecutive Table 3.1 Column B sampling events, the owner or operator shall notify the director of this finding in the semi-annual report and may return to first determination monitoring;

(2) If any Table 3.1 Column B constituents are found to be above background values, but are below the established groundwater protection standard using the statistical procedures in subsection D of this section, the owner or operator shall continue semi-annual Phase II monitoring and present the findings in a semi-annual report;

(3) If one or more Table 3.1 Column B constituents are above the established groundwater protection standard using the statistical procedures in subsection D of this section, the owner or operator shall:

(a) Notify the department within 14 days of this finding. The notification will include a statement that within 90 days the owner or operator will either: (i) undertake the characterization and assessment actions required under 9VAC20-81-260 C 1; or (ii) submit an alternate source demonstration as specified in subdivision A 5 of this section. If a successful demonstration is made within 90 days, the owner or operator may continue monitoring in accordance with Phase II monitoring program. If the 90-day period is exceeded, the owner or operator shall comply with the timeframes of 9VAC20-81-260 C unless the director has granted an extension to those timeframes; and

(b) Present the findings in the semi-annual report.

D. Statistical methods and constituent lists.

1. Acceptable test methods. The following statistical test methods may be used to evaluate groundwater monitoring data:

a. A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the

contrasts between each compliance well's mean and the background mean levels for each constituent.

b. An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

c. A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

d. A control chart approach that gives control limits for each constituent.

e. Another statistical test method that meets the performance standards specified below. Based on the justification submitted to the department, the director may approve the use of an alternative test. The justification must demonstrate that the alternative method meets the performance standards in subdivision 2 of this subsection.

2. Performance standards. Any statistical method chosen by the owner or operator shall comply with the following performance standards, as appropriate:

a. The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of monitoring parameters or constituents. If the distribution is shown by the owner or operator to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one statistical method may be needed.

b. If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment-wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained.

c. If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

d. If a tolerance interval or a predictional interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

e. The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any estimated quantitation limit (EQL) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the landfill.

f. If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

E. Recordkeeping and reporting.

1. Records pertaining to groundwater monitoring activities shall be retained at a specified location by the owner or operator throughout the active life and postclosure care period of the landfill, and shall include at a minimum:

a. All historical groundwater surface elevation data obtained from wells installed pursuant to subdivision A 3 a of this section;

b. All historical laboratory analytical results for groundwater sampling events required under the groundwater monitoring programs as described in this section;

c. All records of well installation, repair, or abandonment actions;

d. All department correspondence to the landfill; and

e. All approved variances, well subsets, wetlands, or other such director/department approvals.

2. Reporting requirements.

a. Annual report.

(1) An Annual Groundwater Monitoring Report shall be submitted by the owner or operator to the department no later than 120 days from the completion of sampling and analysis conducted under subdivision A 4 h of this section for the second semi-annual event or fourth quarterly event during each calendar year and shall by accompanied by:

(a) A signature page; and

(b) A completed QA/QC DEQ Form ARSC-01.

(2) The technical content of the annual report shall at a minimum, contain the following topical content:

(a) The landfill's name, type, permit number, current owner or operator, and location keyed to a USGS topographic map;

(b) Summary of the design type (i.e., lined versus unlined), operational history (i.e., trench fill versus area fill), and size (acres) of the landfill including key dates such as beginning and termination of waste disposal actions and dates different groundwater monitoring phases were entered;

(c) Description of the surrounding land use noting whether any adjoining land owners utilize private wells as a potable water source;

(d) A discussion of the topographic, geologic, and hydrologic setting of the landfill including a discussion on the nature of the uppermost aquifer (i.e., confined versus unconfined) and proximity to surface waters;

(e) A discussion of the monitoring wells network noting any modifications that were made to the network during the year or any nonperformance issues and a statement noting that the monitoring well network meets (or did not meet) the requirements of subdivision A 3 of this section;

(f) A listing of the groundwater sampling events undertaken during the previous calendar year;

(g) A historical table listing the detected constituents, and their concentrations identified in each well during the sampling period; and

(h) Evaluations of and appropriate responses to the groundwater elevation data; groundwater flow rate as calculated using the prior years elevation data; groundwater flow direction (as illustrated on a potentiometric surface map); and sampling and analytical data obtained during the past calendar year.

b. Semi-annual or quarterly report.

(1) After each sampling event has been completed for the 1st semi-annual or first, second and third quarterly groundwater sampling events, a semi-annual or quarterly monitoring report shall be submitted under separate cover by the owner or operator to the department no later than 120 days from the completion of sampling and analysis conducted under subdivision A 4 h of this section, unless as allowed under a director-approved extension. The report shall at a minimum contain the following items:

(a) Signature page signed by a professional geologist or qualified groundwater scientist;

(b) Landfill name and permit number;

(c) Statement noting whether or not all monitoring points within the permitted network installed to meet the requirements of subdivision A 3 a of this section were sampled as required under subdivision B 2 or 3 or C 2 or 3 during the event;

(d) Calculated rate of groundwater flow during the sampling period as required under subdivision A 4 c of this section;

(e) The groundwater flow direction as determined during the sampling period as required under subdivision A 4 c of this section presented as either plain text or graphically as a potentiometric surface map;

(f) Statement noting whether or not there were statistically significant increases over background or groundwater protection standards during the sampling period, the supporting statistical calculations, and reference to the date the director was notified of the increase pursuant to timeframes in subdivision B 2 or 3 or C 2 or 3, if applicable;

(g) Copy of the full Laboratory Analytical Report including dated signature page (laboratory manager or representative) to demonstrate compliance with the timeframes of subdivision A 4 h of this section. The department will accept the lab report in CD-ROM format.

(2) In order to reduce the reporting burden on the owner or operator and potential redundancy within the operating record, a discussion of the second semi-annual or fourth quarterly sampling event results may be presented in the Annual Report submission.

c. Other submissions. Statistically significant increase notifications, well certifications, the first determination report, alternate source demonstration, nature and extent study, assessment of corrective measures, presumptive remedy proposal, corrective action plan or monitoring plan, or other such report or notification types as may be required under 9VAC20-81-250 or 9VAC20-81-260, shall be submitted in a manner which achieves the timeframe requirements as listed in 9VAC20-81-250 or 9VAC20-81-260.

TABLE 3.1
GroundWater Solid Waste Constituent Monitoring List

Column A – Common Name[1, 2]	Column B – Common Name[1, 2]	CAS RN[3]
	Acenaphthene	83-32-9
	Acenaphthylene	208-96-8
Acetone	Acetone	67-64-1
	Acetonitrile; Methyl cyanide	75-05-8
	Acetophenone	98-86-2
	2-Acetylaminofluorene; 2-AAF	53-96-3
	Acrolein	107-02-8
Acrylonitrile	Acrylonitrile	107-13-1
	Aldrin	309-00-2
	Allyl chloride	107-05-1
	4-Aminobiphenyl	92-67-1
	Anthracene	120-12-7
Antimony	Antimony	(Total)
Arsenic	Arsenic	(Total)
Barium	Barium	(Total)
Benzene	Benzene	71-43-2
	Benzo[a]anthracene; Benzanthracene	56-55-3
	Benzo[b]fluoranthene	205-99-2
	Benzo[k]fluoranthene	207-08-9
	Benzo[ghi]perylene	191-24-2
	Benzo[a]pyrene	50-32-8
	Benzyl alcohol	100-51-6
Beryllium	Beryllium	(Total)
	alpha-BHC	319-84-6
	beta-BHC	319-85-7
	delta-BHC	319-86-8
	gamma-BHC; Lindane	58-89-9
	Bis(2-chloroethoxy)methane	111-91-1
	Bis(2-chloroethyl) ether; Dichloroethyl ether	111-44-4
	Bis(2-chloro-1-methylethyl) ether; 2, 2'-Dichlorodiisopropyl ether; DCIP	108-60-1, See note 4
	Bis(2-ethylhexyl)phthalate	117-81-7
Bromochloromethane;.Chlorobromomethane	Bromochloromethane;.Chlorobromomethane	74-97-5

Bromodichloromethane;.Dibromochloromethane	Bromodichloromethane;.Dibromochloromethane	75-27-4
Bromoform; Tribromomethane	Bromoform; Tribromomethane	75-25-2
	4-Bromophenyl phenyl ether	101-55-3
	Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7
Cadmium	Cadmium	(Total)
Carbon disulfide	Carbon disulfide	75-15-0
Carbon tetrachloride	Carbon tetrachloride	56-23-5
	Chlordane	Note 5
	p-Chloroaniline	106-47-8
Chlorobenzene	Chlorobenzene	108-90-7
	Chlorobenzilate	510-15-6
	p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7
Chloroethane; Ethyl chloride	Chloroethane; Ethyl chloride	75-00-3
Chloroform; Trichloromethane	Chloroform; Trichloromethane	67-66-3
	2-Chloronaphthalene	91-58-7
	2-Chlorophenol	95-57-8
	4-Chlorophenyl phenyl ether	7005-72-3
	Chloroprene	126-99-8
Chromium	Chromium	(Total)
	Chrysene	218-01-9
Cobalt	Cobalt	(Total)
Copper	Copper	(Total)
	m-Cresol; 3-methyphenol	108-39-4
	o-Cresol; 2-methyphenol	95-48-7
	p-Cresol; 4-methyphenol	106-44-5
	Cyanide	57-12-5
	2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7
	4,4'-DDD	72-54-8
	4,4'-DDE	72-55-9
	4,4'-DDT	50-29-3
	Diallate	2303-16-4
	Dibenz[a,h]anthracene	53-70-3
	Dibenzofuran	132-64-9
Dibromochloromethane; Chlorodibromomethane	Dibromochloromethane; Chlorodibromomethane	124-48-1
1,2-Dibromo-3-chloropropane; DBCP	1,2-Dibromo-3-chloropropane; DBCP	96-12-8

1,2-Dibrimoethane; Ethylene dibromide; EDB	1,2-Dibrimoethane; Ethylene dibromide; EDB	106-93-4
	Di-n-butyl phthalate	84-74-2
o-Dichlorobenzene; 1,2-Dichlorobenzene	o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
	m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1
p-Dichlorobenzene; 1,4-Dichlorobenzene	p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
	3,3'-Dichlorobenzidine	91-94-2
trans-1,4-Dichloro-2-butene	trans-1,4-Dichloro-2-butene	110-57-6
	Dichlorodifluoromethane; CFC 12;	75-71-8
1.1-Dichloroethane; Ethylidene chloride	1,1-Dichloroethane; Ethylidene chloride	75-34-3
1,2-Dichloroethane; Ethylene dichloride	1,2-Dichloroethane; Ethylene dichloride	107-06-2
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
trans-1,2-Dichloroethylene	trans-1,2-Dichloroethylene; trans-1,2-Dichroroethene	156-60-5
	2,4-Dichlorophenol	120-83-2
	2,6-Dichlorophenol	87-65-0
1,2-Dichloropropane; Propylene dichloride	1,2-Dichloropropane; Propylene dichloride	78-87-5
	1,3-Dichloropropane; Trimethylene dichloride	142-28-9
	2, 2-Dichloropropane; isopropylidene chloride	594-20-7
	1,1-Dichloropropene	563-58-6
cis-1,3-Dichloropropene	cis-1,3-Dichloropropene	10061-01-5
trans-1,3-Dichloropropene	trans-1,3-Dichloropropene	10061-02-6
	Dieldrin	60-57-1
	Diethyl phthalate	84-66-2
	O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin	297-97-2
	Dimethoate	60-51-5
	p-(Dimethylamino)azobenzene	60-11-7
	7,12-Dimethylbenz[a]anthracene	57-97-6
	3,3'-Dimethylbenzidine	119-93-7
	2,4-Dimethylphenol; m-Xylenol	105-67-9
	Dimethyl phthalate	131-11-3
	m-Dinitrobenzene	99-65-0
	4,6-Dinitro-o-cresol; 4,6-Dinitro-2-methylphenol	534-52-1
	2,4-Dinitrophenol	51-28-5

	2,4-Dinitrotoluene	121-14-2
	2,6-Dinitrotoluene	606-20-2
	Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7
	Di-n-octyl phthalate	117-84-0
	Diphenylamine	122-39-4
	Disulfoton	298-04-4
	Endosulfan I	959-96-8
	Endosulfan II	33213-65-9
	Endosulfan sulfate	1031-07-8
	Endrin	72-20-8
	Endrin aldehyde	7421-93-4
Ethylbenzene	Ethylbenzene	100-41-4
	Ethyl methacrylate	97-63-2
	Ethylmethanesulfonate	62-50-0
	Famphur	52-85-7
	Fluoranthene	206-44-0
	Fluorene	86-73-7
	Heptachlor	76-44-8
	Heptachlor epoxide	1024-57-3
	Hexachlorobenzene	118-74-1
	Hexachlorobutadiene	87-68-3
	Hexachlorocyclopentadiene	77-47-4
	Hexachloroethane	67-72-1
	Hexachloropropene	1888-71-7
2-Hexanone; Methyl butyl ketone	2-Hexanone; Methyl butyl ketone	591-78-6
	Indeno[1,2,3-cd]pyrene	193-39-5
	Isobutyl alcohol	78-83-1
	Isodrin	465-73-6
	Isophorone	78-59-1
	Isosafrole	120-58-1
	Kepone	143-50-0
Lead	Lead	(Total)
	Mercury	(Total)
	Methacrylonitrile	126-98-7
	Methapyrilene	91-80-5
	Methoxychlor	72-43-5

Methyl bromide; Bromomethane	Methyl bromide; Bromomethane	74-83-9
Methyl chloride; Chloromethane	Methyl chloride; Chloromethane	74-87-3
	3-Methylcholanthrene	56-49-5
Methyl ethyl ketone; MEK; 2-Butanone	Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
Methyl iodide; Iodomethane	Methyl iodide; Iodomethane	74-88-4
	Methyl methacrylate	80-62-6
	Methyl methanesulfonate	66-27-3
	2-Methylnaphthalene	91-57-6
	Methyl parathion; Parathion methyl methyl	298-00-0
4-Methyl-2-pentanone; Methyl isobutyl ketone	4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
Methylene bromide; Dibromomethane	Methylene bromide; Dibromomethane	74-95-3
Methylene chloride; Dichloromethane	Methylene chloride; Dichloromethane	75-09-2
	Naphthalene	91-20-3
	1,4-Naphthoquinone	130-15-4
	1- Naphthylamine	134-32-7
	2-Napthylamine	91-59-8
Nickel	Nickel	(Total)
	o-Nitroaniline; 2-Nitroaniline	88-74-4
	m-Nitroaniline; 3-Nitroaniline	99-09-2
	p-Nitroaniline; 4-Nitroaniline	100-01-6
	Nitrobenzene	98-95-3
	o-Nitrophenol; 2-Nitrophenol	88-75-5
	p-Nitrophenol; 4-Nitrophenol	100-02-7
	N-Nitrosodi-n-butylamine	924-16-3
	N-Nitrosodiethylamine	55-18-5
	N-Nitrosodimethylamine	62-75-9
	N-Nitrosodiphenylamine	86-30-6
	N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine	621-64-7
	N-Nitrosomethylethalamine	10595-95-6
	N-Nitrosopiperidine	100-75-4
	N-Nitrosopyrrolidine	930-55-2
	5-Nitro-o-toluidine	99-55-8
	Parathion	56-38-2
	Pentachlorobenzene	608-93-5

	Pentachloronitrobenzene	82-68-8
	Pentachlorophenol	87-86-5
	Phenacetin	62-44-2
	Phenanthrene	85-01-8
	Phenol	108-95-2
	p-Phenylenediamine	106-50-3
	Phorate	298-02-2
	Polychlorinated biphenyls; PCBS; Aroclors	Note 6
	Pronamide	23950-58-5
	Propionitrile; Ethyl cyanide	107-12-0
	Pyrene	129-00-0
	Safrole	94-59-7
Selenium	Selenium	(Total)
Silver	Silver	(Total)
	Silvex; 2,4,5-TP	93-72-1
Styrene	Styrene	100-42-5
	Sulfide	18496-25-8
	2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5
	1,2,4,5-Tetrachlorobenzene	95-94-3
1,1,1,2-Tetrachloroethane	1,1,1,2-Tetrachloroethane	630-20-6
1,1,2,2-Tetrachloroethane	1,1,2,2-Tetrachloroethane	79-34-5
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
	2,3,4,6-Tetrachlorophenol	58-90-2
Thallium	Thallium	(Total)
	Tin	(Total)
Toluene	Toluene	108-88-3
	o-Toluidine	95-53-4
	Toxaphene	Note 7
	1,2,4-Trichlorobenzene	120-82-1
1,1,1-Trichloroethane; Methychloroform	1,1,1-Trichloroethane; Methychloroform	71-55-6
1,1,2-Trichloroethane	1,1,2-Trichloroethane	79-00-5
Trichloroethylene; Trichloroethene ethene	Trichloroethylene; Trichloroethene ethane	79-01-6
Trichlorofluoromethane; CFC-11	Trichlorofluoromethane; CFC-11	75-69-4
	2,4,5-Trichlorophenol	95-95-4
	2,4,6-Trichlorophenol	88-06-2

1,2,3-Trichloropropane	1,2,3-Trichloropropane	96-18-4
	O,O,O-Triethyl phosphorothioate	126-68-1
	sym-Trinitrobenzene	99-35-4
Vanadium	Vanadium	(Total)
Vinyl acetate	Vinyl acetate	108-05-4
Vinyl chloride; Chloroethene	Vinyl chloride; Chloroethene	75-01-4
Xylene(total)	Xylene(total)	Note 8
Zinc	Zinc	(Total)

NOTES:

[1]Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[2]The corresponding Chemical Abstracts Service Index name as used in the 9th Collective Index, may be found in Appendix II of 40 CFR 258.

[3]Chemical Abstracts Service Registry Number. Where "Total" is entered, all species in the groundwater that contains this element are included.

[4]This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2.2'-oxybis2-chloro (CAS RN 39638-32-9).

[5]Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12739-03-6).

[6]Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Arclor 1260 (CAS RN 11096-82-5).

[7]Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.

[8]Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7).

9VAC20-130-10. Definitions.

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

"Agricultural waste" means all solid waste produced from farming operations.

"Board" means the Virginia Waste Management Board.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, solid waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

"Compost" means a stabilized organic product produced by composting in such a manner that the product can be handled, stored, and/or applied to the land.

"Composting" means the manipulation of the natural process of decomposition of organic materials to increase the rate of decomposition.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to, lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos-containing material, any liquid, compressed gases, or semi-liquids and garbage are not construction wastes.

"Debris waste" means solid waste resulting from land clearing operations. Debris wastes include, but are not limited to, stumps, wood, brush, leaves, soil, and road spoils.

"Demolition waste" means solid waste produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality or his designee. For purposes of submissions to the director as specified in the Waste Management Act, submissions may be made to the department.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.

"Facility" means solid waste management facility unless the context clearly indicates otherwise.

"Hazardous waste" means a "hazardous waste" as defined by the Virginia Hazardous Waste Management Regulation, 9VAC20-60.

"Incineration" means the controlled combustion of solid waste for disposal.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Institutional waste" means all solid waste emanating from institutions such as, but not limited to, hospitals, nursing homes, orphanages, and public or private schools. It can include regulated medical waste from health care facilities and research facilities that must be managed as a regulated medical waste.

"Integrated waste management plan" means a governmental plan that considers all elements of waste management during generation, collection, transportation, treatment, storage, disposal, and litter control and selects the appropriate methods of providing necessary control and services for effective and efficient management of all wastes. An "integrated waste management plan" must provide for source reduction, reuse and recycling within the jurisdiction and the proper funding and management of waste management programs.

"Jurisdiction" means a local governing body; city, county or town; or any independent entity, such as a federal or state agency, which join with local governing bodies to develop a waste management plan.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill (as these terms are defined in the Solid Waste Management Regulations (9VAC20-81).

"Litter" means all waste material disposable packages or containers, but not including the wastes of the primary processes of mining, logging, farming, or manufacturing.

"Market" or "markets" means interim or end destinations for the recyclable materials, including a materials recovery facility (MRF).

"Market conditions" means business and system related issues used to determine if materials can be targeted, collected, and delivered to an interim or end market in an efficient manner. Issues may include, but are not limited to: the cost of collection, storage and preparation or both; the cost of transportation; accessible volumes of materials targeted for recycling; market value of materials targeted for collection/recycling; and distance to viable markets.

"Materials recovery facility (MRF)" means, for the purpose of this regulation, a facility for the collection, processing and marketing of recyclable materials including, but not limited to: metal, paper, plastics, and glass.

"Mulch" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves and other clean wood waste that has undergone size reduction by grinding, shredding, or chipping, and is distributed to the general public for landscaping purposes or other horticultural uses, except composting as defined and regulated under the Solid Waste Management Regulations (9VAC20-81).

"Municipal solid waste" means waste that is normally composed of residential, commercial, and institutional solid waste and residues derived from the combustion of these wastes.

"Permit" means the written permission of the director to own, operate or construct a solid waste management facility.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation or any other legal entity.

"Principal recyclable materials (PRMs)" means paper, metal, plastic, glass, commingled yard waste, wood, textiles, tires, used oil, used oil filters, used antifreeze, batteries, electronics, or material as may be approved by the director. Commingled materials refers to single stream collections of recyclables where sorting is done at a materials recovery facility.

"Recycling" means the process of separating a given waste material from the waste stream and processing it so that it may be used again as a raw material for a product, which may or may not be similar to the original product. For the purpose of this chapter, recycling shall not include processes that only involve size reduction.

"Recycling residue" means the (i) nonmetallic substances, including but not limited to plastic, rubber, and insulation, which remain after a shredder has separated for purposes of recycling the ferrous and nonferrous metal from a motor

vehicle, appliance or other discarded metallic item and (ii) organic waste remaining after removal of metals, glass, plastics and paper that are to be recycled as part of a resource recovery process for municipal solid waste resulting in the production of a refuse derived fuel.

"Regional boundary" means the boundary defining an area of land that will be a unit for the purpose of developing a waste management plan, and is established in accordance with 9VAC20-130-180 through 9VAC20-130-220.

"Regulated medical waste" means solid wastes so defined by the Regulated Medical Waste Management Regulations (9VAC20-120) as promulgated by the Virginia Waste Management Board.

"Residential waste" means any waste material, including garbage, trash and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Residential wastes do not include sanitary waste in septic tanks (septage), that is regulated by other state agencies.

"Resource recovery system" means a solid waste management system that provides for collection, separation, recycling and recovery of energy or solid wastes, including disposal of nonrecoverable waste residues.

"Reuse" means the process of separating a given solid waste material from the waste stream and using it, without processing or changing its form, other than size reduction, for the same or another end use.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste, which is so located, designed, constructed and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from ~~conditionally exempt~~ very small quantity generators, construction demolition debris, and nonhazardous industrial solid waste.

"Site" means all land and structures, other appurtenances, and improvements on them used for treating, storing, and disposing of solid waste. This term includes adjacent land within the facility boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste. (Note: This term includes all sites whether they are planned and managed facilities or open dumps.)

"Sludge" means any solid, semisolid or liquid waste generated from a public, municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility.

"Solid waste" means any of those materials defined as "solid waste" in the Solid Waste Management Regulations (9VAC20-81).

"Solid waste planning unit" means each region or locality that submits a solid waste management plan.

"Solid waste management facility ("SWMF")" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Source reduction" means any action that reduces or eliminates the generation of waste at the source, usually within a process. Source reduction measures include process modifications, feedstock substitutions, improvements in feedstock purity, improvements in housekeeping and management practices, increases in the efficiency of machinery, and recycling within a process. Source reduction minimizes the material that must be managed by waste disposal or nondisposal options by creating less waste. "Source reduction" is also called "waste prevention," "waste minimization," or "waste reduction."

"Source separation" means separation of recyclable materials by the waste generator of materials that are collected for use, reuse, reclamation, or recycling.

"Tons" means 2,000 pounds.

"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration or resource recovery.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing activities and includes, but is not limited to, leaves, grass trimmings, and woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps. For more detail see the Solid Waste Management Regulations (9VAC20-81).

"Waste exchange" means any system to identify sources of wastes with potential for use reuse, recycling or reclamation and to facilitate its acquisition by persons who reuse, recycle or reclaim it, with a provision for maintaining confidentiality of trade secrets.

"White goods" means any stoves, washers, hot water heaters or other large appliances. For the purposes of this chapter, this definition also includes, but is not limited to, such Freon-containing appliances as refrigerators, freezers, air conditioners, and dehumidifiers.

"Yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed six inches in diameter.

VA.R. Doc. No. R19-5720; Filed January 15, 2019, 2:22 p.m.

STATE WATER CONTROL BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been 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 of a form with a hyperlink to access it. The form is also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC25-91. Facility and Aboveground Storage Tank (AST) Regulation.**

Contact Information: Gary E. Graham, Regulatory Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4103, or email gary.graham@deq.virginia.gov.

FORMS (9VAC25-91)

Registration for Facility and Aboveground Storage Tank (AST), DEQ Form 7540-AST (rev. 11/2015)

~~Approval Application for Facility Oil Discharge Contingency Plan (rev. 8/2007)~~

Approval Application for Facility Oil Discharge Contingency Plan (rev. 1/2019)

Renewal Application for Facility Oil Discharge Contingency Plan (rev. 8/2007)

VA.R. Doc. No. R19-5803; Filed January 14, 2019, 1:59 p.m.

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC25-740. Water Reclamation and Reuse Regulation.**

Contact Information: Gary E. Graham, Regulatory Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4103, or email gary.graham@deq.virginia.gov.

FORMS (9VAC25-740)

Application for an Emergency Authorization to Produce, Distribute or Reuse Reclaimed Water (12/2015)

Application for Reclaimed Water Hauling Operations, DEQ Form WR&R-2 (eff. 10/2018)

~~Water Reclamation and Reuse Addendum to an Application for a Virginia Pollutant Discharge Elimination System Permit or a Virginia Pollution Abatement Permit, DEQ Form WR&R-1 (rev. 11/2018)~~

Water Reclamation and Reuse Addendum to an Application for a Virginia Pollutant Discharge Elimination System Permit or a Virginia Pollution Abatement Permit, DEQ Form WR&R-1 (rev. 1/2019)

Water Reclamation and Reuse Variance Application (12/2015)

VA.R. Doc. No. R19-5804; Filed January 15, 2019, 10:38 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-210).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 6, 2019.

Effective Date: March 21, 2019.

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

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

Purpose: The purpose of this action is to allow DMAS to align drug formularies across fee-for-service and Medicaid managed care health plans so that DMAS may collect supplemental rebates for Medicaid member drug utilization through managed care organizations (MCOs). This will protect the health, safety, and welfare of citizens in that it will

allow recipients to continue their medications in the event they change from fee-for-service to managed care and will minimize potential disruptions in the recipient's drug therapy.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is being promulgated as a fast-track rulemaking action because it is expected to be noncontroversial. The 2010 Affordable Care Act expanded the collection of federal rebates for drugs administered to Medicaid recipients enrolled with Medicaid managed care plans. The department has been collecting federal rebates for this population since 2010. Effective, August 1, 2017, with the implementation of the Commonwealth Coordinated Care program, Medicaid managed health plans are contractually required to cover all "preferred" drugs on Virginia Medicaid's fee-for-service preferred drug list (PDL). DMAS will be soliciting drug rebates for select "preferred" drugs for recipients enrolled with Medicaid managed care health plans. Contractually, the health plans are required to cover these drugs, therefore no opposition is anticipated from the managed care health plans or pharmaceutical manufacturers.

Substance: This regulatory action permits DMAS to collect supplemental payments for Medicaid member utilization through MCOs.

Issues: The primary advantage to the Commonwealth and the public from this regulatory change is collection of additional supplemental drug rebates from pharmaceutical manufacturers for drugs dispensed to Medicaid recipients enrolled in a Medicaid managed care health plan.

There are no disadvantages to the Commonwealth or the public as a result of this regulatory action.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medical Assistance Services (Board) proposes to authorize the Department of Medical Assistance Services (DMAS) to collect supplemental rebates for drugs dispensed to Medicaid beneficiaries who receive care through managed care organizations.

Result of Analysis. There is insufficient information to accurately compare the magnitude of the benefits versus the costs.

Estimated Economic Impact. Drug rebates have long been collected from participating drug manufacturers to help offset the federal and state costs of most outpatient prescription drugs dispensed to Medicaid fee-for-service patients. Under the federal rebate program, a drug manufacturer is required to enter into a national rebate agreement in exchange for Medicaid coverage. The 2010 Affordable Care Act allowed collection of federal rebates for drugs dispensed to Medicaid managed care patients. In this action, the Board proposes to authorize DMAS to collect supplemental rebates in addition to the federal rebates.

Currently, in Commonwealth Coordinated Care Plus program, Medicaid managed health plans are contractually required to cover all "preferred" drugs on Virginia Medicaid's fee-for-service preferred drug list (PDL). The proposed supplemental rebates from managed care drugs will give Virginia Medicaid leverage to control drug costs above and beyond the control exercised by the federally required rebates. DMAS estimates that it would collect about $5 to $6 million in supplemental drug rebates annually.[1] [2] Thus, the main benefit of the proposed regulation is to further offset the state cost of outpatient drugs dispensed to managed care recipients.

The cost will mainly fall on the drug manufacturers as they will be asked to provide additional rebates to the Commonwealth or risk being removed from the managed care PDL. Some of this cost may arguably be offset by the benefit of being on the managed care PDL. Being on the managed care PDL in addition to the fee-for-service PDL may be seen as another opportunity for the drug manufacturers to promote their product, much like having additional shelf space in a store.

Finally, when a change must be made in a managed care recipient's prescription due to implementation of a new PDL, there may be other effects such as the quality and continuance of care, patient compliance with the new regimen, physician and patient satisfaction, and the utilization of other health care services, etc. The likely effects of such changes will largely depend on how the resulting managed care PDL will compare to the existing fee-for-service PDL managed care recipients currently have access to. For example, if all manufacturers participate, and their drugs are listed in the managed care PDL, then patients would not experience any disruption in their care or loss of access to any specific drugs. If, however, some drugs listed on the fee-for-service PDL are not listed on the managed care PDL then there may be some unintended disruptions or loss of access.

Businesses and Entities Affected. There are 35-40 pharmaceutical manufacturers and approximately 935,000 members enrolled in managed care.

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

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

Effects on the Use and Value of Private Property. The amount of supplemental rebates that may be collected from an affected manufacturer is unlikely to be significant relative to its asset value. Thus, no significant impact on the use and value of private property is expected.

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

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. None of the affected pharmaceutical manufacturers is a small business. Thus, the proposed regulation does not impose any costs or other effects on small businesses.

Alternative Method that Minimizes Adverse Impact. There is no adverse impact on small businesses.

Adverse Impacts:

Businesses. The proposed regulation allows DMAS to collect an estimated $5-6 million in additional rebates from pharmaceutical manufacturers.

Localities. The proposed regulation does not adversely affect localities.

Other Entities. The proposed regulation does not adversely affect other entities.

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[1]This estimate is very preliminary. DMAS will not have sufficient data to determine the annual collection of supplemental rebates for drugs dispensed to Medicaid members in managed care until October 2018.

[2]Currently, the federal fee-for-service rebate collections amount to approximately $20 million per quarter and the supplemental rebate collections amount to $700,000 per quarter. The federal managed care rebate collections have been approximately $80 million per quarter.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

The amendment clarifies that, because the Department of Medical Assistance Services (DMAS) has the authority to seek supplemental rebate payments from pharmaceutical manufacturers under the State Plan for Medical Assistance, DMAS may collect rebates for Medicaid member use through managed care organizations in the same manner rebates are collected for Medicaid member use through fee-for-service.

12VAC30-50-210. Prescribed drugs, dentures, and prosthetic devices~~,~~ and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

A. Prescribed drugs.

1. Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA 90 § 4401), shall not be covered.

2. Nonlegend drugs shall be covered by Medicaid in the following situations:

a. Insulin, syringes, and needles for diabetic patients;

b. Diabetic test strips for Medicaid recipients ~~under~~ younger than 21 years of age;

c. Family planning supplies;

d. Designated categories of nonlegend drugs for Medicaid recipients in nursing homes; ~~and~~

e. Designated drugs prescribed by a licensed prescriber to be used as less expensive therapeutic alternatives to covered legend drugs; and

f. U.S. Environmental Protection Agency-registered insect repellents with one of the following active ingredients: DEET, picaridin, IR3535, oil of lemon eucalyptus, or p-Menthane-3,8-diol for all Medicaid members of reproductive age (ages 14 through 44 years) and all pregnant women, when prescribed by an authorized health professional.

3. Legend drugs are covered for a maximum of a 34-day supply per prescription per patient with the exception of the drugs or classes of drugs identified in 12VAC30-50-520. FDA-approved drug therapies and agents for weight loss, when preauthorized, will be covered for recipients who meet the strict disability standards for obesity established by the Social Security Administration in effect on April 7, 1999, and whose condition is certified as life threatening, consistent with Department of Medical Assistance Services' medical necessity requirements, by the treating physician. For prescription orders for which quantity exceeds a 34-day supply, refills may be dispensed in sufficient quantity to fulfill the prescription order within the limits of federal and state laws and regulations.

4. Prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR 447.332 shall be filled with generic drug products unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written or unless the drug class is subject to the ~~Preferred Drug List~~ preferred drug list.

5. New drugs shall be covered in accordance with the Social Security Act § 1927(d) (OBRA 90 § 4401).

6. The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

7. Drug prior authorization.

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

"Clinical data" means drug monographs as well as any pertinent clinical studies, including peer review literature.

"Complex drug regimen" means treatment or course of therapy that typically includes multiple medications, co-morbidities ~~and/or~~, or caregivers.

"Department" or "DMAS" means the Department of Medical Assistance Services.

"Drug" shall have the same meaning, unless the context otherwise dictates or the board otherwise provides by regulation, as provided in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

"Emergency supply" means 72-hour supplies of the prescribed medication that may be dispensed if the prescriber cannot readily obtain authorization, or if the physician is not available to consult with the pharmacist, including after hours, weekends, and holidays and the pharmacist, in his professional judgment consistent with current standards of practice, feels that the patient's health would be compromised without the benefit of the drug, or other criteria defined by the Pharmacy and Therapeutics Committee and DMAS.

"Nonpreferred drugs" means those drugs that were reviewed by the Pharmacy and Therapeutics Committee and not included on the preferred drug list. Nonpreferred drugs may be prescribed but require authorization prior to dispensing to the patient.

"Pharmacy and Therapeutics Committee," "P&T Committee" or "committee" means the committee formulated to review therapeutic classes, conduct clinical reviews of specific drugs, recommend additions or deletions to the preferred drug list, and perform other functions as required by the department.

"Preferred drug list" or "PDL" means the list of drugs that meet the safety, clinical efficacy, and pricing standards employed by the P&T Committee and adopted by the department for the Virginia Medicaid fee-for-service program. Most drugs on the PDL may be prescribed and dispensed in the Virginia Medicaid fee-for-service program without prior authorization; however, some drugs as recommended by the Pharmacy and Therapeutics Committee may require authorization prior to dispensing to the patient.

"Prior authorization," as it relates to the PDL, means the process of review by a clinical pharmacist of legend drugs that are not on the preferred drug list, or other drugs as recommended by the Pharmacy and Therapeutics Committee, to determine if medically justified.

"State supplemental rebate" means any cash rebate that offsets Virginia Medicaid expenditure and that supplements the federal rebate. State supplemental rebate amounts shall be calculated in accordance with the Virginia Supplemental Drug Rebate Agreement Contract and Addenda.

"Therapeutic class" means a grouping of medications sharing the same Specific Therapeutic Class Code (GC3) within the Federal Drug Data File published by First Data Bank, Inc.

"Utilization review" means the prospective and retrospective processes employed by the agency to evaluate the medical necessity of reimbursing for certain covered services.

b. Medicaid Pharmacy and Therapeutics Committee.

(1) The department shall utilize a Pharmacy and Therapeutics Committee to assist in the development and ongoing administration of the preferred drug list and other pharmacy program issues. The committee may adopt bylaws that set out its make-up and functioning. A quorum for action of the committee shall consist of seven members.

(2) Vacancies on the committee shall be filled in the same manner as original appointments. DMAS shall appoint individuals for the committee that assures a cross-section of the physician and pharmacy community and remains compliant with General Assembly membership guidelines.

(3) Duties of the committee. The committee shall receive and review clinical and pricing data related to the drug classes. The committee's medical and pharmacy experts shall make recommendations to DMAS regarding various aspects of the pharmacy program. For the preferred drug list program, the committee shall select those drugs to be deemed preferred that are safe, clinically effective, as supported by available clinical data, and meet pricing standards. Cost effectiveness or any pricing standard shall be considered only after a drug is determined to be safe and clinically effective.

(4) As the ~~United States~~ U.S. Food and Drug Administration (FDA) approves new drug products, the department shall ensure that the Pharmacy and Therapeutics Committee will evaluate the drug for clinical effectiveness and safety. Based on clinical information and pricing standards, the P&T Committee will determine if the drug will be included in the PDL or require prior authorization.

(a) If the new drug product falls within a drug class previously reviewed by the P&T Committee, until the

review of the new drug is completed, it will be classified as nonpreferred, requiring prior authorization in order to be dispensed. The new drug will be evaluated for inclusion in the PDL no later than at the next review of the drug class.

(b) If the new drug product does not fall within a drug class previously reviewed by the P&T Committee, the new drug shall be treated in the same manner as the other drugs in its class.

(5) To the extent feasible, the Pharmacy and Therapeutics Committee shall review all drug classes included in the preferred drug list at least every 12 months and may recommend additions to and deletions from the PDL.

(6) In formulating its recommendations to the department, the committee shall not be deemed to be formulating regulations for the purposes of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

(7) Immunity. The members of the committee ~~and~~, the staff of the department, and the contractor shall be immune, individually and jointly, from civil liability for any act, decision, or omission done or made in performance of their duties pursuant to this subsection while serving as a member of such board, committee, or staff provided that such act, decision, or omission is not done or made in bad faith or with malicious intent.

c. Pharmacy prior authorization program. Pursuant to § 1927 of the Act and 42 CFR 440.230, the department shall require the prior authorization of certain specified legend drugs. For those therapeutic classes of drugs subject to the PDL program, drugs with nonpreferred status included in the DMAS drug list shall be subject to prior authorization. The department also may require prior authorization of other drugs only if recommended by the P&T Committee. Providers who are licensed to prescribe legend drugs shall be required to obtain prior authorization for all nonpreferred drugs or other drugs as recommended by the P&T Committee.

(1) Prior authorization shall consist of prescription review by a licensed pharmacist or pharmacy technician to ensure that all predetermined clinically appropriate criteria, as established by the P&T Committee relative to each therapeutic class, have been met before the prescription may be dispensed. Prior authorization shall be obtained through a call center staffed with appropriate clinicians, or through written or electronic communications (e.g., faxes, mail). Responses by telephone or other telecommunications device within 24 hours of a request for prior authorization shall be provided. The dispensing of 72-hour emergency supplies of the prescribed drug may be permitted and dispensing fees shall be paid to the pharmacy for such emergency supply.

(2) The preferred drug list program shall include~~:~~ (i) provisions for an expedited review process of denials of requested prior authorization by the department; (ii) consumer and provider education; and (iii) training and information regarding the preferred drug list both prior to implementation as well as ongoing communications, to include computer and website access to information and multilingual material.

(3) Exclusion of protected groups from the pharmacy preferred drug list prior authorization requirements. The following groups of Medicaid eligibles shall be excluded from pharmacy prior authorization requirements: individuals enrolled in hospice care, services through PACE or pre-PACE programs; persons having comprehensive third party insurance coverage; minor children who are the responsibility of the juvenile justice system; and refugees who are not otherwise eligible in a Medicaid covered group.

d. State supplemental rebates. The department has the authority to seek supplemental rebates from pharmaceutical manufacturers. In addition to collecting supplemental rebates for fee-for-service claims, the department may, at its option, also collect supplemental rebates for Medicaid member utilization through MCOs. The contract regarding supplemental rebates shall exist between the manufacturer and the Commonwealth. Rebate agreements between the Commonwealth and a pharmaceutical manufacturer shall be separate from the federal rebates and in compliance with federal law, §§ 1927(a)(1) and 1927(a)(4) of the Social Security Act. All rebates collected on behalf of the Commonwealth shall be collected for the sole benefit of the state share of costs. One hundred percent of the supplemental rebates collected on behalf of the state shall be remitted to the state. Supplemental drug rebates received by the Commonwealth in excess of those required under the national drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the national drug rebate agreement.

e. Pursuant to 42 USC § 1396r-8(b)(3)(D), information disclosed to the department or to the committee by a pharmaceutical manufacturer or wholesaler which discloses the identity of a specific manufacturer or wholesaler and the pricing information regarding the drugs by such manufacturer or wholesaler is confidential and shall not be subject to the disclosure requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

f. Appeals for denials of prior authorization shall be addressed pursuant to 12VAC30-110, Part I, Client Appeals.

8. Coverage of home infusion therapy. This service shall be covered consistent with the limits and requirements set out within home health services (12VAC30-50-160). Multiple applications of the same therapy (e.g., two antibiotics on the same day) shall be covered under one service day rate of reimbursement. Multiple applications of different therapies (e.g., chemotherapy, hydration, and pain management on the same day) shall be a full service day rate methodology as provided in pharmacy services reimbursement.

B. Dentures. Dentures are provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

C. Prosthetic devices.

1. Prosthetic services shall mean the replacement of missing arms, legs, eyes, and breasts and the provision of any internal (implant) body part. Nothing in this regulation shall be construed to refer to orthotic services or devices or organ transplantation services.

2. Artificial arms and legs, and their necessary supportive attachments, implants and breasts are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary and preauthorized for the minimum applicable component necessary for the activities of daily living.

3. Eye prostheses are provided when eyeballs are missing regardless of the age of the recipient or the cause of the loss of the eyeball. Eye prostheses are provided regardless of the function of the eye.

D. Eyeglasses. Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

VA.R. Doc. No. R19-5345; Filed January 7, 2019, 8:49 a.m.

Proposed Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-440, 12VAC30-50-490; repealing 12VAC30-50-450).**

12VAC30-120. Waivered Services (repealing 12VAC30-120-700 through 12VAC30-120-777, 12VAC30-120-1000 through 12VAC30-120-1090, 12VAC30-120-1500 through 12VAC30-120-1550).

12VAC30-122. Community Waiver Services for Individuals with Developmental Disabilities (adding 12VAC30-122-10 through 12VAC30-122-570).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 5, 2019.

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

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

Chapter 780, Item 306 CCCC of the 2016 Acts of Assembly and Chapter 836, Item 306 CCCC of the 2017 Acts of Assembly direct as follows:

"1. The Department of Medical Assistance Services shall adjust the rates and add new services in accordance with the recommendations of the provider rate study and the published formula for determining the SIS® levels and tiers developed as part of the redesign of the Individual and Family Developmental Disabilities Support (DD), Day Support (DS), and Intellectual Disability (ID) Waivers. The department shall have the authority to adjust provider rates and units, effective July 1, 2016, in accordance with those recommendations with the exception that no rate changes for Sponsored Residential services shall take effect until January 1, 2017. The rate increase for skilled nursing services shall be 25 percent."

"2. The Department of Medical Assistance Services shall have the authority to amend the Individual and Family Developmental Disabilities Support (DD), Day Support (DS), and Intellectual Disability (ID) Waivers, to initiate the following new waiver services effective July 1, 2016: Shared Living Residential, Supported Living Residential, Independent Living Residential, Community Engagement, Community Coaching, Workplace Assistance Services, Private Duty Nursing Services, Crisis Support Services, Community Based Crisis Supports, Center-based Crisis Supports, and Electronic Based Home Supports; and the following new waiver services effective July 1, 2017: Community Guide and Peer Support Services, Benefits Planning, and Non-medical Transportation. The rates and units for these new services shall be established consistent with recommendations of the provider rate study and the published formula for determining the SIS levels and tiers developed as part of the waiver redesign, with the exception that private duty nursing rates shall be equal to the rates for

private duty nursing services in the Assistive Technology Waiver and the EPSDT program. The implementation of these changes shall be developed in partnership with the Department of Behavioral Health and Developmental Services."

"3. Out of this appropriation, $328,452 the first year and $656,903 the second year from the general fund and $328,452 the first year and $656,903 the second year from nongeneral funds shall be provided for a Northern Virginia rate differential in the family home payment for Sponsored Residential services. Effective January 1, 2017, the rates for Sponsored Residential services in the Intellectual Disability waiver shall include in the rate methodology a higher differential of 24.5 percent for Northern Virginia providers in the family home payment as compared to the rest-of-state rate. The Department of Medical Assistance Services and the Department of Behavioral Health and Developmental Services shall, in collaboration with sponsored residential providers and family home providers, collect information and feedback related to payments to family homes and the extent to which changes in rates have impacted payments to the family homes statewide."

"4. For any state plan amendments or waiver changes to effectuate the provisions of paragraphs CCCC 1 and CCCC 2 above, the Department of Medical Assistance Services shall provide, prior to submission to the Centers for Medicare and Medicaid Services, notice to the Chairmen of the House Appropriations and Senate Finance Committees, and post such changes and make them easily accessible on the department's website."

"5. The department shall have the authority to implement necessary changes upon federal approval and prior to the completion of any regulatory process undertaken in order to effect such changes."

Purpose: The purpose of this action is to (i) better support individuals with developmental disabilities to live integrated and engaged lives in their communities by covering services that promote community integration and engagement, (ii) standardize and simplify access to services, (iii) improve providers' capacity and quality to render covered services, (iv) achieve positive outcomes for individuals supported in smaller community settings, and (v) facilitate meeting the Commonwealth's commitments under the community integration mandate of the American with Disabilities Act (42 USC § 12101 et seq.), the Supreme Court's Olmstead Decision, and the 2012 Department of Justice Settlement Agreement. This regulatory action is essential to protect the health, safety, and welfare of individuals with developmental disabilities who are served by these waivers.

Substance: The regulations that are affected by this action are:

Case Management - 12VAC30-50-440, 12VAC30-50-450, 12VAC30-50-490 are repealed and 12VAC30-50-455 is added

Individual and Family Developmental Disabilities Waiver - 12VAC30-120-700 et seq. are repealed

Intellectual Disability Waiver - 12VAC30-120-1000 et seq. are repealed

Day Support Waiver for Individuals with Mental Retardation - 12VAC30-1500 et seq. are repealed.

The regulatory action adds new 12VAC30-122, Community Waiver Services for Individuals with Developmental Disabilities.

Current policy regarding the waivers:

Individual and Family Developmental Disabilities Support (DD) Waiver: This waiver was originally developed in 2000 to serve the needs of individuals, and their families, who require the level of care provided in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) (formerly Intermediate Care Facilities for the Mentally Retarded (ICF/MR)). Such individuals must be older than six years of age and have diagnoses of either autism or severe chronic disabilities identified in 42 CFR 435.1009 (cerebral palsy or epilepsy, any other condition (other than mental illness)) that impairs general intellectual functioning, manifests itself prior to the individual's 22nd birthday, is expected to continue indefinitely, and results in substantial limitation of three or more areas of major life activity (self-care, language, learning, mobility, self-direction, independent living). The originally covered services were (i) in-home residential support, (ii) day support, (iii) prevocational services, (iv) supported employment services, (v) therapeutic consultation, (vi) environmental modifications, (vii) skilled nursing, (viii) assistive technology, (ix) crisis stabilization, (x) personal care and respite (both agency directed and consumer directed), (xi) family and caregiver training, (xii) personal emergency response systems, and (xiii) companion services (both agency directed and consumer directed).

In State Fiscal Year (SFY) 2015, this waiver served 913 individuals or families with expenditures of $28,747,525. Non-waiver acute care costs for these individuals totaled $9,388,868 for the same time period.

Intellectual Disabilities (ID) Waiver: This waiver was originally developed in 1991 to serve the needs of individuals and their families who are determined to require the level of care in an ICF/IID. Such individuals must have a diagnosis of intellectual disability or if younger than six years old, be at developmental risk of significant limitations in major life activities. The services covered in ID are (i) assistive technology, (ii) companion services (both agency-directed

and consumer-directed), (iii) crisis stabilization, (iv) day support, (v) environmental modifications, (vi) personal assistance and respite (both agency-directed and consumer-directed), (vii) personal emergency response systems, (viii) prevocational services, (ix) residential support services, (x) services facilitation (only for consumer-directed services), (xi) skilled nursing services, (xii) supported employment, (xiii) therapeutic consultation, and (xiv) transition services.

In SFY 2015, this waiver served 10,174 individuals/families with expenditures of $693,861,042. Nonwaiver acute care costs for these individuals totaled $138,928,215 for the same time period.

Day Support (DS) Waiver: This waiver was originally developed in 2005 to serve the needs of individuals, along with their families, who have an intellectual disability and have been determined to require the level of care in an ICF/IID. This waiver was developed to address the overwhelming service demands of this population of individuals in the Commonwealth, because the ID waiver operated at capacity and was not funded for the higher numbers of individuals who required the covered services. This waiver was intended to be temporary measure while the individuals on the waiting list waited for an opening in the ID waiver. The services covered in DS are (i) day support, (ii) prevocational services, and (iii) supported employment.

In SFY 2015, this waiver served 271 individuals/families with expenditures of $3,806,006. Non-waiver acute care costs for these individuals totaled $3,103,295 for the same time period.

Current issues regarding the waivers: The Commonwealth's three waivers have not been substantially updated in recent years. The Department of Medical Assistance Services (DMAS) and the Department of Behavioral Health and Developmental Services (DBHDS) have undertaken this waiver redesign in consideration of recent federal policy changes to ensure that Virginia's system of services and supports fully embraces community inclusion and full community access for individuals who have disabilities. This redesign effort is important to:

1. Provide community-based services for individuals with significant medical and behavioral support needs;

2. Expand opportunities that promote smaller, more integrated independent living options with needed supports;

3. Enable providers to adapt their service provision and business models to support the values and expectations of the federally required community integration mandate and;

4. Comply with U.S. Department of Justice Settlement Agreement elements requiring expansion of integrated residential/day services and employment options for persons with I/DD.

In Virginia, funding and payment for services are broadly related to individual support needs. DMAS has found that differing expenditures have become associated with people who have similar needs. Currently, an individual's level of need for resources and supports is often not correlated to waiver expenditures. Over time, DMAS and DBHDS expect that better correlating individuals' support levels with the costs of their needs will enable the Commonwealth to more precisely predict costs, thereby leading to improved budgeting, which is expected to enable serving more individuals within current appropriations.

Recommendations regarding the waivers: DMAS and DBHDS recommend amending the three existing waivers into three distinct waivers that will support all individuals who are eligible and have a developmental disability by:

1. Integrating individuals with developmental disabilities into their communities by providing needed supports and resources;

2. Standardizing and simplifying access to services;

3. Offering services that promote community integration and engagement;

4. Improving providers' capacities and quality by increasing reimbursements as quality improves;

5. Aligning this waiver redesign with recent research about supporting such individuals in smaller communities in order to achieve better outcomes and;

6. Creating a statewide waiting list which DBHDS will maintain to replace multiple current waiting lists. Individuals will be ranked by priority based on the degree of jeopardy to their health and safety due to their unpaid caregivers' circumstances. Individuals and their families or caregivers will have appeal rights for the priority assignment process but not the actual slot allocation determination.

DMAS and DBHDS believe that a combination of information gained via the application of the three part VIDES evaluation plus the individual's diagnosis with the individual's financial eligibility determination establishes the best results to determine access to waiver services or, in the absence of a slot, a position on the waiver waiting list. Once determined eligible, the individual undergoes assessments via the Supports Intensity Scale (SIS®) and the Virginia Supplemental Questions to establish service needs that are then reflected in the individual support plan.

DMAS and DBHDS believe that these recommendations will enable the Commonwealth to meet its obligations under the community integration mandate of the ADA, the Supreme Court's Olmstead Decision, and the 2012 Settlement Agreement with the U.S. Department of Justice.

Building Independence Waiver (formerly the DS Waiver): This amended waiver will support adults (18 years of age and

older) who are able to live in their communities and control their own living arrangements with minimal supports. The following services will be added: (i) assistive technology, (ii) community- and center-based crisis supports, (iii) environmental modifications, (iv) personal emergency response systems and electronic home based supports, (v) transition services, (vi) shared living, (vii) independent living supports, (viii) community engagement, and (ix) community coaching services (see 12VAC30-122-240).

Community Living Waiver (formerly the ID Waiver): This amended waiver will remain a comprehensive waiver that includes 24/7 residential support services for those who require this level of support. It will be open to children and adults with developmental disabilities who may require intense medical or behavioral supports. The following services will be added: (i) crisis support services, (ii) supported living residential, (iii) shared living, (iv) electronic home based support, (v) community engagement, (vi) community coaching, (vii) community- based and center-based crisis supports, (viii) individual and family/caregiver training, (ix) private duty nursing, and (x) workplace assistance services (see 12VAC30-122-250).

Family and Individual Supports (FIS) Waiver (formerly the DD Waiver): This amended waiver will continue to support individuals with disabilities who are living with their families or friends, or in their own residences. It will support individuals who have some medical or behavioral needs and will be open to children and adults. The following services will be added: (i) shared living, (ii) supported residential living, (iii) community coaching, (iv) community engagement, (v) workplace assistance services, (vi) private duty nursing, (vii) crisis support services, (viii) community-based crisis supports, (ix) center-based crisis supports, and (x) electronic home based supports (see 12VAC30-122-260).

Currently provided prevocational services (defined as preparing an individual for paid or unpaid employment, such as accepting supervision, attendance, task completion, problem solving, and safety) is recommended for discontinuation as part of this redesign action.

A number of public comments were received during the comment period for the Notice of Intended Regulatory Action about the organizational structure of the emergency regulations, such as (i) regulations need to be easy to understand for self-advocates, (ii) make regulations user friendly and easy to read, (iii) put the regulations in alphabetical order, (iv) sections that mandate specific procedures that are sequential should be organized to follow the natural sequence, and (v) combine the three sets of waiver regulations into one set to avoid significant cross referencing.

DMAS is repealing the three separate sets of waiver regulations and is promulgating a single set of regulations for the Developmental Disability (DD) Waiver program. The single set of regulations, to be located in new 12VAC30-122, is organized into sections of general information that apply across all DD programs followed by specific sections for each covered service.

General information includes topics such as definitions, waiver populations, covered services, aggregate cost effectiveness, individual costs, criteria for individuals, financial eligibility standards, assessment and enrollment, VIDES and SIS® requirements, waiting list priorities, slot assignment, provider enrollment, requirements, termination, requirements for consumer-directed services and voluntary/involuntary disenrollment from consumer-directed services, professional competency requirements, individual support plans, appeals, payment for covered services, and utilization review.

Following the general sections that apply across all three programs, each covered service is in its own section and contains (i) a service description, (ii) criteria and allowed activities, (iii) service units and limits, (iv) provider qualifications and requirements, and (v) service documentation requirements.

DMAS relies on its regulations for legal support in appeals and lawsuits. Making regulations user friendly and easy to read for self-advocates can conflict with this agency requirement. In the alternative, DMAS and DBHDS has published, and will continue to do so, various manuals and guidance materials to more appropriately satisfy this information need in the disability community.

Issues: The Commonwealth's three waivers have not been substantially updated in recent years. DMAS and DBHDS have undertaken this waiver redesign in consideration of recent federal policy changes to ensure that Virginia's system of services and supports fully embraces community inclusion and full access for individuals who have disabilities. This redesign effort is important to:

1. Provide community-based services for individuals with significant medical and behavioral support needs.

2. Expand opportunities that promote smaller, more integrated independent living options with needed supports.

3. Enable providers to adapt their service provision and business model to support the values and expectations of the federally required community integration mandate.

4. Comply with Settlement Agreement elements requiring expansion of integrated residential/day services and employment options for persons with I/DD.

In Virginia, funding and payment for services are only broadly related to individual support needs. DMAS has found that differing expenditures have become associated with people who have similar needs. Currently, an individual's level of need for resources and supports is often not correlated to waiver expenditures. Over time, DMAS and DBHDS expect that better correlating individuals' support

levels with the costs of their needs will enable the Commonwealth to more precisely predict costs, thereby leading to improved budgeting, which is expected to enable serving more individuals within current appropriations.

There are no known disadvantages to the public, the agency, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medical Assistance Services (Board) proposes to permanently adopt emergency regulations that redesigned three existing home and community based waivers: Individual and Family Developmental Disabilities Support Waiver (12 VAC 30-120-700 et seq.), Intellectual Disability Waiver (12 VAC 30-120-1000 et seq.), and the Day Support Waiver for Individuals with Mental Retardation (12 VAC 30-120-1500 et seq.).

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

Estimated Economic Impact.

Background. This action permanently implements three-waiver redesign efforts that have been underway since 2014. The overall goal is to provide alternatives to services provided in institutions and maximize the opportunities for individuals receiving community based waiver services to have access to the benefits of community living, including services in the most integrated setting.

In 1999, the U.S. Supreme Court ruled in Olmstead v. L.C.[1] that the Americans with Disabilities Act requires public services and supports to be furnished in the most integrated settings appropriate to each person's needs in order to prevent their exclusion from the rights of citizenship. In 2009, the U.S. Department of Justice (DOJ) Civil Rights Division launched an aggressive effort to enforce Olmstead v. L.C. The division was involved in more than 40 matters in 25 states including Virginia.[2] In 2012, the Commonwealth of Virginia and DOJ signed a settlement agreement as a result of the DOJ investigation of services provided to individuals with intellectual disabilities in Virginia's training centers, as well as services for individuals with intellectual and other developmental disabilities (I/DD) in the community. Supports and services for individuals in the target population defined in the Settlement Agreement are almost exclusively funded by the state's Medicaid home and community based services waivers. In 2014, the Centers for Medicare and Medicaid Services (CMS) issued a final rule among other purposes to incorporate the mandate of Olmstead v. L.C.[3] The rule established in federal regulation requirements for all 1915(c) waivers, authorized under 1915(c) of the Social Security Act, to enhance the quality of home and community based services and provide additional protections to individuals that receive services under these Medicaid authorities.

Meeting the requirements of the DOJ Settlement Agreement and the CMS final rule required changes to multiple policies and practices. The Virginia legislature requested[4] and the Departments of Medical Assistance (DMAS) and Behavioral Health and Developmental Services (DBHDS) convened numerous workgroups and studied plans to redesign home and community based services waivers.[5] This analysis heavily relies on that Waiver Redesign Study.

Waivers Affected. The Individual and Family Developmental Disabilities Support (DD) Waiver was originally developed in 2000 to serve the needs of individuals and their families, who require the level of care provided in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID), commonly referred to as institutions. Such individuals would have to have been older than six years of age and have diagnoses of either autism or severe chronic disabilities identified in 42 CFR 435.1009 (cerebral palsy or epilepsy), any other condition (other than mental illness) that impairs general intellectual functioning, manifests itself prior to the individual's 22nd birthday, is expected to continue indefinitely, and results in substantial limitation of three or more areas of major life activity (self-care, language, learning, mobility, self-direction, independent living). Under the proposed regulation, the DD Waiver is changing to the Family and Individual Supports Waiver (FIS), which will support individuals living with their families, friends, or in their own homes. It will support individuals with some medical or behavioral needs and will be available to both children and adults.

The second waiver being redesigned is the Intellectual Disability (ID) Waiver, which was originally developed in 1991 to serve the needs of individuals and their families, who are determined to require the level of care in an ICF/IID. Such individuals would have had a diagnosis of intellectual disability or if younger than six years old, be at developmental risk of significant limitations in major life activities. The ID Waiver is changing to the Community Living Waiver (CL), which will remain a comprehensive waiver that includes 24/7 residential services for those who require that level of support. It will include services and supports for adults and children, including those with intense medical and/or behavioral needs.

The third waiver being redesigned is the Day Support (DS) Waiver, which was originally developed in 2005 to serve the needs of individuals, along with their families, who had an intellectual disability and would have been determined to require the level of care in an ICF/IID. This waiver was developed to address the overwhelming service demands of this population of individuals in the Commonwealth, because the ID Waiver operated at capacity and was not funded for the higher numbers of individuals who required the covered services. This waiver was intended to be a temporary measure while the individuals on the waiting list waited for an opening in the ID Waiver. The DS Waiver is changing to the Building

Independence Waiver (BI), which will support adults 18 and older who are able to live in the community with minimal supports. This will remain a supports waiver that does not include 24/7 residential services. Individuals will own, lease, or control their own living arrangements and supports may need to be complemented by non-waiver-funded rent subsidies.

Assessment of Needs. Under the redesigned waivers, information gathered via the Virginia Individual Developmental Disabilities Eligibility Survey (VIDES) and the Supplemental Questions, are combined with the Supports Intensity Scale® (SIS®) service needs assessment instrument through the person centered planning process to develop each individual's unique Individual Service Plan.

SIS® is a nationally recognized assessment tool that measures the intensity of support required for a person with a developmental disability in their personal, work-related, and social activities. The SIS® is multi-dimensional and comprehensively evaluates the pattern and intensity of needed supports. In 2009, Virginia began using the SIS® in the person-centered planning process to help identify preferences, skills, and life goals for individuals in the ID and DS waivers. In addition, SIS® does not provide the same type of information that a person-centered planning process offers, such as information regarding the settings the person enjoys most, activities the person wishes to participate in, and life experiences the person desires. Therefore, the SIS® is used in conjunction with person-centered planning for individualized service plan development.

VIDES is the recently adopted tool used to determine institutional placements. The VIDES survey assesses individuals in the same areas as the old Level of Functioning Survey, but also includes an additional assessment on self-direction skills. Self-direction skills include making and implementing daily personal decisions regarding daily schedule and time management; making and implementing major life decisions such as choice and type of living arrangements; demonstrating adequate social skills to establish/maintain interpersonal relationships; demonstrating the ability to cope with fears, anxieties, or frustrations; demonstrating the ability to manage personal finances; and demonstrating ability to protect self from exploitation.[6] Both the VIDES and the SIS® provide for age-appropriate individual data gathering.

The SIS® assessment also includes Supplemental Questions, which are unique to Virginia. These questions are designed to identify individuals with unique needs (e.g. severe medical risk, severe community safety risk, severe risk of harm to self, etc.) that fall outside of the SIS® standardized instrument.

These combined tools are used to determine an individual SIS® score, which can then be used to correlate an individual's supports needs to one of seven levels. Those levels are 1) Least Support Needs, 2) Modest or Moderate Support Needs, 3) Least/Moderate Support Needs with Some Behavioral Support Needs, 4) Moderate to High Support Needs, 5) High to Maximum Support Needs, 6) Extraordinary Medical Support Needs, and 7) Extraordinary Behavioral Support Needs.

The seven levels were recommended by a study of Virginia's waiver utilization and assessment data.[7] The design of the seven supports level system has been validated through a review of a random sample of individuals' records by DBHDS and Community Services Board (CSB) staff.[8] After one year of experience with the waiver design under the emergency regulations, a study conducted pursuant to Item 310 R of the Chapter 836 of the 2017 Appropriation Act[9] found that "An analysis of data and SIS® administration procedures highlight that the distribution of supports needs levels, while not identical, are consistent with the model predictions from 2014, when the levels and reimbursement tiers were first recommended for incorporation into the DD Waivers."[10] Thus, the waiver redesign appear to be successful in identifying individual support needs.

DBHDS and DMAS also recognize that, in spite of sound research and best efforts, some individuals may have been assigned a supports level that does not align with their identified essential needs. Therefore, individuals and families are allowed to request a review of their assessment.

Eligibility. Prior to 2016, Virginia was one of a few states to still operate a bifurcated ID/DD waiver system. Under the bifurcated system, the eligibility for a specific waiver and access to specific services depended on diagnosis of intellectual or developmental disability. For example, an individual with a diagnosis of autism, but no specific diagnosis noting an intellectual disability, would only be eligible to receive services under the DD waiver but not the ID waiver. The previous system had limited service options and did not include group home services or sponsored residential services. Waiver redesign modernized Virginia's approach eliminating this bifurcation. Under the proposed redesign, all three waivers will serve individuals with a diagnosis of DD of which ID is included. The three waivers' target populations are being merged under the single definition of developmental disability. Common definitions of intellectual disability and developmental disability are proposed.

Under the waiver redesign, all three waivers serve individuals with a diagnosis of ID or DD. All three waivers are open to all eligible individuals with a developmental disability, creating a unified system for individuals to access a full array of waiver services. All individuals seeking DD waiver services have diagnostic and functional eligibility confirmed by their local CSB and have their names placed on a single, statewide waiting list.

Service Coverage. The proposed regulation expands services available in each waiver. The originally covered services in

the DD Waiver were: in-home residential support; day support; prevocational services; supported employment services; therapeutic consultation; environmental modifications; skilled nursing; assistive technology; crisis stabilization; personal care and respite (both agency directed and consumer directed); family/caregiver training; personal emergency response systems; and companion services (both agency directed and consumer directed). The proposed FIS Waiver adds the following services: shared living; supported living residential; community coaching; community engagement; workplace assistance services; private duty nursing; crisis support services; community-based crisis supports; center-based crisis supports; and electronic home based supports.

The services covered in the ID Waiver were: assistive technology; companion services (both agency-directed and consumer-directed); crisis stabilization; day support; environmental modifications; personal assistance and respite (both agency-directed and consumer-directed); personal emergency response systems; prevocational services; residential support services; services facilitation (only for consumer-directed services); skilled nursing services; supported employment; therapeutic consultation; transition services. The proposed CL Waiver will add following services: crisis support services; supported living residential; shared living; electronic home based support; community engagement; community coaching; community-based and center-based crisis supports; individual and family/caregiver training; private duty nursing; and workplace assistance services.

The services covered in the DS Waiver were: day support; prevocational services; and supported employment. The proposed BI Waiver will add following services: assistive technology; community- and center-based crisis supports; environmental modifications; Personal Emergency Response Systems and electronic home based supports; transition services; shared living; independent living supports; community engagement; and community coaching services.

Expansion of services in each waiver will be beneficial to the recipients in that they will have access to a broader array of services and more flexibility in the use of those services.

The proposed redesign also discontinues currently provided prevocational services (defined as preparing an individual for paid/unpaid employment such as accepting supervision, attendance, task completion, problem solving, and safety) in all three waivers as the service has been ineffective, according to DMAS, in achieving its intended goals.

Reimbursement/Utilization. In Fiscal Year (FY) 2015, the DD Waiver served 913 individuals/families with expenditures of $28,747,525. In FY 2017, the FIS Waiver served 1,193 individuals/families with expenditures of $36,808,172. The cost per person per year declined slightly from $31,487 in FY 2015 to $30,853 in FY 2017. Currently, there are 1,859 individuals enrolled in the FIS waiver.

In FY 2015, the ID Waiver served 10,174 individuals/families with expenditures of $693,861,042. In FY 2017, the CL Waiver served 11,091 individuals/families with expenditures of $801,729,999. The cost per person per year increased slightly from $68,199 in FY 2015 to $72,287 in FY 2017. Currently, there are 11,733 individuals are enrolled in the CL waiver.

In FY 2015, the DS Waiver served 271 individuals/families with expenditures of $3,806,006. In FY 2017, the BI Waiver served 263 individuals/families with expenditures of $3,388,436. The cost per person per year declined slightly from $14,044 in FY 2015 to $12,884 in FY 2017. Currently, there are 321 individuals enrolled in the BI waiver.

According to the Waiver Redesign Study, a hallmark of waiver redesign is the development of proposed reimbursement rates based on a methodology developed and implemented by nationally-recognized consultant Burns & Associates, Inc. This rate-setting methodology, required by CMS, builds rates to cover most all the components of costs for providers to meet the service requirements (e.g., wages, benefits, travel, training, documentation, program support and administration). This methodology allows the Commonwealth to adjust the assumptions for each service based on current data.

To establish rate methodologies for services, a statewide rate study of I/DD waiver providers and services was conducted. The study used Bureau of Labor Statistics data and reviewed market costs, service definitions, and provider requirements. The subsequent rate calculations were disseminated for public comment in late 2014, and adjustments were made. The final proposed rates were published on April 23, 2015.

Various "congregate" residential services (e.g., group home and sponsored residential), as well as other services (e.g., group day, community engagement, and group supported employment) require a tiered reimbursement schedule based on the expected number of hours of direct supervision and support that an individual may need. The reimbursement tiers are tied to individuals' support levels, so that service providers are reimbursed at a higher amount for supporting individuals with greater needs. The rate structure also reflects higher reimbursement for more integrated and/or smaller settings.

The Waiver Redesign Study projected decreased payments to group supported employment (-3.7%), supported living (-1.1%), and sponsored residential (-0.4%), and increased payments to therapeutic consultation (+43.8%), skilled nursing (+40%) DD case management (+38.4%), in-home residential (+23.7%), day support (+9.1%), group homes (+2.8%), and all other congregate (+2.7%). The original net estimated impact was an increase of $19.2 million. The

updated estimates are an increase of $26.3 million in total funds in FY 2017 and $46 million in FY 2018. The increased expenditures are a result of higher rates as well as expansion of services in each waiver. Impact to the general fund however is one-half of those amounts in each year respectively because of the federal matching funds.

As mentioned before, the study conducted pursuant to Item 310 R of Chapter 836 of the 2017 Appropriation Act[11] found that the distribution of support needs levels are consistent with the model predictions from 2014. Therefore, the distribution of tiers of rates should be aligned with difficulty of the service provided because the adjusting rates for the level of difficulty was one of the goals of the redesign efforts.

Furthermore, Item 306 CCCC.3 of Chapter 836 of the 2017 Appropriation Act[12] required DMAS and DBHDS to study the impact of the Sponsored Residential (SR) payment rates on providers in the redesigned waivers. SR services are a DBHDS licensed service. A licensed provider agency contracts with individuals or couples to provide Medicaid home and community based waiver services in their own homes for up to two individuals with I/DD. The licensed provider agency screens these sponsors and provides them with required training and ongoing oversight. The licensed agency bills Medicaid for waiver services and pays the sponsors. In other states, this is commonly known as a "host home" model. It is distinct from a foster home or group home. DBHDS collected data from its systems and surveyed sponsors regarding financial impact and challenges to supporting individuals in their homes. The study concluded that "[w]hile the a few individuals in the high range of monthly reimbursement experienced changes in reimbursement, most respondents did not experience a change in revenue."

According to the Waiver Redesign Study, the proposed needs assessment model has been employed in a number of other states and is found to lead overtime to the same level of spending for individuals with the same level of needs. Under the previous system in Virginia, funding and payment for services were only broadly related to individual support needs, and different amounts of funding were associated with people who have similar support needs. An individual's level of need for resources and support were not often correlated to waiver expenditures in the past. Implementing the SIS® assessment process and assignment of a support level is a critical step toward more equitable resource distribution in the waiver redesign. Over time, the Commonwealth anticipates the waiver redesign will bring a higher degree of correlation, aligning individuals' support level with the cost of their services.

Finally, CSBs and Behavioral Health Authorities (BHAs) also take an active role in provision of waiver services, particularly providing case management services. They receive approximately 16% of the total waiver expenditures.

Waiting List. Resource limitations have long been a significant barrier to access to waiver services. Generally, each year the Virginia Legislature grants a number of additional slots on waivers to address the unmet needs of this population. While almost 14,000 individuals served at a total cost over $840 million in FY 2017, over 13,000 additional individuals remain on the waiting list.

As of October 9, 2015, the waitlist for the ID Waiver was 8,143, with 4,966 individuals on the urgent needs list. As of June 18, 2018, those numbers have increased to almost 13,000 for the three waivers. In contrast to the needs-based ID Waiver waiting list, the DD Waiver waiting list was maintained in chronological order, so that individuals were offered slots on a first come, first served basis. The chronological waitlist for the DD waiver was 2,109. Approximately 70 percent of the individuals on the waiting list were under age 25.

CMS permits an individual to be on a waiting list for a waiver and receive services under another waiver if they are eligible for both. Approximately 3,500 of those on DD Waiver waiting lists were being served in the Commonwealth Coordinated Care Plus (CCC plus) Waiver. These individuals, accounting for more than one-third of the waiting list, have full access to Medicaid benefits, including acute and primary care services. However, the CCC plus Waiver does not provide the full range of services an individual with I/DD may need; therefore, they remain on the DD Waivers waiting list. These individuals were waiting for DD Waiver services to more effectively meet their needs.

An important aspect of waiver redesign is the transition to a single statewide waitlist for all three waivers. This wait list is based on need and individuals are grouped into one of three "priority needs" categories. During the transition, approximately 200 individuals from the chronologically based DD Waiver waiting list were assigned slots before the remaining waiting list individuals were shifted to the new needs based waiting list. Since the new list is needs based, it will be dynamic and change as individuals needs change. DBHDS has in place five regional SIS® specialists who are working directly with each CSB and assisting with each regional waitlist. These staff also support waiver slot assignment committees (WSACs) within each region, comprised of community members recommended by CSBs. As required by CMS, the redesigned waivers separate the entity that determines eligibility for the waiver (CSB support coordinators/case managers) from the entity, which makes recommendations for allocating slots (WSACs). Final approval for allocation and slot assignment remains the responsibility of DBHDS.

Consistent with CMS guidance, the Commonwealth needs to have the capacity to address emergencies; this is accomplished by maintaining a reserve pool of slots for each waiver each fiscal year.

Summary. The proposed permanent waiver redesign accomplishes multiple goals: it provides compliance with the DOJ Settlement Agreement and the CMS final rule; it successfully identifies individual support needs; it modernizes eligibility determination models that did not distinguish between individual and developmental disabilities; it expands access to a wider spectrum of services for any individual who used to be in one of the previous waivers; it sets a rate structure that is more closely correlated with the difficulty of service levels; it results in increased expenditures due to providing more services at higher rates, albeit, the Commonwealth pays only half of the increases expenditures because of the matching federal funds; and establishes a needs based waiting list rather than a chronological one.

Businesses and Entities Affected. In FY 2016, there were 554 providers of waiver services. Of them 37 were CSB/BHAs. Many providers are likely to be small business. As of June 2018, enrollment in CL Waiver is 11,733; FIS Waiver is 1,859; BI Waiver 321, for a total of 13,913. This list grows approximately by 75 people each month.

Of these entities, CSBs are particularly affected. Impacts include 1) CSBs assuming an expanded role with eligibility determination as the single point of entry; 2) CSBs need to expand their knowledge and expertise with eligibility determination and service planning for individuals with a developmental disability other than intellectual disability; 3) a bi-product of waiver redesign is CSBs assuming the responsibility of case management for both ID and DD individuals. This resulted in CSBs entering into contractual relationships with entities providing DD case management prior to waiver redesign in order to ensure continuity and individual choice; 4) in coordination with state partners, educating individuals and families in localities about the new process for eligibility determination and the process for being placed on the statewide waiting list.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. No impact on employment is expected upon promulgation of this permanent regulation as the emergency regulation has been in effect since September 1, 2016. However, the waiver redesign likely had a positive impact on employment as it led and continues to lead to more services being provided.

Effects on the Use and Value of Private Property. Since more services are provided and reimbursements to Medicaid providers increased, there should be a positive impact on their asset values.

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

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed regulation does not impose costs on small businesses.

Alternative Method that Minimizes Adverse Impact. There is no adverse impact on small businesses.

Adverse Impacts:

Businesses. The proposed redesign does not adversely affect businesses.

Localities. According to DMAS, the proposed redesign does not adversely affect localities.

Other Entities. The proposed redesign does not adversely affect other entities.

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[1]Olmstead v. L.C., 527 U.S. 581 (1999).

[2]Source: https://rga.lis.virginia.gov/Published/2015/RD385/PDF

[3]https://www.gpo.gov/fdsys/pkg/FR-2014-01-16/pdf/2014-00487.pdf

[4]See https://budget.lis.virginia.gov/item/2015/1/HB1400/Chapter/1/301/

[5]https://rga.lis.virginia.gov/Published/2015/RD385/PDF

[6]See http://townhall.virginia.gov/l/ViewStage.cfm?stageid=7905 for more details.

[7]http://www.dbhds.virginia.gov/library/developmental%20services/dds%20final%20revised%20validation%20study%20summary%206-21-15.pdf

[8]Source: https://rga.lis.virginia.gov/Published/2015/RD385/PDF

[9]https://budget.lis.virginia.gov/item/2017/1/HB1500/Chapter/1/310/

[10]https://rga.lis.virginia.gov/Published/2017/RD370/PDF

[11]https://budget.lis.virginia.gov/item/2017/1/HB1500/Chapter/1/310/

[12]https://budget.lis.virginia.gov/item/2017/1/HB1500/Chapter/1/310/

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

The proposed regulatory action redesigns three of the existing home and community-based waivers as follows: Individual and Family Developmental Disabilities Support Waiver (12VAC30-120-700 et seq.) is changing to the Family and Individual Supports (FIS) Waiver, Intellectual Disability Waiver (12VAC30-120-1000 et seq.) is changing to the Community Living (CL) Waiver, and the Day Support Waiver for Individuals with Mental Retardation (12VAC30-120-1500 et seq.) is changing to the Building Independence (BI) Waiver. The proposed action repeals the existing regulations found in 12VAC30-120-700 et seq.,

12VAC30-120-1000 et seq., and 12VAC30-120-1500 et seq. and promulgates a new chapter for the proposed FIS, CL, and BI Waivers in 12VAC30-122.

The proposed action combines the target populations of individuals with intellectual disabilities and other developmental disabilities and offers new services that are designed to promote improved community integration and engagement. New services include (i) crisis support (including center-based and community-based) services, (ii) shared living supports, (iii) independent living supports, (iv) supported living residential, (v) community engagement supports, (vi) community coaching supports, (vii) community guide supports, (viii) workplace assistance services, (ix) private duty nursing, and (x) electronic home based supports.

The proposed action modifies some existing services and repeals the prevocational service. Current services proposed for retention with modifications include (i) skilled nursing services, (ii) therapeutic consultation, (iii) personal emergency response systems, (iv) assistive technology, (v) environmental modifications, (vi) personal assistance services, (vii) companion services, (viii) respite services, (ix) group day services, (x) group home services, (xi) sponsored residential services, (xii) individual and family caregiver training, (xiii) supported living, (xiv) supported employment, (xv) transition services, and (xvi) services facilitation. For personal assistance services, companion services, and respite services, the proposed action retains the consumer-direction model of service delivery as currently permitted with no further expansion of this model to any of the other existing or new services.

Information gathered via the three-part Virginia Individual Developmental Disabilities Eligibility Survey (VIDES) and the Virginia Supplemental Questions plus financial eligibility determination are proposed to be combined with the Supports Intensity Scale® service needs assessment instrument through the person-centered planning process to develop each individual's unique individual service plan.

The proposed action (i) establishes seven levels of supports to create the most equitable distribution of funding for core waiver services; (ii) uses common definitions of intellectual disability and developmental disability; (iii) establishes standards for a uniform waiting list and criteria for how individuals on the waiting list are provided their choice of available services; (iv) merges the FIS, CL, and BI Waivers target populations under the single definition of developmental disability and the individual eligibility sections into a single set of regulations at 12VAC30-122-30, 12VAC30-122-50, and 12VAC30-122-60; and (v) updates the provisions regarding case management.

12VAC30-50-440. ~~Case~~ Support coordination/case management services for individuals with ~~mental retardation~~ intellectual disability.

A. Target Group. Medicaid eligible individuals who ~~are mentally retarded~~ have an intellectual disability as defined in state law.

1. An active ~~client~~ individual for ~~mental retardation case~~ intellectual disability support coordination/case management shall mean ~~an individual~~ a person for whom there is ~~a plan of care~~ an individual support plan (ISP) in effect ~~which~~ that requires ~~regular~~ direct or ~~client related~~ individual-related contacts or communication or activity with the ~~client~~ individual, the individual's family or caregiver, service providers, significant others, and others including at least one face-to-face contact with the individual every ~~90 days~~ 90 days. Billing can be submitted for an active ~~client~~ individual only for months in which direct or ~~client related~~ individual-related contacts, activity, or communications occur.

2. The unit of service is one month. There shall be no maximum service limits for ~~case management~~ support coordination/case management services except ~~case management services for~~ as related to individuals residing in institutions or medical facilities. For these individuals, reimbursement for ~~case management~~ support coordination/case management shall be limited to ~~thirty~~ 30 days immediately preceding discharge. ~~Case management~~ Support coordination/case management for ~~institutionalized~~ individuals who reside in an institution may be billed for no more than two predischarge periods ~~in twelve~~ within 12 months.

B. Services will be provided in the entire ~~State~~ state.

C. Comparability of ~~Services~~ services: Services are not comparable in amount, duration, and scope. Authority of ~~section~~ § 1915(g)(1) of the Social Security Act (the Act) is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of ~~Services~~ services. ~~Mental retardation~~ Intellectual disability support coordination/case management services to be provided include:

1. Assessment and planning services, to include developing ~~a Consumer Service Plan (does~~ an individual support plan (ISP), which does not include performing medical and psychiatric assessment but does include referral for ~~such assessment)~~ assessment;

2. Linking the individual to services and supports specified in the ~~consumer service plan~~ ISP;

3. Assisting the individual directly for the purpose of locating, developing, or obtaining needed services and resources;

4. Coordinating services and service planning with other agencies and providers involved with the individual;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills~~,~~ and to use vocational, civic, and recreational services;

6. Making collateral contacts with the individual's significant others to promote implementation of the ~~service plan~~ ISP and community ~~adjustment~~ integration;

7. ~~Following up~~ Following up and monitoring to assess ongoing progress and ensuring services are delivered; and

8. Education and counseling ~~which~~ that guides the ~~client~~ individual and develops a supportive relationship that promotes the ~~service plan~~ ISP.

E. Qualifications of providers:

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit ~~case~~ support coordination/case management providers for individuals with ~~mental retardation~~ intellectual disability and ~~serious/chronic~~ serious or chronic mental illness to the ~~Community Services Boards~~ community services boards only to enable them to provide services to ~~serious/chronically~~ seriously or chronically mentally ill or ~~mentally retarded~~ individuals with an intellectual disability without regard to the requirements of § 1902(a)(10)(B) of the Act. References to providers in this section shall refer to enrolled community services boards.

2. To qualify as a provider of services ~~through~~ enrolled with DMAS for ~~rehabilitative mental retardation case~~ intellectual disability support coordination/case management, the provider of the services ~~must~~ shall meet certain criteria. These criteria shall be:

a. The provider ~~must~~ shall guarantee that ~~clients~~ individuals have access to emergency services on a 24-hour basis;

b. The provider ~~must~~ shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;

c. The provider ~~must~~ shall have the administrative and financial management capacity to meet state and federal requirements;

d. The provider ~~must have the ability to~~ shall document and maintain individual case records in accordance with state and federal requirements;

e. The services shall be in accordance with the Virginia ~~Comprehensive~~ State Plan ~~for Mental Health, Mental Retardation and Substance Abuse Services~~; and

f. The provider must be ~~certified~~ licensed as ~~a mental retardation case~~ an intellectual disability support coordination/case management agency by the ~~DMHMRSAS~~ Department of Behavioral Health and Developmental Services.

3. Providers may bill for Medicaid ~~mental retardation case~~ intellectual disability support coordination/case management only when the services are provided by qualified ~~mental retardation case managers~~ support coordinators/case managers. The ~~case manager must~~ support coordinator/case manager shall possess a combination of ~~mental retardation~~ intellectual disability work experience or relevant education ~~which~~ that indicates that the ~~individual~~ incumbent, at entry level, possesses the ~~following~~ knowledge, skills, and abilities listed in this subdivision. ~~The incumbent must have at entry level the following knowledge, skills and abilities.~~ These must be documented ~~or observable~~ in the application form or supporting documentation or ~~in~~ observable and documented during the interview (with appropriate supporting documentation).

a. Knowledge of:

(1) The definition~~,~~ and causes of intellectual disability and ~~program philosophy of mental retardation~~ best practices in supporting individuals who have intellectual disability;

(2) Treatment modalities and intervention techniques, such as ~~behavior management~~ positive behavior supports, person-centered practices, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning, and ~~service~~ support coordination;

(3) Different types of assessments and their uses in ~~program~~ service planning;

(4) ~~Consumers'~~ Individuals' civil and human rights;

(5) Local community resources and service delivery systems, including support services, eligibility criteria and intake process, termination criteria and procedures, and generic community resources;

(6) Types of ~~mental retardation~~ intellectual disability programs and services;

(7) Effective oral, written, and interpersonal communication principles and techniques;

(8) General principles of record documentation; and

(9) The service planning process and the major components of ~~a service plan~~ an ISP.

b. Skills in:

(1) Interviewing;

(2) Negotiating with ~~consumers~~ individuals and service providers;

(3) Observing~~, recording and reporting~~ and documenting an individual's behaviors;

(4) Identifying and documenting ~~a consumer's~~ an individual's needs for resources, services, and other assistance;

(5) Identifying services within the established service system to meet the ~~consumer's~~ individual's needs;

(6) Coordinating the provision of services by diverse public and private providers;

(7) Using information from assessments, evaluations, ~~observation~~ observations, and interviews to develop ~~service~~ support plans;

(8) Formulating, writing, and implementing individualized consumer ~~service~~ support plans to promote goal attainment for individuals with ~~mental retardation~~ intellectual disability;

(9) Using assessment tools; and

(10) Identifying community resources and organizations and coordinating resources and activities.

c. Abilities to:

(1) Demonstrate a positive regard for ~~consumers~~ individuals and their families (e.g., treating ~~consumers~~ people as individuals, allowing risk taking, avoiding stereotypes of people with ~~mental retardation~~ intellectual disability, respecting ~~consumers'~~ individual and ~~families'~~ family privacy, and believing ~~consumers~~ individuals can grow);

(2) Be persistent and remain objective;

(3) Work as team member, maintaining effective ~~inter-~~ interagency and intra-agency working relationships;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, verbally and in writing; and

(6) Establish and maintain ongoing supportive relationships.

F. The ~~State~~ state assures that the provision of ~~case~~ support coordination/case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of ~~case~~ support coordination/case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the ~~plan~~ State Plan.

G. Payments for ~~case management~~ support coordination/case management services under the ~~plan does~~ State Plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

12VAC30-50-450. ~~Case management services for individuals with mental retardation and related conditions who are participants in the Home and Community Based Care waivers for such individuals.~~ (Repealed.)

~~A. Target group: Medicaid eligible individuals with mental retardation and related conditions, or a child under 6 years of age who is at developmental risk, who have been determined to be eligible for Home and Community Based Care Waiver Services for persons with mental retardation and related conditions.~~

~~1. An active client for waiver case management shall mean an individual who receives at least one face to face contact every 90 days and monthly on going case management interactions. There shall be no maximum service limits for case management services. Case management services may be initiated up to 3 months prior to the start of waiver services, unless the individual is institutionalized.~~

~~2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to thirty days immediately preceding discharge. Case management for institutionalized individuals may be billed for no more than two predischarge periods in twelve months.~~

~~B. Services will be provided in entire State.~~

~~C. Comparability of Services. Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.~~

~~D. Definition of Services. Mental retardation case management services to be provided include:~~

~~1. Assessment and planning services, to include developing a Consumer Service Plan (does not include performing medical and psychiatric assessment but does not include referral for such assessment);~~

~~2. Linking the individual to services and supports specified in the consumer service plan;~~

~~3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;~~

~~4. Coordinating services with other agencies and providers involved with the individual;~~

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic and recreational services;

6. Making collateral contacts with the individual's significant others to promote implementation of the service plan and community adjustment; and

7. Following up and monitoring to assess ongoing progress and ensuring services are delivered; and

8. Education and counseling which guides the client and develop a supportive relationship that promotes the service plan.

E. Qualifications of Providers:

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers for individuals with mental retardation and serious/chronic mental illness to the Community Services Boards only to enable them to provide services to seriously or chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.

2. To qualify as a provider of services through DMAS for rehabilitative mental retardation case management, the provider of the services must meet certain criteria. These criteria shall be:

a. The provider must guarantee that clients have access to emergency services on a 24 hour basis;

b. The provider must demonstrate the ability to serve individuals in need of comprehensive services regardless of the individuals' ability to pay or eligibility for Medicaid reimbursement;

c. The provider must have the administrative and financial management capacity to meet state and federal requirements;

d. The provider must have the ability to document and maintain individual case records in accordance with state and federal requirements;

e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

f. The provider must be certified as a mental retardation case management agency by the DMHMRSAS.

3. Providers may bill for Medicaid mental retardation case management only when the services are provided by qualified mental retardation case managers. The case manager must possess a combination of mental retardation work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities, at the entry level. These must be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

(1) The definition, causes and program philosophy of mental retardation

(2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;

(3) Different types of assessments and their uses in program planning

(4) Consumers' rights

(5) Local service delivery systems, including support services

(6) Types of mental retardation programs and services

(7) Effective oral, written and interpersonal communication principles and techniques

(8) General principles of record documentation

(9) The service planning process and the major components of a service plan

b. Skills in:

(1) Interviewing

(2) Negotiating with consumers and service providers

(3) Observing, records and reporting behaviors

(4) Identifying and documenting a consumer's needs for resources, services and other assistance

(5) Identifying services within the established service system to meet the consumer's needs

(6) Coordinating the provision of services by diverse public and private providers

(7) Analyzing and planning for the service needs of mentally retarded persons

(8) Formulating, writing and implementing individualized consumer service plans to promote goal attainment for individuals with mental retardation

(9) Using assessment tools.

c. Abilities to:

(1) Demonstrate a positive regard for consumers and their families (e.g., treating consumers as individuals, allowing risk taking, avoiding stereotypes of mentally retarded people, respecting consumers' and families' privacy, believing consumers can grow)

~~(2) Be persistent and remain objective~~

~~(3) Work as team member, maintaining effective inter- and intra-agency working relationships~~

~~(4) Work independently, performing positive duties under general supervision~~

~~(5) Communicate effectively, verbally and in writing~~

~~(6) Establish and maintain ongoing supportive relationships.~~

~~F. The State assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.~~

~~1. Eligible recipients will have free choice of the providers of case management services.~~

~~2. Eligible recipients will have free choice of the providers of other medical care under the plan.~~

~~G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.~~

12VAC30-50-490. ~~Case~~ Support coordination/case management for individuals with developmental disabilities, including autism.

A. Target group. Medicaid-eligible individuals with developmental disability or related conditions who are six years of age and older and who are on the waiting list or are receiving services under one of the ~~Individual and Family Developmental Disabilities Support (IFDDS) Waiver~~ Developmental Disabilities (DD) Waivers.

1. An active ~~client~~ individual for ~~case~~ support coordination/case management shall mean ~~an individual~~ a person for whom there is ~~a plan of care~~ an individual support plan (ISP), as defined in 12VAC30-122-20, that requires ~~regular~~ direct or ~~client related~~ individual-related contacts or communication or activity with the ~~client~~ individual, ~~family~~ the individual's family/caregiver, service providers, and significant others ~~and others including at least one face to face contact every 90 calendar days~~. Billing can be submitted for an active ~~client~~ individual only for months in which direct or ~~client related~~ individual-related contacts, activity, or communications occur, consistent with the activities in the individual's ISP. Face-to-face contact between the support coordinator/case manager shall occur at least every three months in which there is an activity submitted for billing.

2. When an individual applies for the ~~IFDDS Waiver~~ DD Waivers and there is no available ~~funding (slots)~~ slot, he will be placed on a waitlist until ~~funding~~ a slot is available. ~~The "Initial Waitlist Plan of Care" is completed with the case manager and identifies the services anticipated once a slot is available. Individuals on the waitlist do not have routine case management services unless there is a documented special service need in the plan of care. Case managers may~~ Individuals on the waitlist shall not receive developmental disability support coordination/case management services unless a special service need (as defined in subdivision 4 of this subsection) is identified, in which case an ISP shall be developed to address the special service need. Support coordinators/case managers shall make face-to-face contact with the individual at least every 90 calendar days to monitor the special service need, and documentation is required to support such contact. ~~The case manager will~~ support coordinator/case manager shall assure the ~~plan of care~~ ISP addresses the current special service needs of the individual and ~~will~~ shall coordinate with ~~DMAS~~ the Department of Medical Assistance Services designee to assure actual enrollment into the waiver upon slot availability.

3. The unit of service is one month. There shall be no maximum service limits for ~~case~~ support coordination/case management services except ~~case management services for~~ as related to individuals residing in institutions or medical facilities. For these individuals, reimbursement for ~~case~~ support coordination/case management ~~for institutionalized individuals~~ services may be billed for no more than two months in a 12-month ~~cycle~~ period.

4. ~~The unit of service is one month. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management for institutionalized individuals may be billed for no more than two months in a 12 month cycle.~~ A special service need is one that requires linkage to and temporary monitoring of those supports and services identified in the ISP to address an individual's mental health, behavioral, and medical needs or provide assistance related to an acute need that coincides with the allowable activities noted in subsection D of this section. If an activity related to the special service need is provided in a given month, then the support coordinator/case manager would be eligible for reimbursement. Once the special service need is addressed related to the specific activity identified, billing for the service shall not continue until a special service need presents again.

B. Services will be provided in the entire state.

C. Comparability of services. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Social Security Act (Act) is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act and to limit support coordination/case management providers to the community services boards or behavioral health authorities (CSBs or BHAs). CSBs or BHAs shall

contract with private support coordinators/case managers for this service.

D. Definition of services. ~~Case~~ Support coordination/case management services will be provided for Medicaid-eligible individuals with developmental disability or related conditions who are on the waiting list for or ~~participants~~ enrolled in one of the home and community-based ~~care IFDDS Waiver~~ services DD Waivers. ~~Case~~ Support coordination/case management services ~~to~~ that may be provided include:

1. Assessment and planning services, to include developing ~~a consumer service plan (does~~ an ISP, which does not include performing medical and psychiatric assessment but does include referral for such ~~assessments)~~ assessment;

2. Linking the individual to services and supports specified in the ~~consumer service plan~~ ISP;

3. Assisting the individual directly for the purpose of locating, developing, or obtaining needed services and resources;

4. Coordinating services and service planning with other agencies and providers involved with the individual;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills and to use vocational, civic, and recreational services;

6. Making collateral contacts with the individual's significant others to promote implementation of the ~~service plan~~ ISP and community ~~adjustment~~ integration;

~~7. Following up and monitoring to assess ongoing progress and ensure services are delivered;~~

~~8.~~ 7. Education and counseling that guides the individual and develops a supportive relationship that promotes the ~~service plan~~ ISP; and

~~9.~~ 8. Benefits counseling.

E. Qualifications of providers. ~~In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12VAC30-120-730 and 12VAC30-120-740, specific provider qualifications are:~~

~~1. To qualify as a provider of services through DMAS for IFDDS Waiver case management, the service provider must meet these criteria:~~

~~a. Have the administrative and financial management capacity to meet state and federal requirements;~~

~~b. Have the ability to document and maintain recipient case records in accordance with state and federal requirements; and~~

~~c. Be enrolled as an IFDDS case management agency by DMAS.~~

~~2. Providers may bill for Medicaid case management only when the services are provided by qualified case managers. The case manager must possess a combination of developmental disability work experience or relevant education, which indicates that the individual possesses the following knowledge, skills, and abilities, at the entry level. These must be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).~~

1. CSBs or BHAs shall have current, signed provider agreements with the Department of Medical Assistance Services (DMAS) and shall directly bill DMAS for reimbursement. CSBs or BHAs may contract with other entities to provide support coordination/case management.

2. Support coordinators/case managers shall not be (i) the direct care staff person, (ii) the immediate supervisor of the direct care staff person, (iii) otherwise related by business or organization to the direct care staff person, or (iv) an immediate family member of the direct care staff person.

3. Support coordination/case management services shall not be provided to the individual by (i) parents, guardians, spouses, or any family living with the individual or (ii) parents, guardians, spouses, or any family employed by an organization that provides support coordination/case management for the individual except in cases where the family member was employed by the case management entity prior to implementation of this chapter.

4. Providers of developmental disability support coordination/case management services shall meet the following criteria:

a. The provider shall guarantee that individuals have access to emergency services on a 24-hour basis pursuant to § 37.2-500 of the Code of Virginia;

b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid;

c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

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

e. The provider shall be licensed as a support coordination/case management entity.

5. The provider shall ensure that support coordinators/case managers who provide developmental disability support coordination/case management services and were hired

after September 1, 2016, shall possess a minimum of a bachelor's degree in a human services field or be a registered nurse. Support coordinators/case managers hired before September 1, 2016, who do not possess a minimum of a bachelor's degree in a human services field may continue to provide support coordination/case management if they are employed by or contracting with an entity that has or had a Medicaid provider participation agreement to provide developmental disability support coordination/case management prior to February 1, 2005, and the support coordinator/case manager has maintained employment with the provider without interruption and that is documented in the personnel record.

6. In addition to the requirements in subdivision 5 of this subsection, the support coordinator/case manager shall possess developmental disability work experience or relevant education that indicates that at entry level he possesses the following knowledge, skills, and abilities that shall be documented in the employment application form or supporting documentation or during the job interview:

a. Knowledge of:

(1) The definition~~,~~ and causes~~,~~ of developmental disability and ~~program philosophy of~~ best practices in supporting individuals who have developmental disabilities;

(2) Treatment modalities and intervention techniques, such as ~~behavior management~~ positive behavioral supports, person-centered practices, independent living skills, training, supportive counseling, family education, crisis intervention, discharge planning, and service coordination;

(3) Different types of assessments and their uses in ~~program planning~~ determining the specific needs of the individual with respect to his ISP;

(4) Individuals' human and civil rights;

(5) Local service delivery systems, including support services;

(6) ~~Types of developmental disability programs and services~~ Programs and services that support individuals with developmental disabilities;

(7) Effective oral, written, and interpersonal communication principles and techniques;

(8) General principles of record documentation; and

(9) The service planning process and the major components of ~~a service plan~~ the ISP.

b. Skills in:

(1) Interviewing;

(2) Negotiating with individuals and service providers;

(3) Observing~~, recording, and reporting~~ and documenting an individual's behaviors;

(4) Identifying and documenting an individual's needs for resources, services, and other assistance;

(5) Identifying services within the established service system to meet the individual's needs;

(6) Coordinating the provision of services by diverse public and private providers;

(7) Analyzing and planning for the service needs of ~~developmentally disabled persons~~ individuals with developmental disability;

(8) Formulating, writing, and implementing individual-specific ~~service~~ support plans ~~to promote goal attainment for recipients with developmental disabilities~~ designed to facilitate attainment of the individual's unique goals for a meaningful, quality life; and

(9) Using assessment tools.

c. Abilities to:

(1) Demonstrate a positive regard for individuals and their families (e.g., allowing risk taking, avoiding stereotypes of ~~developmentally disabled~~ people with developmental disabilities, respecting ~~individuals'~~ individual and ~~families'~~ family privacy, believing individuals can grow);

(2) Be persistent and remain objective;

(3) Work as a team member, maintaining effective ~~inter-~~ interagency and intra-agency working relationships;

(4) Work independently, performing ~~positive~~ position duties under general supervision;

(5) Communicate effectively, orally and in writing; and

(6) Establish and maintain ongoing supportive relationships.

~~3. In addition, case managers who enroll with DMAS to provide case management services after (insert the effective date of these regulations) must possess a minimum of an undergraduate degree in a human services field. Providers who had a Medicaid participation agreement to provide case management prior to February 1, 2005, and who maintain that agreement without interruption may continue to provide case management using the KSA requirements effective prior to February 1, 2005.~~

~~4. Case managers who are employed by an organization must receive supervision within the same organization. Case managers who are self-employed must obtain one hour of documented supervision every three months when the case manager has active cases. The individual who provides the supervision to the case manager must have a~~

~~master's level degree in a human services field and/or have five years of satisfactory experience in the field working with individuals with related conditions as defined in 42 CFR 435.1009. A case management provider cannot supervise another case management provider.~~

~~5. Case managers must complete eight hours of training annually in one or a combination of the areas described in the knowledge, skills and abilities (KSA) subdivision. Case managers must have documentation to demonstrate training is completed. The documentation must be maintained by the case manager for the purposes of utilization review.~~

~~6. Parents, spouses, or any person living with the individual may not provide direct case management services for their child, spouse or the individual with whom they live or be employed by a company that provides case management for their child, spouse, or the individual with whom they live.~~

~~7. A case manager may provide services facilitation services. In these cases, the case manager must meet all the case management provider requirements as well as the service facilitation provider requirements. Individuals and their family/caregivers, as appropriate, have the right to choose whether the case manager may provide services facilitation or to have a separate services facilitator and this choice must be clearly documented in the individual's record. If case managers are not services facilitation providers, the case manager must assist the individual and his family/caregiver, as appropriate, to locate an available services facilitator.~~

~~8. If the case manager is not serving as the individual's services facilitator, the case manager may conduct the assessments and reassessment for CD services if the individual or his family/caregiver, as appropriate, chooses. The individual's choice must be clearly documented in the case management record along with which provider is responsible for conducting the assessments and reassessments required for CD services.~~

7. Support coordinators/case managers shall receive supervision within the employing organization. The supervisor of the support coordinator/case manager shall have either:

a. A master's degree in a human services field and one year of required documented experience working with individuals who have developmental disabilities as defined in §37.2-100 of the Code of Virginia;

b. A registered nurse license in the Commonwealth, or hold a multistate licensure privilege and one year of documented experience working with individuals who have developmental disabilities as defined in § 37.2-100 of the Code of Virginia;

c. A bachelor's degree and two years of experience working with individuals who have developmental disabilities as defined in § 37.2-100 of the Code of Virginia;

d. A high school diploma or GED and five years of paid experience in developing, conducting, and approving assessments and ISPs as well as working with individuals who have developmental disabilities as defined in §37.2-100 of the Code of Virginia;

e. A doctor of medicine license or doctor of osteopathy license in the Commonwealth and one year of required documented experience working with individuals who have developmental disabilities as defined in § 37.2-100 of the Code of Virginia; or

f. Requirements as set out in the Department of Behavioral Health and Developmental Disabilities licensing regulations (12VAC35-105-1250).

8. Support coordinators/case managers shall obtain at least one hour of documented supervision at least every three months.

9. A support coordinator/case manager shall complete a minimum of eight hours of training annually in one or more of a combination of areas described in the knowledge, skills, and abilities in subdivision 6 of this subsection and shall provide documentation to his supervisor that demonstrates that training is completed. The documentation shall be maintained by the supervisor of the support coordinator/case manager in the employee's personnel file for the purposes of utilization review. This documentation shall be provided to the Department of Medical Assistance Services and the Department of Behavioral Health and Developmental Services upon request.

F. The state assures that the provision of ~~case management~~ support coordination/case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. ~~Eligible recipients will have free choice of the providers of case management services.~~ To provide choice to individuals who are enrolled in the Developmental Disabilities (DD) Waivers (Building Independence (BI), Community Living (CL), and Family and Individual Supports (FIS)), CSBs or BHAs may contract with private support coordination/case management entities to provide developmental disabilities support coordination/case management services. If there are no qualified providers in that CSB's or BHA's catchment area, then the CSB or BHA shall provide the support coordination/case management services. The CSBs or BHAs shall be the only licensed entities permitted to be reimbursed for developmental disabilities or intellectual disability support coordination/case management services. For those

individuals who receive developmental disabilities support coordination/case management services:

a. The CSB or BHA that serves the individual shall be the responsible provider of support coordination/case management. This CSB or BHA shall be the provider responsible for submitting claims to the Department of Medical Assistance Services (DMAS) for reimbursement.

b. The CSB shall inform the individual that the individuial has a choice with respect to the support coordination/case management services that he receives. The individual shall be informed that he can choose from among these options:

(1) The individual may have his choice of support coordinator/case manager employed by the CSB or BHA.

(2) The individual may have his choice of another CSB or BHA with which the responsible CSB or BHA provider has a memorandum of agreement if the individual or family decides that no choice is desired in the responsible CSB or BHA provider.

(3) The individual may have a choice of a designated private provider with whom the responsible CSB or BHA provider has a contract for support coordination/case management if the individual or family decides not to choose the responsible CSB or BHA provider or another CSB or BHA when there is a memorandum of agreement.

c. At any time, the individual or family may request to change their support coordinator/case manager.

2. Eligible ~~recipients~~ individuals will have free choice of the providers of other medical care under the ~~plan~~ State Plan.

3. When the required support coordination/case management services are contracted out to a private entity, the responsible CSB or BHA provider shall remain the Medicaid enrolled provider for the purpose of submitting claims to DMAS for reimbursement. Only the responsible CSB or BHA provider shall be permitted to submit claims to DMAS for reimbursement of support coordination/case management services.

G. Payment for ~~case management~~ support coordination/case management services under the ~~plan does~~ State Plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

CHAPTER 122
COMMUNITY WAIVER SERVICES FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

12VAC30-122-10. Purpose; legal authority; covered services; aggregate cost effectiveness; required individual and provider enrollment; individual costs.

A. This chapter:

1. Supports individuals with developmental disabilities to live integrated and engaged lives in their communities;

2. Standardizes and simplifies access to services;

3. Sets out and defines services that promote community integration and engagement;

4. Improves provider capacity and quality to render covered services; and

5. Facilitates meeting the Commonwealth's commitments under the community integration mandate of the Americans with Disabilities Act (42 USC § 12101 et seq.), the Supreme Court's decision in Olmstead v. L.C. (527 U.S. 581 (1999)), and the 2012 Settlement Agreement in United States of America v. Commonwealth of Virginia.

B. Legal authority.

1. Selected home and community-based waiver services shall be available through § 1915(c) waivers of the Social Security Act (42 USC § 1396n). The waivers shall be named (i) Family and Individual Supports (FIS), (ii) Community Living (CL), and (iii) Building Independence (BI) and are collectively referred to as the Developmental Disabilities (DD) Waivers. These waiver services shall be required, appropriate, and medically necessary to maintain an individual in the community instead of placement in an institution.

2. The Department of Medical Assistance Services (DMAS), the single state agency pursuant to 42 CFR 431.10 responsible for administrative authority over service authorizations, delegates the processing of service authorizations and daily operations to the Department of Behavioral Health and Developmental Services in accordance with the interagency Memorandum of Understanding. DMAS shall be the single state agency authority pursuant to 42 CFR 431.10 for payment of claims for the services covered in the DD Waivers and for obtaining federal financial participation from the Centers for Medicare and Medicaid Services.

C. Covered services. The services covered in the Developmental Disabilities Waivers shall be:

1. Assistive technology service (12VAC30-122-270);

2. Benefits planning service (12VAC30-122-280 - reserved);

3. Center-based crisis support service (12VAC30-122-290);

4. Community-based crisis support service (12VAC30-122-300);

5. Community coaching service (12VAC30-122-310);

6. Community guide service (12VAC30-122-320 - reserved);

7. Community engagement service (12VAC30-122-330);

8. Companion service (12VAC30-122-340);

9. Crisis support service (12VAC30-122-350);

10. Electronic home-based support service (12VAC30-122-360);

11. Environmental modification service (12VAC30-122-370);

12. Group day service (12VAC30-122-380);

13. Group home residential service (12VAC30-122-390);

14. Group and individual supported employment service (12VAC30-122-400);

15. In-home support service (12VAC30-122-410);

16. Independent living support service (12VAC30-122-420);

17. Individual and family/caregiver training service (12VAC30-122-430);

18. Nonmedical transportation service (12VAC30-122-440 - reserved);

19. Peer support service (12VAC30-122-450 - reserved);

20. Personal assistance service (12VAC30-122-460);

21. Personal emergency response system service (12VAC30-122-470);

22. Private duty nursing service (12VAC30-122-480);

23. Respite service (12VAC30-122-490);

24. Services facilitation service (12VAC30-122-500);

25. Shared living support service (12VAC30-122-510);

26. Skilled nursing service (12VAC30-122-520);

27. Sponsored residential support service (12VAC30-122-530);

28. Supported living residential service (12VAC30-122-540);

29. Therapeutic consultation service (12VAC30-122-550);

30. Transition service (12VAC30-122-560); and

31. Workplace assistance service (12VAC30-122-570).

D. Aggregate cost effectiveness. Federal waiver requirements, as established in § 1915 of the Social Security Act and 42 CFR 430.25, provide that the average per capita fiscal year expenditures in the aggregate under the DD Waivers shall not exceed the average per capita expenditures in the aggregate for the level of care provided in ICFs/IID, as defined in 42 CFR 435.1010 and 42 CFR 483.440, under the State Plan for Medical Assistance that would have been provided had the DD Waivers not been granted.

E. No waiver services shall be reimbursed until after both the provider enrollment process and the individual eligibility determination process have been completed. A determination of individual eligibility for waiver services shall not determine claim reimbursement. Individuals shall be enrolled to receive services in order for provider reimbursement to occur.

1. No back-dated payments shall be made for services that were rendered before the completion of the provider enrollment and the individual eligibility determination processes.

2. Individuals who are enrolled in these waivers who choose to employ their own companions or assistants prior to the completion of the provider enrollment process shall be responsible for reimbursing such costs themselves.

3. No back dating of provider enrollment requirements shall be permitted in order for DMAS to reimburse for prematurely incurred costs.

F. With the exception of costs specified in subsection E of this section that waiver individuals may elect to incur, no costs for evaluations or assessments that may be required by either DMAS or DBHDS shall be borne by the individual.

12VAC30-122-20. Definitions.

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

"AAIDD" means the American Association on Intellectual and Developmental Disabilities.

"Activities of daily living" or "ADLs" means personal care tasks, for example, bathing, dressing, using a toilet, transferring, and eating or feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Agency-directed model" means a model of service delivery where an agency is responsible for providing direct support staff, for maintaining individuals' records, and for scheduling the dates and times of the direct support staff's presence in an individual's home and in community.

"Appeal" means the process used to challenge actions regarding services, benefits, and reimbursement provided by

Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Assistive technology" or "AT" means specialized medical equipment and supplies, including those devices, controls, or appliances specified in the individual support plan but not available under the State Plan for Medical Assistance that enable individuals to increase their abilities to perform ADLs or to perceive, control, or communicate with the environment in which they live or that are necessary to the proper functioning of the specialized equipment.

"Barrier crime" means those crimes listed in §§ 32.1-162.9:1, 37.2-314, 37.2-416, 37.2-506, 37.2-607, and 63.2-1719 of the Code of Virginia.

"Behavioral health authority" or "BHA" means the same as defined in § 37.2-600 of the Code of Virginia.

"BI" means the Building Independence Waiver as further described in 12VAC30-122-240.

"Center-based crisis support services" means crisis prevention and stabilization in a crisis therapeutic home using planned and emergency admissions. The services are designed for those individuals who need ongoing crisis supports.

"Centers for Medicare and Medicaid Services" or "CMS" means the unit of the U.S. Department of Health and Human Services that administers and funds the Medicare and Medicaid programs.

"Challenging behavior" means behaviors of such intensity, frequency, and duration that the physical safety of the individual or others is placed in serious jeopardy or the behavior limits access to the community. Challenging behavior may include withdrawal, self-injury, injury to others, aggression, or self-stimulation.

"CL" means the Community Living Waiver as described in 12VAC30-122-250.

"Community-based crisis support services" means services for individuals who are experiencing crisis events that put them at risk for homelessness, incarceration, hospitalization, or that create a danger to themselves or others and includes ongoing supports to individuals in their homes and in community settings.

"Community coaching" means a service designed for individuals who require one-to-one support in a variety of community settings in order to develop specific skills to address barriers that prevent that individual from participating in community engagement services.

"Community engagement" means, for the purpose of building relationships and natural supports, services that support and foster individuals' abilities to acquire, retain, or improve skills necessary to build positive social behavior, interpersonal competence, greater independence, employability, and personal choice necessary to access typical activities and benefits of community life equal to those available to the general population. Community engagement services shall be provided in groups no larger than one staff person to three individuals.

"Community services board" or "CSB" means the same as defined in § 37.2-100 of the Code of Virginia.

"Companion" means a person who provides companion services for compensation by DMAS.

"Companion services" means nonmedical care, support, and socialization provided to an adult individual age 18 years and older in accordance with a therapeutic goal in the individual support plan. Companion services are not purely recreational in nature but shall not provide routine support with ADLs.

"Consumer direction" means a model of service delivery for which the individual or the individual's employer of record, as appropriate, shall be responsible for hiring, training, supervising, and firing of the person who provides the direct support or specific services covered by DMAS and whose wages are paid by DMAS through its fiscal agent.

"Crisis support services" means intensive supports by trained and, where applicable, licensed staff in crisis prevention, crisis intervention, and crisis stabilization for an individual who is experiencing an episodic behavioral or psychiatric event that has the potential to jeopardize his current community living situation.

"Customized rate" means a reimbursement rate available to group home residential, sponsored residential, supported living residential, group day, community coaching, and in-home support service providers that exceeds the normal rate applicable to the individual receiving these specific services.

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

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

"DBHDS staff" means persons employed by or contracted with DBHDS.

"Develomental Disability Waivers" or "DD Waivers" means the waiver program established in 12VAC30-122 and consisting of the FIS, CL, and BI waivers.

"Developmental disability" means the same as defined in § 37.2-100 of the Code of Virginia.

"Direct support professional," "direct care staff," or "DSP" means staff members identified by the provider as having the primary role of assisting an individual on a day-to-day basis with routine personal care needs, social support, and physical assistance in a wide range of daily living activities so that the individual can lead a self-directed life in his own community.

This term shall exclude consumer-directed staff and services facilitation providers.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by or contracted with DMAS.

"Electronic home-based support" or "EHBS" means goods and services based on current technology, such as Smart Home©, and includes purchasing electronic devices, software, services, and supplies that allow individuals to use technology in their residences to achieve greater independence and self-determination and reduce the need for staff intervention but that are not otherwise covered through other benefits in the DD Waivers or through the State Plan for Medical Assistance.

"Employer of record" or "EOR" means the person who performs the functions of the employer in the consumer-directed model of service delivery and may be the individual enrolled in the waiver, a family member, a caregiver, or another designated person.

"Enroll" with respect to an individual means (i) the local department of social services has determined the individual's financial eligibility for Medicaid as set out in 12VAC30-122-60; (ii) the individual has been determined by the support coordinator to be at risk of institutionalization and to meet the functional eligibility requirements in the Virginia Intellectual Developmental Disabilities Eligibility Survey form, which is referenced in 12VAC30-122-70, for the waiver; (iii) the Department of Behavioral Health and Developmental Services has verified the availability of a waiver slot for the individual; and (iv) the individual has agreed to accept the waiver slot.

"Environmental modifications" or "EM" means physical adaptations to the individual's home or primary vehicle that are necessary to ensure the individual's health and welfare or to enable functioning with greater independence.

"EPSDT" means the Early and Periodic Screening, Diagnosis and Treatment program administered by DMAS for children younger than 21 years of age according to federal guidelines that prescribe preventive and treatment services for Medicaid eligible children and as defined in 12VAC30-50-130.

"Face-to-face visit" means an in-person meeting between the support coordinator and the individual and family/caregiver, as appropriate, for the purpose of assessing the individual's status and determining satisfaction with services, including the need for additional services and supports.

"Family" means, for the purpose of receiving individual and family/caregiver training services, the unpaid people who live with or provide care to an individual served by the waiver and may include a parent, a legal guardian, a spouse, children, relatives, a foster family, or in-laws but shall not include persons who are compensated, by any possible means, to care for the individual.

"FIS" means the Family and Individual Support Waiver as further described in 12VAC30-122-260.

"General supports" means staff presence to ensure that appropriate action is taken in an emergency or an unanticipated event and includes (i) awake staff during nighttime hours; (ii) routine bed checks; (iii) oversight of unstructured activities; (iv) asleep staff at night on premises for security or safety reasons, or both; or (v) on-call staff.

"Group day services" means services for the individual to acquire, retain, or improve skills of self-help, socialization, community integration, employability, and adaptation via opportunities for peer interactions, community integration, and enhancement of social networks.

"Group home residential services" means skill-building, routine supports, general supports, and safety supports that are provided in a residence licensed by DBHDS that enable the individual to acquire, retain, or improve skills necessary to lead a self-directed life in his own community.

"Home and community-based waiver services," "HCBS," or "waiver services" means the range of community services approved by CMS pursuant to § 1915(c) of the Social Security Act to be offered to persons as an alternative to institutionalization.

"ICF/IID" means a facility or distinct part of a facility that (i) is licensed by DBHDS; (ii) meets the federal certification regulations for an intermediate care facility for individuals with intellectual disabilities and individuals with related conditions; and (iii) addresses the total needs of the individuals, which include physical, intellectual, social, emotional, and habilitation, and (iv) provides active treatment as defined in 42 CFR 483.440.

"IDEA" means the Individuals with Disabilities Education Act (20 USC § 1400 et seq.).

"Immediate family member" means, for the purposes of support coordination/case management services (12VAC30-50-455), spouses, parents, children (biological, adoptive, foster) and siblings of the individual in the waiver.

"Individual" means the Commonwealth's citizen, including a child, who meets the income and resource standards in order to be eligible for Medicaid-covered services, has a diagnosis of developmental disability, and is eligible for the DD Waiver. The individual may be a person on the DD Waiver waiting list or an enrolled individual who is receiving these waiver services.

"Individual support plan" or "ISP" means a comprehensive, person-centered plan that sets out the supports and actions to be taken during the year by each provider, as detailed in each

provider's plan for supports to achieve desired outcomes, goals, and dreams. The individual support plan shall be developed collaboratively by the individual, the individual's family/caregiver, as appropriate, providers, the support coordinator, and other interested parties chosen by the individual and shall contain the DMAS-approved ISP components as set forth in 12VAC30-122-190.

"Individual supported employment" means services that consist of ongoing, one-on-one supports provided by a job coach that enable the individual to be employed in an integrated work setting and may include assisting the individual to locate a job or develop a job on behalf of the individual, as well as activities needed to sustain paid work by the individual.

"Individual's responses to services" means the individual's behaviors in and responses to the settings. In the case of an individual who does not communicate through spoken language, this shall mean the individual's condition and observable responses.

"In-home support services" means residential services that take place in the individual's home, family home, or community settings that typically supplement the primary care provided to himself or by family or another unpaid caregiver and are designed to enable the individual to lead a self-directed life in the community while ensuring his health, safety, and welfare.

"Instrumental activities of daily living" or "IADLs" means skills that are more complex than those needed to address ADLs and that are needed to successfully live independently such as meal preparation, shopping, housekeeping, laundry, and money management.

"Job coach" means the person who instructs individuals with disabilities utilizing structured intervention techniques to help the individual learn to perform job tasks to the employer's specifications and to learn the interpersonal skills necessary to be accepted as a worker at the job site and in related community contacts.

"LEIE" means List of Excluded Individuals and Entities. For the purpose of the use of LEIE, the use of the word "individual" shall not refer to the enrolled waiver individual.

"Levels of support" means the level (1-7) that is assigned to an individual based on the SIS® score, the results of the Virginia Supplemental Questions, and, as needed, a supporting document review verification process.

"Licensed practical nurse" or "LPN" means a person who is licensed or holds multistate licensure privilege pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia to practice practical nursing as defined in § 54.1-3000 of the Code of Virginia.

"LMHP" means a licensed mental health professional as defined in 12VAC35-105-20.

"LMHP-resident" means the same as defined in 12VAC30-50-130.

"LMHP-RP" means the same as defined in 12VAC30-50-130.

"LMHP-supervisee" means the same as defined in 12VAC30-50-130.

"Medically necessary" means an item or service provided for the diagnosis or treatment of an individual's condition consistent with community standards of medical practice as determined by DMAS.

"Own home" means an individual residence that meets the legal definition of a residential dwelling that can be owned or leased by an individual.

"Parent" means a person who is biologically or naturally related, a foster parent, step-parent, or an adoptive parent to the individual enrolled in the waiver.

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS.

"Person-centered planning" means a fundamental process that focuses on what is important to and for an individual and the needs and preferences of the individual to create an individual support plan.

"Personal assistance service" means direct support with (i) ADLs, (ii) IADLs, (iii) access to the community, (iv) monitoring the self-administration of medication or other medical needs, and (v) monitoring health status and physical condition. Personal assistance services may occur in the home, community, work site, or postsecondary school.

"Personal assistant" means a person who provides personal assistance services employed by a provider agency.

"Personal emergency response system" or "PERS" means an electronic device and monitoring service, and also may include medication monitoring units, that enable individuals to secure help in an emergency.

"Personal profile" means a point-in-time synopsis of what an individual enrolled in the waiver wants to maintain, change, improve in his life, or goals and dreams to achieve, and shall be completed by the individual and another person, such as his support coordinator or family/caregiver, chosen by the individual to help him plan before the annual planning meeting where it is discussed and then finalized to inform the individual supports plan process.

"Plan for supports" means each provider's plan for supporting the individual enrolled in the waiver in achieving the individual's desired outcomes and facilitating the individual's health and safety. The provider plan for supports is one component of the individual support plan.

"Positive behavior support" means an applied science that uses educational methods to expand an individual's behavior repertoire and systems change methods to redesign an individual's living environment to enhance the individual's quality of life by minimizing his challenging behaviors to enable him to lead a self-directed life in the community.

"Primary caregiver" means the primary person who consistently assumes the role of providing direct care and support without compensation for such care to the individual enrolled in the waiver to enable the individual to live a self-directed life in the community.

"Private duty nursing services" means individual and continuous nursing care to individuals that may be provided concurrently with other services or be required by individuals who have a serious medical condition or complex health care needs, or both, and that has been certified by a physician as medically necessary to enable the individual to remain in a community setting rather than in a hospital, nursing facility, or ICF/IID.

"Progress notes" means individual-specific written documentation that (i) contains unique differences specific to the individual's circumstances and the supports provided, and the individual's responses to such supports; (ii) is signed and dated by the person who rendered the supports; and (iii) is written and signed and dated as soon as is practicable but no longer than one week after the referenced service.

"Qualified developmental disabilities professional" or "QDDP" means a professional who (i) possesses at least one year of documented experience working directly with individuals who have developmental disabilities; (ii) is one of the following: a doctor of medicine or osteopathy, a registered nurse, a provider holding at least a bachelor's degree in a human service field including sociology, social work, special education, rehabilitation engineering, counseling, or psychology; and (iii) possesses the required Virginia or national license, registration, or certification in accordance with his profession, if applicable.

"Quality management review" or "QMR" (i) means a process used by DMAS to monitor provider compliance with DMAS participation standards and policies and to ensure an individual's health, safety, and welfare and individual satisfaction with services and (ii) includes a review of the provision of services to ensure that services are being provided in accordance with DMAS regulations, policies, and procedures.

"Registered nurse" or "RN" means a person who is licensed or holds multistate licensure privilege pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia to practice professional nursing.

"Respite services" means temporary substitute for care that is normally provided by the unpaid primary caregiver and shall be provided on a short-term basis due to the absence of or need for routine or periodic relief of the primary caregiver or other unpaid caregiver.

"Routine supports" means supports that assist the individual with ADLs and IADLs, if appropriate.

"Safety supports" means specialized assistance that is required to ensure an individual's health and safety.

"Service authorization" means the process to approve specific services for an enrolled Medicaid individual by a DMAS service authorization designee prior to service delivery and reimbursement in order to validate that the service requested is medically necessary and meets DMAS requirements for reimbursement. Service authorization does not guarantee payment for the service.

"Services facilitation" means a service that assists the individual or EOR, as appropriate, in arranging for, directing, and managing services provided through the consumer-directed model of service delivery.

"Services facilitator" means (i) a DMAS-enrolled provider, (ii) a DMAS-designated entity, or (iii) one who is employed by or contracts with a DMAS-enrolled services facilitator that is responsible for supporting the individual or EOR, as appropriate, by ensuring the development and monitoring of the plan for supports for consumer-directed services, providing employee management training, and completing ongoing review activities as required. "Services facilitator" shall be deemed to mean the same thing as "consumer-directed services facilitator."

"Shared living" means an arrangement in which a roommate resides in the same household as the individual receiving waiver services and provides an agreed-upon, limited amount of supports in exchange for which a portion of the total cost of rent, food, and utilities that can be reasonably attributed to the roommate is reimbursed to the individual.

"Skill building" means those supports that help the individual gain new skills and abilities and was previously called training.

"Skilled nursing services" means short-term nursing services (i) listed in the plan for supports that do not meet home health criteria, (ii) not otherwise available under the State Plan for Medical Assistance, (iii) provided within the scope of § 54.1-3000 et seq. of the Code of Virginia and the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), and (iv) provided by a registered nurse or by a licensed practical nurse under the supervision of a registered nurse who is licensed to practice in the state or who holds a multistate licensing privilege. Skilled nursing services are to be used to train and provide consultation, using nurse delegation as appropriate, and oversight of direct staff as appropriate.

"Slot" means an opening or vacancy in waiver services.

"Sponsored residential services" means residential services that consist of skill-building, routine supports, general supports, and safety supports provided in the homes of families or persons (sponsors) who provide supports for no more than two individuals under the supervision of a DBHDS-licensed provider that enable the individuals to acquire, retain, or improve the self-help, socialization, and adaptive skills necessary to live a self-directed life in the community.

"State Plan for Medical Assistance" or "Plan" means the Commonwealth's legal document approved by CMS identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Support coordination/case management" means assessing and planning of services; linking the individual to services and supports identified in the individual support plan; assisting the individual directly for the purpose of locating, developing, or obtaining needed services and resources; coordinating services and service planning with other agencies and providers involved with the individual; enhancing community integration; making collateral contacts to promote the implementation of the individual support plan and community integration; monitoring the individual to assess ongoing progress and ensuring that authorized services are delivered; and educating and counseling the individual to guide him to develop supportive relationships that promote the individual support plan.

"Support coordinator" means the person who provides support coordination services to an individual in accordance with 12VAC30-50-455. Formerly, this was referred to as case manager and may be either an employee of a CSB or of a private entity contracted with the local CSB.

"Supported living residential" means a service taking place in an apartment setting operated by a DBHDS-licensed provider that consists of skill-building, routine supports, general supports, and safety supports that enable the individual to acquire, retain, or improve self-help skills necessary to live a self-directed life in home and community settings.

"Supporting documentation" means any written or electronic materials used to record and verify the individual's support needs, services provided, and contacts made on behalf of the individual and may include, for example, the personal profile, individual support plan, providers' plans for supports, progress notes, reports, medical orders, contact logs, attendance logs, and assessments.

"Supports" means paid and nonpaid assistance that promotes the accomplishment of an individual's desired outcomes. There shall be four types of supports: (i) routine supports that assist the individual in ADLs and IADLs, if appropriate; (ii) skill building supports to help the individual gain new abilities; (iii) safety supports that are required to ensure the individual's health and safety; and (iv) general supports that provide general oversight.

"Supports Intensity Scale®" or "SIS®" means an assessment tool and form that is published by the American Association on Intellectual and Developmental Disabilities and administered through a thorough interview process that measures and documents an individual's practical support requirements in personal, school-related or work-related, social, behavioral, and medical areas to suggest the types and intensity levels of the supports required by that individual to live a self-directed life in the community and to inform the discussion in the person-centered planning process.

"Therapeutic consultation" means professional consultation provided by members of psychology, social work, rehabilitation engineering, behavioral analysis, speech therapy, occupational therapy, psychiatry, psychiatric clinical nursing, therapeutic recreation, physical therapy, or behavior consultation disciplines that are designed to assist individuals, parents, family members, and any other providers of support services with implementing the individual support plan.

"Transition services" means the same as defined in 12VAC30-120-2010.

"VDSS" means the Virginia Department of Social Services.

12VAC30-122-30. Waiver populations; single waiver enrollment; waiver termination upon loss of eligibility.

A. The waiver services set out in 12VAC30-122-240, 12VAC30-122-250, and 12VAC30-122-260 shall be provided for eligible individuals, including children, with a developmental disability (DD) as defined in § 37.2-100 of the Code of Virginia and who have been determined to require the level of care provided in an ICF/IID. These services can only be covered if required by the individual to avoid institutionalization. These services shall be appropriate and necessary to ensure community integration.

B. An individual shall not be simultaneously enrolled in more than one waiver. An individual who has a diagnosis of DD may be on the waiting list for one of the DD Waivers (FIS, CL, or BI) while simultaneously being enrolled in the Elderly or Disabled with Consumer Direction (EDCD) (12VAC30-120-900 et seq.) or the Technology Assisted (12VAC30-120-1700 et seq.) waivers if he meets applicable criteria for either.

C. DMAS or its designee shall ensure only eligible individuals receive home and community-based waiver services and shall terminate the individual from the waiver and such services when the individual is no longer eligible for the waiver. Termination from the DD Waivers shall occur when, for example, (i) the individual's health, safety, and welfare and medical needs can no longer be safely met in the community; (ii) when the individual is no longer eligible for

either Medicaid or no longer meets the ICF/IID level of care; or (iii) when the individual was eligible for one of the waivers and accepted a waiver slot but did not start services for five months.

12VAC30-122-40. Waiver services; when not authorized.

A. The FIS, CL, and BI waiver services, collectively known as Developmental Disabilities (DD) Waivers, shall not be authorized or reimbursed by DMAS for an individual who resides outside of the physical boundaries of the Commonwealth.

B. Waiver services shall not be furnished to individuals who are inpatients of a hospital, nursing facility, ICF/IID, or inpatient rehabilitation facility. Individuals with DD who are inpatients of these facilities may receive service coordination services as described in 12VAC30-50-440.

1. The support coordinator may recommend waiver services that would promote the individual's exiting from an institutional placement.

2. However, the FIS, CL, or BI waiver services shall not be provided until the individual has exited the institution and has been enrolled in the waiver.

C. DMAS shall not reimburse providers for the costs of room and board, education, services covered by other payers, or participation in social or recreational activities.

12VAC30-122-45. Waiver slot allocation process.

A. When the General Assembly has approved less than 40 slots for a given waiver, the available slots will be allocated by DBHDS to regions or sub-regions of the state for distribution to the individuals in that region or sub-region who are determined to have the most urgent needs. If there are BI slots to be allocated, the BI slots will be allocated by region.

B. When at least 40 new waiver slots are funded by the General Assembly, one slot will be allocated by DBHDS to each CSB. Additional slots up to the total number of available slots for a given waiver will be allocated by DBHDS to CSBs for individuals living within that CSB's catchment area based upon the following objective factors and criteria:

1. The region's population;

2. The percentage of Medicaid eligible individuals in the catchment area; and

3. Each CSB's percentage of individuals on the "Priority One" portion of the statewide waiting list.

12VAC30-122-50. Criteria for all individuals seeking Developmental Disability Waivers services.

The following four criteria shall apply to all individuals who seek DD Waivers services:

1. The need for DD Waivers services shall arise from an individual having a diagnosed condition of developmental disability as defined in § 37.2-100 of the Code of Virginia. Individuals qualifying for the DD Waivers services shall have a demonstrated need for the covered services due to significant functional limitations in major life activities, as demonstrated on their Virginia Individual Developmental Disabilities Eligibility Survey (VIDES) forms, and shall be at risk of institutionalization.

2. Individuals qualifying for the DD Waivers services shall meet the level-of-care provided in an ICF/IID and shall demonstrate this need at least annually consistent with 42 CFR 441.302.

3. The results of an individual's Virginia Individual Developmental Disabilities Eligibility Survey (VIDES) determination shall be one element in determining if the individual qualifies for the DD Waivers (either in the FIS, CL, or BI waiver). The Commonwealth shall use VIDES forms conducted in person and by a qualified support coordinator to establish the level of care required for its DD Waivers.

a. VIDES for infants shall be used for the evaluation of individuals who are younger than three years of age (DMAS-P235).

b. VIDES for children shall be used for the evaluation of individuals who are three years of age through 17 years of age (DMAS-P-236).

c. VIDES for adults shall be used for the evaluation of individuals who are 18 years of age and older (DMAS-P237).

4. The individual shall meet the financial eligibility criteria set out in 12VAC30-122-60.

12VAC30-122-60. Financial eligibility standards for individuals.

A. Individuals receiving services under the Family and Individual Supports (FIS) Waiver, Community Living (CL) Waiver, and Building Independence (BI) Waiver, which are collectively known as the DD Waivers, shall meet the following Medicaid eligibility requirements. The Commonwealth shall apply the financial eligibility criteria contained in the State Plan for Medical Assistance for the categorically needy and in 12VAC30-30-10 and 12VAC30-40-10. The Commonwealth covers the optional categorically needy groups under 42 CFR 435.211, 42 CFR 435.217, and 42 CFR 435.230.

B. Patient pay methodology.

1. The income level used for 42 CFR 435.211, 42 CFR 435.217, and 42 CFR 435.230 shall be 300% of the current supplemental security income (SSI) payment standard for one person.

2. Under the DD Waivers, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act shall be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All individuals under the waivers shall meet the financial and nonfinancial Medicaid eligibility criteria and meet the institutional level-of-care criteria for an ICF/IID. The deeming rules shall be applied to waiver eligible individuals as if the individuals were residing in an ICF/IID or would require that level of care.

3. The Commonwealth shall reduce its payment for home and community-based waiver services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income, including amounts disregarded in determining eligibility, that remains after allowable deductions for personal maintenance needs, other dependents, and medical needs have been made according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986 (42 USC § 1395ww). DMAS shall reduce its payment for home and community-based waiver services by the amount that remains after the deductions listed in this subdivision:

a. For individuals to whom § 1924(d) of the Social Security Act applies and for whom the Commonwealth waives the requirement for comparability pursuant to § 1902(a)(10)(B), DMAS shall deduct the following in the respective order:

(1) The basic maintenance needs for an individual under the DD Waivers, which shall be equal to 165% of the SSI payment for one person. Due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% of SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, shall be added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI.

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges, and necessary medical or remedial care recognized under state law but not covered under the State Plan for Medical Assistance.

b. For individuals to whom § 1924(d) does not apply and for whom the Commonwealth waives the requirement for comparability pursuant to § 1902(a)(10)(B), DMAS shall deduct the following in the respective order:

(1) The basic maintenance needs for an individual under the DD Waivers, which is equal to 165% of the SSI payment for one person. Due to expenses of employment, a working individual shall have an additional income allowance. For an individual employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% of SSI; for an individual employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, shall be added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI.

(2) For an individual with a dependent child, an additional amount for the maintenance needs of the child, which shall be equal to the Title XIX medically needy income standard based on the number of dependent children.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges, and necessary medical or remedial care recognized under state law but not covered under the State Plan for Medical Assistance.

12VAC30-122-70. Assessment and enrollment; Virginia Individual Developmental Disabilities Eligibility Survey.

A. Home and community-based waiver services shall be considered only for individuals eligible for admission to an ICF/IID due to the individuals' diagnoses of developmental disabilities and documented functional support needs. For the support coordinator to make a recommendation for the DD Waivers services, the services shall be determined to be an

appropriate service alternative to delay or avoid placement in an ICF/IID or to promote exiting from an ICF/IID or other institutional placement provided that a viable discharge plan that preserves the individual's health, safety, and welfare in the community has been developed.

B. The support coordinator shall confirm diagnostic and functional eligibility for individuals with input from the individual and the individual's family/caregiver, as appropriate, and service or support providers involved in the individual's support prior to DMAS assuming payment responsibility for covered home and community-based waiver services. This confirmation shall be accomplished through the completion of the following:

1. A psychological or other evaluation of the individual that affirms that the individual meets the diagnostic criteria for developmental disability as defined in § 37.2-100 of the Code of Virginia; and

2. The required level-of-care determination through the Virginia Intellectual Developmental Disabilities Eligibility Survey (VIDES) appropriate to the individual according to his age, completed no more than six months prior to waiver enrollment.

C. To receive waiver services, the individual shall be found to be eligible for Medicaid pursuant to 12VAC30-122-60.

D. The individual who has been found to be eligible for these services consistent with subsections A, B, and C in this section shall be given by the support coordinator his choice of either institutional placement or receipt of home and community-based waiver services.

E. If the individual chooses home and community-based waiver services and an ISP that ensures the individual's safety can be developed, then the support coordinator shall recommend the individual for home and community-based waiver services.

F. If the individual selects waiver services and a slot is available, then the support coordinator shall enroll the individual in the waiver. The CSB or BHA shall only enroll the individual following electronic confirmation by DBHDS that a slot is available.

G. If no slot is available, the support coordinator shall place the individual on the DD Waivers waiting list consistent with criteria established for the DD Waivers in 12VAC30-122-90 until such time as a slot becomes available. Once the individual's name has been placed on the DD Waivers waiting list, the support coordinator shall (i) notify the individual in writing within 10 business days of his placement on the DD Waivers waiting list and his assigned prioritization level, as set out in 12VAC30-122-90, and (ii) offer appeal rights pursuant to 12VAC30-110.

H. There shall be documentation of contact with the individual at least annually while the individual is on the waiting list to provide the choice between institutional placement and waiver services consistent with the requirements of 12VAC30-50-440 or 12VAC30-50-490, as applicable.

12VAC30-122-80. Waiver approval process; authorizing and accessing services.

A. The support coordinator shall electronically submit enrollment information to DBHDS to confirm level-of-care eligibility once he has determined (i) an individual meets the functional criteria for FIS, CL, or BI waiver services, (ii) that a slot is available, and (iii) the individual has chosen waiver services.

B. Once the individual has been notified of an available waiver slot by the CSB or BHA, the support coordinator shall submit a DMAS-225 (Medicaid Long-Term Care Communication Form) along with a computer-generated confirmation of level-of-care eligibility to the local department of social services to determine financial eligibility for Medicaid and the waiver and any patient pay responsibilities. The DMAS-225 is the form used by the support coordinator to report information about patient pay amount changes in an individual's situation.

C. After the support coordinator has received written notification of Medicaid eligibility from the local department of social services, the support coordinator shall inform the individual, submit information to DMAS or its designee to enroll the individual in the waiver, and develop the person-centered individual support plan (ISP).

1. The individual and the individual's family/caregiver, as appropriate, shall meet with the support coordinator within 30 calendar days of the waiver enrollment date to (i) discuss the individual's assessed needs, existing supports, and individual preferences and then obtain a medical examination, which shall have been completed no earlier than 12 months prior to the initiation of waiver services; (ii) begin to develop the personal profile; and (iii) schedule the completion of the assessment as required by 12VAC30-122-200.

2. The support coordinator shall provide the individual with a choice of services identified as needed and available in the assigned waiver, alternative settings, and providers. Once the providers are chosen, a planning meeting shall be held by the support coordinator to develop the ISP based on the individual's assessed needs, the individual's preferences, and the individual's family/caregiver preferences, as appropriate.

3. Persons invited by the support coordinator to participate in the person-centered planning meeting may include the individual, providers, and others as desired by the individual. During the person-centered planning meeting, the services to be rendered to the individual, the frequency of services, the type of provider, and a description of the

services to be offered are identified and included in the ISP. At a minimum, the individual enrolled in the waiver, or the family/caregiver as appropriate, and support coordinator shall sign and date the ISP.

4. The individual, family/caregiver, or support coordinator shall contact chosen providers so that services can be initiated within 30 calendar days of receipt of written confirmation of waiver enrollment. If the services are not initiated by the provider within 30 days, the support coordinator shall notify the local department of social services so that reevaluation of the individual's financial eligibility can be made.

5. In the case of an individual being referred back to a local department of social services for a redetermination of eligibility and to retain the designated slot, the support coordinator shall, at the same time as submission of notification to the local department of social services, electronically submit information to DBHDS requesting retention of the designated slot pending the initiation of services.

a. A copy of the request shall be provided to the individual and the individual's family/caregiver, as appropriate.

b. DBHDS shall have the authority to approve the slot-retention request in 30-day extensions, up to a maximum of four consecutive extensions, or deny such request to retain the waiver slot for the individual when at the end of this extension time period there is no evidence of the individual's efforts to utilize waiver services. All written denial notifications to the individual, and family/caregiver, as appropriate, shall be accompanied by the standard appeal rights (12VAC30-110).

c. DBHDS shall provide an electronic response to the support coordinator indicating denial or approval of the slot extension request. DBHDS shall submit this response to the support coordinator within 10 working days of the receipt of the request for extension.

d. The support coordinator shall notify the individual in writing of any denial of the slot extension request and the individual's right to appeal.

6. The providers, in conjunction with the individual and the individual's family/caregiver, as appropriate, and the support coordinator shall develop a plan for supports for each service.

a. Each provider shall submit a copy of his plan for supports to the support coordinator. The plan for supports from each provider shall be incorporated into the ISP. The ISP shall also contain the steps for mitigating any identified risks.

b. The support coordinator shall review and ensure the provider-specific plan for supports meets the established service criteria for the identified needs prior to electronically submitting the plan for supports along with the results of the comprehensive assessment and a recommendation for the final determination of the need for ICF/IID level of care to DMAS or its designee for service authorization. "Comprehensive assessment" means the gathering of relevant social, psychological, medical, and level of care information by the support coordinator that are used as bases for the development of the individual support plan.

c. DMAS or its designee shall, within 10 working days of receiving all supporting documentation, review and approve, suspend for more information, or deny the individual service requests. DMAS or its designee shall communicate electronically to the support coordinator whether the recommended services have been approved and the amounts and types of services authorized or if any services have been denied.

d. Only waiver services authorized on the ISP by the state-designated agency or its designee shall be reimbursed by DMAS.

7. DMAS shall not pay for any home and community-based waiver services delivered prior to the authorization date approved by DMAS or its designee if service authorization is required.

8. Waiver services shall be approved and authorized by DMAS or its designee only if:

a. The individual is Medicaid eligible as determined by the local department of social services;

b. The individual has a diagnosis of developmental disability, as defined by § 37.2-100 of the Code of Virginia, and would, in the absence of waiver services, require the level of care provided in an ICF/IID that would be reimbursed under the State Plan for Medical Assistance;

c. The individual's ISP can be safely rendered in the community; and

d. The contents of providers' plans for supports are consistent with the ISP requirements, limitation, units, and documentation requirements of each service.

12VAC30-122-90. Waiting list; criteria; slot assignment; emergency access; reserve slots.

A. There shall be a current and accurate statewide waiting list, called the DD Waivers waiting list, for the DD Waivers. This waiting list shall be created and maintained by DBHDS, which shall update it no less than annually.

B. Individuals on this waiting list shall have (i) a diagnosis of developmental disability pursuant to § 37.2-100 of the Code of Virginia, (ii) a completed VIDES form, and (iii) a

priority designation consistent with subsection C of this section.

C. To be placed in one of the following prioritization levels, the support coordinator shall determine through inquiry of the individual and family/caregiver, as appropriate, and consideration of the information reflected in the individual's diagnosis and VIDES form, which category the individual meets. The individual shall be placed in the prioritization level that best describes his need for waiver services by meeting at least one criterion in the category:

1. Priority One shall include individuals who require a waiver service within one year and are determined to meet at least one of the following criteria:

a. An immediate jeopardy exists to the health and safety of the individual due to the unpaid primary caregiver having a chronic or long-term physical or psychiatric condition that currently significantly limits the ability of the primary caregiver to care for the individual; there are no other unpaid caregivers available to provide supports;

b. There is immediate risk to the health or safety of the individual, primary caregiver, or other person living in the home due to either of the following conditions:

(1) The individual's behavior, presenting a risk to himself or others, cannot be effectively managed by the primary caregiver or unpaid provider even with support coordinator-arranged generic or specialized supports; or

(2) There are physical care needs or medical needs that cannot be managed by the primary caregiver even with support coordinator-arranged generic or specialized supports;

c. The individual lives in an institutional setting and has a viable discharge plan; or

d. The individual is a young adult who is no longer eligible for IDEA services and is transitioning to independent living. After individuals attain 27 years of age, this criterion shall no longer apply.

2. Priority Two shall include individuals who will need a waiver service in one to five years and are determined to meet at least one of the following criteria:

a. The health and safety of the individual is likely to be in future jeopardy due to:

(1) The unpaid primary caregiver having a declining chronic or long-term physical or psychiatric condition that currently significantly limits his ability to care for the individual;

(2) There are currently no other unpaid caregivers available to provide supports; and

(3) The individual's skills are declining as a result of lack of supports;

b. The individual is at risk of losing employment supports;

c. The individual is at risk of losing current housing due to a lack of adequate supports and services; or

d. The individual has needs or desired outcomes that with adequate supports will result in a significantly improved quality of life.

3. Priority Three shall include individuals who will need a waiver slot in five years or longer as long as the current supports and services remain and have been determined to meet at least one of the following criteria:

a. The individual is receiving a service through another funding source that meets current needs;

b. The individual is not currently receiving a service but is likely to need a service in five or more years; or

c. The individual has needs or desired outcomes that with adequate supports will result in a significantly improved quality of life.

D. Individuals and family/caregivers shall have the right to appeal the application of the prioritization criteria, emergency criteria, or reserve criteria to their circumstances pursuant to 12VAC30-110. All notifications of appeal shall be submitted to DMAS.

E. Waiver slots shall be assigned subject to available funding.

1. A Waiver Slot Assignment Committee (WSAC) is the impartial body of trained volunteers established for each locality or region with responsibility for recommending individuals eligible for a waiver slot according to their urgency of need. All WSACs shall be composed of community members who shall not be employees of a CSB or a private provider of either support coordination or waiver services and shall be knowledgeable and have experience in the developmental disabilities service system.

2. For FIS and CL waiver slots, individuals who are in the Priority One category who are determined to be most in need of supports at the time a slot is available shall be reviewed by an independent WSAC for the area in which the slot is available. The individual who has the highest need as designated by the committee shall be recommended for the available waiver slot. DBHDS shall make the final determination for slot assignment.

3. For BI waiver slots, each of five regional WSACs composed of one representative from each existing WSAC within the region shall make assignment recommendations for BI waiver slots. If the number of individuals interested in a BI waiver slot with Priority One status for all CSBs in a region is less than the number of available slots, those individuals are assigned a slot without a regional WSAC

session occurring. A regional WSAC session will then be held for the remainder of available slots, reviewing those individuals meeting criteria for Priority Two and then Priority Three.

F. If the individual determines at any time that he no longer wishes to be on the DD Waiver waiting list, he may contact his support coordinator to request removal from the waiting list. The support coordinator shall notify DBHDS so that the individual's name can be removed from the waiting list.

G. Eligibility criteria for emergency access to either the FIS, CL, or BI waiver.

1. Subject to available funding of waiver slots and a finding of eligibility under 12VAC30-122-50 and 12VAC30-122-60, individuals shall meet at least one of the emergency criteria of this subdivision to be eligible for immediate access to waiver services without consideration to the length of time they have been waiting to access services. The criteria shall be one of the following:

a. Child protective services has substantiated abuse or neglect against the primary caregiver and has removed the individual from the home; or for adults where (i) adult protective services has found that the individual needs and accepts protective services or (ii) abuse or neglect has not been founded, but corroborating information from other sources (agencies) indicate that there is an inherent risk present and there are no other caregivers available to provide support services to the individual.

b. Death of primary caregiver or lack of alternative caregiver coupled with the individual's inability to care for himself and endangerment to self or others without supports.

2. Requests for emergency slots shall be forwarded by the CSB or BHA to DBHDS.

a. Emergency slots may be assigned by DBHDS to individuals until the total number of available emergency slots statewide reaches 10% of the emergency slots funded for a given fiscal year, or a minimum of three slots. At that point, the next nonemergency waiver slot that becomes available at the CSB or BHA in receipt of an emergency slot shall be reassigned to the emergency slot pool to ensure emergency slots remain to be assigned to future emergencies within the Commonwealth's fiscal year.

b. Emergency slots shall also be set aside for those individuals not previously identified but newly known as needing supports resulting from an emergent situation.

H. Reserve slots and the reserve waiting list.

1. Reserve slots may be used for transitioning an individual who, due to (i) documented changes in his support needs or (ii) a preference for supports found in a waiver with a less comprehensive array of supports, requires or requests a move from the DD Waiver in which he is presently enrolled into another of the DD Waivers to access necessary services.

a. An individual who needs to transition between the DD Waivers shall not be placed on the DD Waivers waiting list.

b. A documented change in an individual's assessed needs, which requires a service that is not available in the DD Waivers in which the individual is presently enrolled, shall exist for an individual to be considered for a reserve slot.

c. CSBs or BHAs shall document and notify DBHDS in writing when an individual meets the criteria in subdivision 1 b of this subsection within three business days of knowledge of need. The assignment of reserve slots shall be managed by DBHDS, which will maintain a chronological list of individuals in need of a reserve slot in the event that the reserve slot supply is exhausted. Within three business days of adding an individual's name to the reserve slot list, DBHDS shall advise the individual in writing that his name is on the reserve slot list and his chronological placement on the list.

d. Within three business days of receiving a request from an individual for a status update regarding his placement on the list, DBHDS shall advise the individual of his current chronological list number.

2. When a reserve slot becomes available and an individual is identified from the chronological list to access the slot, the support coordinator will assure to DBHDS that the service that warranted the transfer to the new waiver (e.g., group home residential) is (i) identified and (ii) a targeted date of service initiation is in place prior to the reserve slot assignment to the new waiver.

3. When an individual transitions to a new DD waiver using a reserve slot, the waiver slot vacated by that individual shall be offered to the next individual in that CSB's chronological queue for a reserve slot by DBHDS. If the individual chooses to accept the slot, DBHDS will assign in accordance with subdivision 2 of this subsection. If there is not an individual in that CSB's chronological queue for a reserve slot, the vacated slot will be assigned to an individual on the statewide waiting list who resides in the CSB's or BHA's catchment area by DBHDS after review and recommendations from the local WSAC.

4. When a slot is vacated in one of the DD Waivers (e.g., due to the death of an individual), the slot shall be assigned to the next individual in that CSB's chronological queue for a reserve slot in accordance with the procedures outlined in subdivision 3 of this subsection.

12VAC30-122-100. Modifications to or termination of services.

A. DMAS or its designee shall have the authority to approve modifications to an individual's ISP, based on the recommendations of the support coordination provider.

B. The provider shall be responsible for modifying an individual's plan for supports, with the involvement of the individual enrolled in the waiver and the individual's family/caregiver, as appropriate, and submitting such revised plan for supports to the support coordinator any time there is a modification in the individual's condition or circumstances that may warrant a change in the amount or type of service rendered by the provider.

1. The support coordinator shall review the need for a modification and may recommend a modification to the plan for supports to DBHDS. If the support coordinator does not recommend a modification to the plan for supports and that results in the denial of the requested service, the support coordinator shall inform the individual of his right to appeal.

2. DBHDS shall approve, deny, or suspend for additional information the provider's requested modification to the individual's plan for supports as recommended by the support coordinator. DBHDS shall communicate its determination to the support coordinator within 10 business days of receiving all supporting documentation regarding the request for modification or in the case of an emergency, within three business days of receipt of the request for modification.

3. The individual enrolled in the waiver and the individual's family/caregiver, as appropriate, shall be notified in writing by the support coordinator of his right to appeal, pursuant to DMAS client appeals regulations (12VAC30-110), all decisions to reduce, suspend, deny, or terminate services. The support coordinator shall submit this written notification to the individual enrolled in the waiver or the family/caregiver, as appropriate, within 10 business days of the decision. Once the individual or family/caregiver receives the written notification, the clock for filing an appeal, as set forth in the DMAS client appeals regulations, shall begin to run.

C. In an emergency situation when the health, safety, or welfare of the individual enrolled in the waiver, other individuals in that setting, or provider personnel are endangered, the support coordinator and DBHDS shall be notified by the provider prior to discontinuing services. The 10-business-day prior written notification period shall not be required. The local department of social services adult protective services unit or child protective services unit, as appropriate, and the DBHDS Offices of Licensing and Human Rights and DMAS shall be notified immediately of the emergency discontinuation of services by the support coordinator and the provider when the individual's health, safety, or welfare may be in danger.

D. In a nonemergency situation, when a provider determines that his provision of supports to an individual enrolled in the waiver will be discontinued, the provider shall give the individual and the individual's family/caregiver, as appropriate, and support coordinator written notification of the provider's intent to discontinue services. The notification letter shall provide the reasons for the planned discontinuation and the effective date the provider will be discontinuing services. The effective date of the service discontinuation shall be at least 10 business days after the date of the notification letter. The individual enrolled in the waiver may seek services from another enrolled provider. When an individual is transitioning to a different provider, the former provider that served said individual shall, at the request of the provider, provide all medical records and documentation of services to the new provider to ensure high quality continuity of care and service provision.

E. To discontinue services in both emergency and nonemergency situations, providers of group home residential services, supported living residential services, and sponsored residential services shall comply with the terms set forth in an individual's home and community-based settings residency or lease agreement as described in 42 CFR 441.301.

F. The support coordinator shall have the responsibility to identify those individuals who no longer meet the level of functioning criteria or for whom home and community-based waiver services are no longer an appropriate alternative. In such situations, DMAS or its designee shall terminate such individuals from the waiver.

1. The support coordinator shall notify the individual and family/caregiver, as appropriate, of this determination and the right to appeal, pursuant to 12VAC30-110, such termination.

2. The individual shall be given the option to continue his waiver services pending the final outcome of his appeal. Should the outcome of the appeal confirm the determination by DMAS or its designee that the individual should be terminated from the waiver, the individual shall be responsible for the costs of his waiver services incurred by DMAS during his appeal.

12VAC30-122-110. Waiver provider enrollment.

DMAS or its designee shall be responsible for assuring continued adherence to provider participation standards. DMAS or its designee shall conduct ongoing monitoring of compliance with provider participation standards and applicable laws and regulations. A provider's noncompliance with applicable federal and state Medicaid laws and regulations, as required in the provider's participation agreement, may result in termination of the provider participation agreement. For DMAS to approve enrollment of

a provider for home and community-based waiver services, the following standards shall be met:

1. Licensure or certification requirements, or both as applicable, for services that have licensure or certification requirements;

2. Disclosure of ownership pursuant to 42 CFR 455.104, 42 CFR 455.105, and 42 CFR 455.106; and

3. The ability to document and maintain individual records in accordance with federal and state requirements.

12VAC30-122-120. Provider requirements.

A. Providers approved for participation shall at a minimum perform the following activities:

1. On a monthly basis, screen and document the names of all new and existing employees and contractors to determine whether any are excluded from eligibility for payment from federal health care programs, including Medicaid (i.e., via the U.S. Department of Health and Human Services Office of Inspector General List of Excluded Individuals and Entities (LEIE) website). Immediately upon learning of an exclusion, report in writing to DMAS such exclusion information to: DMAS, ATTN: Program Integrity/Exclusions, 600 East Broad Street, Suite 1300, Richmond, VA 23219 or email to providerexclusion@dmas.virginia.gov.

2. Immediately notify DMAS in writing of any change in the information that the provider previously submitted for the purpose of the provider agreement to DMAS.

3. Assure the individual's freedom to refuse medical care, treatment, and services and document that potential adverse outcomes that may result from refusal of services were discussed with the individual.

4. Accept referrals for services only when staff is available to initiate services within 30 calendar days of the referral and perform such services on an ongoing basis.

5. Provide medically necessary services and supplies for individuals in accordance with the ISP and in full compliance with 42 CFR 441.301, which provides for person-centered planning and other requirements for home and community-based settings including the additional requirements for provider-owned and controlled residential settings; Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000d et seq.), which prohibits discrimination on the grounds of race, color, or national origin; the Virginians with Disabilities Act (Title 51.5 (§ 51.5-1 et seq.) of the Code of Virginia); § 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act, as amended (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. Provide services and supplies to individuals of the same quality and in the same mode of delivery as provided to the general public.

7. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the requirements outlined in federal and state laws, regulations, DMAS provider manuals, and their individual provider participation agreements.

8. Submit reimbursement claims to DMAS for the provision of covered services and supplies for individuals in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount established by the DMAS payment methodology from the individual's authorization date for that waiver service.

9. Use program-designated billing forms for submission of claims for reimbursement.

10. Maintain and retain business records (e.g., licensing or certification records as appropriate) and professional records (e.g., staff training and criminal record check documentation). All providers, including services facilitation providers, shall also document fully and accurately the nature, scope, and details of the services provided to support claims for reimbursement. Provider documentation that fails to fully and accurately document the nature, scope, and details of the services provided may be subject to recovery actions by DMAS or its designee. Provider documentation responsibilities include the following:

a. Retain records for at least six years from the last date of service or as provided by applicable state and federal laws, whichever period is longer. Records of minors shall be kept for at least six years after such minor has reached the age of 18 years.

b. If an audit is initiated of the provider's records within the required retention period, the records shall be retained until the audit is completed and every exception resolved. No business or professional records that are subject to the audit shall be created or modified by providers, employees, or any other interested parties, either with or without the provider's knowledge, once an audit has been initiated.

c. Policies regarding retention of records shall apply even if the provider discontinues operation. Providers shall notify DMAS in writing of storage, location, and procedures for obtaining records for review should the need arise. The location, agent, or trustee of the provider's records shall be within the Commonwealth of Virginia.

d. Providers shall prepare and maintain unique person-centered progress note written documentation in each individual's medical record about the individual's responses to services and rendered supports. Such documentation shall be provided to DMAS or its designee upon request. Such documentation shall be written on the date of service delivery. In instances when the individual does not communicate through words, the provider shall note his observations about the individual's condition and observable responses, if any, at the time of service delivery.

e. Examples of unacceptable person-centered progress note written documentation include:

(1) Standardized or formulaic notes;

(2) Notes copied from previous service dates and simply redated;

(3) Notes that are not signed and dated by staff who deliver the service, with the date services were rendered; and

(4) Person-centered progress note written documentation that does not document the individual's unique opinions or observed responses to supports.

f. Providers shall maintain an attendance log or similar document that indicates the date services were rendered, type of services rendered, and number of hours or units provided (including specific timeframe) for each service type except for one-time services such as assistive technology service, environmental modifications service, transition service, individual and family caregiver training service, electronic home-based support service, services facilitation service, and personal emergency response system support service, where initial documentation to support claims shall suffice.

g. Providers shall develop a plan for supports that shall include at a minimum for each individual in its caseload:

(1) The individual's desired outcomes that describe what is important to and for the individual in observable terms;

(2) Support activities and support instructions that are inclusive of skill-building as may be required by the service provided and that are designed to assist in achieving the individual's desired outcomes;

(3) The services to be rendered and the schedule for such services to accomplish the desired outcomes and support activities, a timetable for the accomplishment of the individual's desired outcomes and support activities, the estimated duration of the individual's need for services, and the provider staff responsible for overall coordination and integration of the services specified in the plan for supports; and

(4) Documentation regarding any restrictions on the freedoms of everyday life in accordance with human rights regulations (12VAC35-115) and the requirements of 42 CFR 441.301.

11. Agree to furnish information and record documentation on request and in the form requested to DMAS, DBHDS, the Attorney General of Virginia or his authorized representatives, federal personnel (e.g., Office of the Inspector General), and the State Medicaid Fraud Control Unit. The Commonwealth's right of access to provider premises and records shall survive any termination of the provider participation agreement.

12. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to individuals enrolled in Medicaid.

13. Perform criminal history record checks for barrier crimes in accordance with applicable licensure requirements at §§ 37.2-416, 37.2-506, and 37.2-600 of the Code of Virginia, as applicable. If the individual enrolled in the waiver is a minor child, also perform a search of the VDSS Child Protective Services Central Registry. The provider shall not be compensated for services provided to the individual enrolled in the waiver effective on the date and afterwards that any of these records checks verifies that the provider has been convicted of barrier crime, as is applicable to the provider's license, or if the provider has a finding in the VDSS Child Protective Services Central Registry (if applicable).

a. For consumer-directed (CD) services, the CD employee shall submit to a criminal history records check conducted by the fiscal employer agent within 30 days of employment. If the individual enrolled in the waiver is a minor child, the CD employee shall also submit to a search within the same 30 days of employment of the VDSS Child Protective Services Central Registry. The CD employee shall not be compensated for services provided to the waiver individual effective the date on which the employer of record learned, or should have learned, that the record check verifies that the CD employee has been convicted of barrier crimes pursuant to § 37.2-416 of the Code of Virginia or if the CD employee has a founded complaint confirmed by the VDSS Child Protective Services Central Registry (if applicable).

b. The DMAS-designated fiscal employer agent shall require the CD employee to notify the employer of record of all convictions occurring subsequent to the initial record check. CD employees who refuse to consent to criminal background checks and VDSS Child

Protective Services Central Registry checks shall not be eligible for Medicaid reimbursement.

c. The CD employer of record shall require CD employees to notify the employer of record of all convictions occurring subsequent to the initial record check. CD employees who refuse to consent to criminal background checks and VDSS Child Protective Services registry checks shall not be eligible for Medicaid reimbursement.

14. Report suspected abuse or neglect immediately at first knowledge to the local Department for Aging and Rehabilitative Services, adult protective services agency or the local department of social services, child protective services agency; to DMAS or its designee; and to the DBHDS Offices of Licensing and Human Rights, if applicable pursuant to §§ 63.2-1509 and 63.2-1606 of the Code of Virginia when the participating provider knows or suspects that an individual receiving home and community-based waiver services is being abused, neglected, or exploited.

15. Refrain from engaging in any type of direct marketing activities to Medicaid individuals or their families/caregivers. "Direct marketing" means (i) conducting directly or indirectly door-to-door, telephonic, or other cold call marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying finder's fees; (iv) offering financial incentives, rewards, gifts, or special opportunities to eligible individuals and the individual's family/caregivers, as appropriate, as inducements to use the provider's services; (v) continuous, periodic marketing activities to the same prospective individual and the individual's family/caregiver, for example, monthly, quarterly, or annual giveaways, as inducements to use the provider's services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the provider's services or other benefits as a means of influencing the individual and the individual's family/caregivers use of the provider's services.

16. Providers shall ensure that staff providing waiver services read and write English to the degree required to create and maintain the required documentation.

B. Providers of services under any of the DD Waivers shall not be parents or guardians of individuals enrolled in the waiver who are minor children, or the adult individual's spouse. Payment shall not be made for services furnished by other family members who are living under the same roof as the individual receiving services unless there is objective, written documentation, as defined in this subsection, as to why there are no other providers available to provide the care. Such other family members if approved to provide services for the purpose of receiving Medicaid reimbursement, shall meet the same provider requirements as all other licensed providers. "Objective, written documentation" means documentation that demonstrates there are no persons available to provide supports to the individual other than the unpaid family/caregiver who lives in the home with the individual. Examples of such documentation may be (i) copies of advertisements showing efforts to hire; (ii) copies of interview notes; (iii) documentation indicating high turnover in consumer-directed assistants who provide, via the consumer-directed model of services, personal assistance services, companion services, respite services, or any combination of these three services; (iv) documentation supporting special medical or behavioral needs; or (v) documentation indicating that language is a factor in service delivery.

C. Providers shall not be reimbursed while the individual enrolled in a waiver is receiving inpatient services in either an acute care hospital, nursing facility, rehabilitation facility, ICF/IID, or any other type of facility.

D. Providers with a history of noncompliance, which may include multiple records with citations of failure to comply with regulations or multiple citations related to health and welfare for one service plan, resulting in a corrective action plan or citation by either DMAS or DBHDS in key identified areas will be required to undergo mandatory training and technical assistance in the specific areas of noncompliance. These areas of noncompliance may include health, safety, or failure to address the identified needs of the individual. Failure to complete the mandatory training or identified technical assistance may result in referral to DMAS Program Integrity or termination of the provider Medicaid participation agreement.

12VAC30-122-130. Provider termination.

A. Except as otherwise provided by applicable federal or state law, the Medicaid provider agreement may be terminated by DMAS (i) pursuant to § 32.1-325 of the Code of Virginia, (ii) as may be required by federal law for federal financial participation, and (iii) in accordance with the provider participation agreement, including termination at will on 30 days written notice. The agreement may be terminated if DMAS determines that the provider poses a threat to the health, safety, or welfare of any individual enrolled in a DMAS administered program. DMAS may also terminate a provider's participation agreement if the provider does not fulfill its obligations as described in the provider participation agreement. Such provider agreement terminations shall be in accordance with § 32.1-325 of the Code of Virginia, 12VAC30-10-690, and Part XII (12VAC30-20-500 et seq.) of 12VAC30-20. Termination precludes further payment by DMAS for services provided for individuals subsequent to the date specified in the termination notice.

B. A provider who has been convicted of a felony, or who has otherwise pled guilty to a felony, in Virginia or in any

other of the 50 states, the District of Columbia, or the United States territories shall, within 30 days of such conviction, notify DMAS of this conviction and relinquish his provider agreement. Such provider agreement terminations shall be effective immediately and conform to § 32.1-325 of the Code of Virginia and 12VAC30-10-690. Providers shall not be reimbursed for services that may be rendered between the conviction of a felony and the provider's notification to DMAS of the conviction.

C. A participating provider may voluntarily terminate his participation with DMAS by providing 30 days written notification.

12VAC30-122-140. Provider confidentiality; change of ownership; completion of assessment instruments.

A. Pursuant to subpart F of 42 CFR Part 431, 12VAC30-20-90, and any other applicable federal or state law or regulation, all providers shall hold confidential and use for DMAS or DBHDS authorized purposes only all medical assistance information regarding individuals served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits or the data are necessary for purposes directly related to the administration of the State Plan for Medical Assistance and related waivers.

B. When ownership of the provider changes, the provider shall notify DMAS pursuant to 42 CFR 420.206.

C. For ICF/IID facilities covered by § 1616(e) of the Social Security Act in which respite care as a home and community-based waiver service will be provided, the facilities shall be in compliance with applicable regulatory standards.

D. Providers shall make available, as may be requested, specific, relevant information about the individual enrolled in the waiver.

12VAC30-122-150. Requirements for consumer-directed model of service delivery.

Criteria for consumer-directed model of service delivery.

1. The DD Waivers have three services that may be provided through a consumer-directed (CD) model: companion services, personal assistance services, and respite services. In addition to this chapter, consumer-direction shall comport with the requirements of § 54.1-2901 A 31 of the Code of Virginia.

2. Requirements for individual.

a. The individual or a person designated by the individual shall serve as the employer of record (EOR). If an individual is unable to direct his own care or is younger than 18 years of age, he may designate another person older than 18 years of age to serve as the employer of record (EOR) on his behalf.

b. The EOR shall be the employer in this service and shall be responsible for advertising, interviewing, hiring, training, supervising, and firing CD employee assistants. Specific EOR duties include checking references of assistants, determining that assistants meet basic qualifications, training assistants, supervising the assistant's performance, and submitting and approving the assistant's timesheets to the fiscal employer agent on a consistent and timely basis.

c. The individual, the family/caregiver, or EOR, as appropriate, shall have an emergency back-up plan in case the assistant does not show up for work.

d. Individuals choosing consumer-directed services may receive support from a CD services facilitator. Services facilitators shall assist the individual or his EOR, as appropriate, in accessing and receiving consumer-directed services. This function shall include providing the individual or EOR, as appropriate, with employer of record management training including a review and explanation of the employee management manual and routine and reassessment visits to monitor the CD services.

e. If an individual choosing consumer-directed services chooses not to receive support from a CD services facilitator, then the individual or the family/caregiver serving as the EOR shall perform all of the duties and meet all of the requirements of a CD services facilitator, including documentation requirements identified for services facilitation. However, the individual or family/caregiver serving as the EOR shall not be reimbursed by DMAS for performing these duties or meeting these requirements. The individual's support coordinator/case manager may also function as the services facilitator.

12VAC30-122-160. Voluntary or involuntary disenrollment of consumer-directed services.

Either voluntary or involuntary disenrollment of the consumer-directed (CD) model of personal assistance, companion, or respite services may occur. In either voluntary or involuntary disenrollment, the individual enrolled in the waiver shall be permitted to select an agency from which to continue to receive his personal assistance services, companion services, or respite services. If the individual either fails to select an agency or refuses to do so, then personal care services, companion services, or respite services, as appropriate, will be discontinued.

1. An individual who has chosen consumer direction may choose, at any time, to change to the agency-directed model as long as he continues to qualify for the specific services. The services facilitator or support coordinator shall assist the individual with the change of services from consumer-directed to agency-directed.

2. The services facilitator or support coordinator, as appropriate, shall initiate involuntary disenrollment from consumer direction of an individual enrolled in the waiver when any of the following conditions occur:

a. The health, safety, or welfare of the individual enrolled in the waiver is at risk;

b. The individual or EOR demonstrates consistent inability to hire and retain a CD personal assistant; or

c. The individual or EOR, as appropriate, is consistently unable to manage the CD personal assistant, as may be demonstrated by a pattern of serious discrepancies with timesheets.

If the individual does not choose a services facilitator and the individual/family caregiver is not willing or able to assume the services facilitation duties, then the support coordinator shall notify DMAS or its designated service authorization contractor and the consumer-directed services shall be discontinued.

3. Prior to involuntary disenrollment, the services facilitator or support coordinator, as appropriate, shall:

a. Verify that essential training has been provided to the EOR to improve the problem condition or conditions;

b. Document in the individual's record the conditions creating the necessity for the involuntary disenrollment and actions taken by the services facilitator or support coordinator, as appropriate;

c. Discuss with the individual and the EOR, if the individual is not the EOR, the agency-direction option that is available and the actions needed to arrange for such services while providing a list of potential providers;

d. Provide written notice to the individual and EOR, if the individual is not the EOR, of the action, the reasons for the action, and the right of the individual to appeal, pursuant to 12VAC30-110, such involuntary termination of consumer-direction. Except in emergency situations in which the health or safety of the individual is at serious risk, such notice shall be given at least 10 business days prior to the effective date of the termination of consumer-direction. In cases of an emergency situation, notice of the right to appeal shall be given to the individual but the requirement to provide notice at least 10 business days in advance shall not apply; and

e. If the services facilitator initiates the involuntary disenrollment from consumer-direction, inform the support coordinator of such action and the reasons for the action.

4. Refer to 12VAC30-122-340, 12VAC30-122-460 and 12VAC30-122-490 for further requirements and limitations for companion services, personal assistance services, and respite services.

12VAC30-122-170. Fiscal employer/agent requirements.

A. Pursuant to a duly negotiated contract or interagency agreement, the fiscal employer/agent shall be reimbursed by DMAS to perform certain employer functions, including payroll and bookkeeping functions, on behalf of employer or individual who is receiving consumer-directed personal assistance services, companion services, and respite services. "Fiscal employer/agent" means a state agency or other entity as determined by DMAS to meet the requirements of 42 CFR 441.484 and the Virginia Public Procurement Act (Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia) that performs an employer's salary payment and tax reporting functions for assistants employed for consumer-directed services.

B. The fiscal employer/agent shall be responsible for administering payroll services on behalf of the individual enrolled in the waiver including:

1. Collecting and maintaining citizenship and alien status employment eligibility information required by the U.S. Department of Homeland Security;

2. Submitting requests for criminal record checks within 15 calendar days of the assistant's employment on behalf of the individual or family/caregiver, as appropriate, and reporting results of such checks to the individual or family/caregiver, as appropriate;

3. Securing all necessary Internal Revenue Service authorizations and approvals in accordance with state and federal tax requirements;

4. Deducting and filing state and federal income and employment taxes and other withholdings;

5. Verifying that assistants' or companions' submitted timesheets do not exceed the maximum hours prior authorized for individuals enrolled in the waiver;

6. Processing timesheets for payment;

7. Making all deposits of income taxes, Federal Insurance Contributions Act, and other withholdings according to state and federal requirements; and

8. Distributing biweekly payroll checks to individuals' companions and assistants.

C. All timesheet discrepancies shall be reported promptly upon their identification to DMAS for investigation and resolution.

D. The fiscal employer/agent shall maintain records and information as required by DMAS and state and federal laws and regulations and make such records available upon request by DMAS in the needed format.

E. The fiscal employer/agent shall establish and operate a customer service center to respond to payroll and related inquiries by individuals and their assistants or companions.

F. The fiscal employer/agent shall maintain confidentiality of all Medicaid information pursuant to the Health Insurance Portability and Accountability Act (42 USC § 1320d et seq.), federal and state Medicaid requirements, and DMAS requirements. Should any breaches of confidential information occur, the fiscal/employer agent shall assume all liabilities under both state and federal law.

12VAC30-122-180. Orientation testing; professional competency requirements; advanced competency requirements.

A. Orientation training and testing for DBHDS licensed providers of agency-directed personal assistance services, agency-directed companion services, agency-directed respite services, center-based crisis support, community-based crisis services, crisis support services, community engagement services, community coaching services, group day services, group home residential services, independent living support services, in-home support services, sponsored residential services, supported living residential services, and workplace assistance.

1. Providers shall ensure that direct support professionals (DSPs) and DSP supervisors providing services to individuals with developmental disabilities receive or have received training on the following knowledge, skills, and abilities consistent with DBHDS licensing requirements. These knowledge, skills, and abilities are addressed in the DMAS-approved orientation training.

a. The characteristics of developmental disabilities and Virginia's DD Waivers;

b. Person-centeredness, positive behavioral supports, and effective communication;

c. Identified potential health risks of individuals with developmental disabilities and the appropriate interventions; and

d. Best practices in the support of individuals with developmental disabilities.

2. Providers shall ensure that DSPs and DSP supervisors pass or have passed, with a minimum score of 80%, a DMAS-approved objective, standardized test of knowledge, skills, and abilities demonstrating knowledge of the topics referenced in subdivision 1 of this subsection prior to providing direct, reimbursable services. Other qualified staff who have passed the knowledge-based test shall work alongside any DSP or supervisor who has not yet passed the test.

3. A copy of the DSP orientation test completed by the DSP with the test score will be filed in the personnel file along with the assurance document with DSP and designee signatures and shall be subject to review by DBHDS for licensing compliance purposes and by DMAS for quality management reviews, utilization reviews, and financial audit purposes.

B. Orientation training and testing for non-DBHDS licensed providers.

1. Providers of agency directed personal assistance, companion, and respite services shall ensure that DSPs and DSP supervisors providing services to individuals with developmental disabilities receive or have received training on the following:

a. The characteristics of developmental disabilities and Virginia's DD Waivers;

b. Person-centeredness, positive behavioral supports, and effective communication;

c. Identified potential health risks of individuals with developmental disabilities and the appropriate interventions; and

d. Best practices in the support of individuals with developmental disabilities.

2. Providers shall ensure that DSPs and DSP supervisors pass or have passed, with a minimum score of 80%, a DMAS-approved objective, standardized test of knowledge, skills, and abilities demonstrating knowledge of topics referenced in subdivision 1 of this subsection prior to providing direct, reimbursable services. Other qualified staff who have passed the knowledge-based test shall work alongside the DSP or DSP supervisor who has not yet passed the test.

3. A copy of the DSP orientation test completed by the DSP with the test score will be filed in the personnel file along with the assurance document with DSP and designee signatures and shall be subject to review by DBHDS for licensing compliance purposes and by DMAS for quality management reviews, utilization reviews, and financial audit purposes.

C. The following DBHDS licensed waiver providers shall ensure that new DSPs or DSP supervisors, including relief and contracted staff, complete the competency training and checklist within 180 days from date of hire: agency-directed personal assistance service, agency-directed companion service, agency-directed respite service, center-based crisis support service, community-based crisis service, community engagement service, community coaching service, group day service, group home residential service, independent living service, in-home support service, sponsored residential service, support living residential service, and workplace assistance service.

1. Evidence of completed core competency training and demonstrated proficiency, and documentation of assurances (DMAS Form P242a or P245a), shall be retained in the provider record.

2. Such provider documentation shall be subject to review by DBHDS for licensing compliance purposes and by DMAS for quality management review, utilization reviews, and financial audit purposes.

3. The director of the provider organization or the director's designee shall complete the competencies checklist (DMAS Form P241a) for each DSP supervisor within 180 days from date of hire with annual updates thereafter.

4. Providers shall ensure that supervisors of DSPs complete the competencies checklist (DMAS Form P241a) for each DSP they supervise within 180 days of the DSP hire date and complete annual updates thereafter. Contracted and relief staff are also required to complete the competencies within 180 days from the first date of hire or original contract. The purpose of this checklist shall be to document the DSP's proficient mastery of the stated core competencies.

5. If upon review a DSP or DSP supervisor does not demonstrate proficiency in one or more competency areas, then within 180 days of this review the DSP or DSP supervisor shall review the training information, and orientation retesting shall be completed achieving a score of at least 80% documenting proficiency in the identified area or areas. DMAS shall not reimburse for those services provided by DSPs or DSP supervisors who have failed to pass the orientation test or demonstrate competencies as required.

6. These DSP and DSP supervisor-specific checklists along with the annual updates shall be retained in the provider personnel records and shall be subject to review by DBHDS for licensing compliance purposes and by DMAS for quality management reviews, utilization reviews, and financial audit purposes.

D. Non-DBHDS licensed waiver providers shall ensure that new DSPs or DSP supervisors, including relief and contracted staff, complete the professional assurances within 180 days from date of hire for agency-directed personal assistance services, agency-directed companion services, and agency-directed respite services.

1. Evidence and documentation of assurances (DMAS Form P243a or P246a) shall be retained in the provider record.

2. DSP supervisors shall maintain completed documentation of the online certificate from the DBHDS Learning Management System.

3. Such provider documentation shall be subject to review by DBHDS for licensing compliance purposes and by DMAS for quality management review, utilization reviews, and financial audit purposes.

E. Advanced core competency requirements for DSPs and DSP supervisors serving individuals with developmental disabilities with the most intensive needs, as identified as assigned to Level 6 or 7 (as referenced in 12VAC30-122-200), shall be as follows:

1. Providers shall ensure that DSPs and DSP supervisors supporting individuals identified as having the most intensive needs, as determined by assignment to Level 6 or 7, shall receive training that is developed or approved by a qualified professional in the areas of health, behavioral needs, autism, or all three, as defined by DMAS and based on the identified needs of the individuals supported.

2. DSPs and DSP supervisors supporting individuals with health support needs and assignment to Level 6 or 7 shall receive training in the area of medical supports and based on the identified needs of the individuals supported.

3. DSPs and DSP supervisors supporting individuals with behavioral support needs and assignment to Level 6 or 7 shall receive training in the area of behavioral supports and based on the identified needs of the individuals supported.

4. DSPs and DSP supervisors supporting individuals with autism and assignment to Level 6 or 7 shall receive training on characteristics of autism and based on the identified needs of the individuals supported.

5. DSPs and DSP supervisors supporting individuals at other support levels but who are receiving a customized rate shall receive training in the appropriate areas related to the needs of the individual.

6. Evidence of training completed by DSPs and DSP supervisors shall be retained in the personnel file and be subject to review by DBHDS for licensing compliance and by DMAS for quality management review, utilization review, and financial audit purposes.

7. The director of the provider agency or designee shall complete the appropriate advanced core competencies checklists (DMAS Forms P240a, P244a, and P201) specific to the needs and level of the individuals supported by each DSP supervisor within 180 days of the date of hire with completed annual updates thereafter. The checklists shall be retained in the personnel file and be subject to review by DBHDS for licensing compliance and by DMAS for quality management review, utilization review, and financial audit purposes.

8. Providers shall ensure that DSP supervisors complete the advanced core competencies checklists (DMAS Forms P240a, P244a, and P201) specific to the needs and service levels of the individuals supported for each DSP that the

DSP supervisors supervise within 180 days of hiring the DSP, with annual competency checklist updates thereafter. These checklists shall be used to document proficient mastery of the stated core competencies.

9. If upon review a DSP or DSP supervisor does not demonstrate proficiency in one or more advanced competency areas, then within 180 days of such review the DSP or DSP supervisor shall review the training information, and orientation retesting shall be completed as appropriate with a score of at least 80% demonstrating proficiency in the identified area. DMAS shall not reimburse for those services provided by DSPs or DSP supervisors who have failed to demonstrate competencies as required.

10. Providers shall retain these checklists in the personnel files that are subject to review by DBHDS for licensing compliance and by DMAS for quality management review, utilization review, and financial audit purposes. Continued knowledge of the advanced core competencies by DSP supervisors shall be confirmed in accordance with subdivisions 6 and 7 of this subsection.

12VAC30-122-190. Individual support plan; plans for supports; reevaluation of service need.

A. Every individual who has been approved to receive FIS, CL, or BI waiver services shall have a unique person-centered individual support plan (ISP) that sets out his unique, specific needs and the services designed to meet those needs.

1. The ISP shall be collaboratively developed at the onset of waiver services and redeveloped, at a minimum, annually by the support coordinator with the individual and the individual's family/caregiver, as appropriate, other providers, consultants as may be needed, and other interested parties at the individual's discretion.

2. The support coordinator shall be responsible for continuously monitoring the appropriateness of the individual's services and making timely revisions to the ISP as indicated by the changing needs of the individual.

3. Any modification to the amount or type of services in the ISP shall be service authorized by DMAS or its designee.

4. The support coordinator shall monitor the providers' plans for supports to ensure that all providers are working toward the desired outcomes with the individuals supported.

5. Support coordinators shall be required to conduct and document evidence of monthly onsite visits for all individuals enrolled in the DD Waivers who are residing in VDSS-licensed assisted living facilities or approved adult foster care homes.

6. Support coordinators shall conduct and document a minimum of quarterly visits to all other individuals with at least one visit annually occurring in the home.

7. All requests for increased waiver services for individuals enrolled in one of the DD Waivers shall be reviewed by the support coordinator to ensure that the individual's health, safety, and welfare in the community is dependent on the finding that the individual demonstrates a need for the service, based on appropriate assessment criteria and a written plan for supports, and that those services can be safely and cost effectively provided in the community.

8. Individuals and the family/caregiver shall be provided with a copy of the individual's ISP.

B. Providers shall develop and keep updated, to include changing needs, a plan for supports for every individual supported. The contents of the plan for supports shall at a minimum contain the items specified in 12VAC30-122-120 A 10 f. Services that are exempt from provider plans for supports requirements can be found in each service's specific regulation section.

C. Reevaluation of service need.

1. At a minimum, the support coordinator shall review the ISP at least quarterly to determine whether the individual's desired outcomes and support activities are being met and whether any modifications to the ISP are necessary. The results of such reviews shall be documented, signed, and dated in the individual's record even if no change occurred during the review period. This documentation shall be provided to DMAS and DBHDS upon request.

2. Components of annual person-centered plan review.

a. The support coordinator shall complete a reassessment annually, at a minimum, in coordination with the individual and the individual's family/caregiver, as appropriate, providers, and others as desired by the individual. The reassessment shall be signed and dated by the support coordinator and shall include an update of the level of care and personal profile, risk assessment, and any other appropriate assessment information. "Risk assessment" means an assessment used to determine areas of high risk of danger to the individual or others based on the individual's serious medical or behavioral factors and shall be used to plan risk mitigating supports for the individual in the individual support plan.

The ISP shall be revised as appropriate for consistency with this reassessment. If this annual level of care reassessment demonstrates that the individual no longer meets waiver requirements, the support coordinator shall inform DMAS and DBHDS that the individual must be terminated from waiver services.

b. A medical examination shall be completed in accordance with 12VAC35-105-740.

c. Medical examinations and screenings for children ages birth to 21 years shall be completed according to the recommended frequency and periodicity of the EPSDT program (42 CFR 440.40 and 12VAC30-50-130).

d. A new psychological or other diagnostic evaluation shall be required whenever the individual's functioning has undergone significant change, such as deterioration of abilities that is expected to last longer than 30 days, and is no longer reflective of the past evaluation. "Significant change" means a change in an individual's condition that is expected to last longer than 30 calendar days but shall not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclical pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

The evaluation shall be completed by a qualified examiner, as defined in this subdivision, and reflect the current diagnosis, adaptive level of functioning, and presence of a functional delay that arose during the developmental period. "Qualified examiner" means a credentialed professional, for example a licensed physician, licensed psychologist, or licensed therapist, who is practicing pursuant to the requirements and limits of his license.

e. The individual shall be allowed to select other entities, either persons or organizations, at his discretion to participate in the annual review of his person-centered plan.

12VAC30-122-200. Supports Intensity Scale® requirements; Virginia Supplemental Questions; levels of support; supports packages.

A. The Supports Intensity Scale (SIS®) requirements.

1. The SIS® is an assessment tool that identifies the practical supports required by individuals to live successfully in their communities. DBHDS shall use the SIS® Child for individuals who are five years through 15 years of age. DBHDS shall use the SIS® Adult for individuals who are 16 to 72 years of age. Individuals who are younger than five years of age shall be assessed using either the SIS® or an age-appropriate alternative instrument, such as the Early Learning Assessment Profile, as approved by DBHDS.

2. A SIS® assessment and the Virginia Supplemental Questions (VSQ), as appropriate, shall be completed with the individual and other appropriate parties who have knowledge of the individual's circumstances and needs for support:

a. At least every three years for those individuals who are 16 years of age and older.

b. Every two years for individuals five years through 15 years of age when the individual is using a tiered service, such as group home residential, sponsored residential, supported living residential, group day, or community engagement. Another developmentally appropriate standardized living skills assessment approved by DBHDS, such as the Brigance Inventory, Vineland, or Choosing Outcomes and Accommodations for Children shall be completed every two years for service planning purposes for those in this age grouping who do not receive a SIS® assessment.

c. For children younger than five years of age, an alternative industry assessment instrument approved by DBHDS, such as the Early Learning Assessment Profile, shall be completed every two years for service planning purposes.

d. When the individual's support needs change significantly for a sustained period of at least six months.

3. The SIS® shall be used in conjunction with VSQ, the person-centered planning process, VIDES, and other assessment information to develop each individual's ISP. The SIS® shall be used to assess individuals' patterns and intensity of needed supports across life activities such as (i) home living activities; (ii) community living activities; (iii) lifelong learning; (iv) employment; (v) health, safety, social activities, and self-advocacy; (vi) medical and behavioral support needs; and (vii) what is important to and important for individuals who are enrolled in a waiver.

4. The sum of (i) the standard scale scores from SIS® Adult Parts A, B, and E (ABE) in Section 1; (ii) scale scores associated with SIS® Section 3 Part A and B; and (iii) responses to Supplemental Questions shall be used to assign levels of supports to each adult individual, as follows:

Seven Levels of Supports	SIS® Sum Scales Parts ABE	Section 3 Part A Medical Support	Section 3 Part B Behavior Support
Least support needs (Level 1)	0 to 22	0 to 6	0 to 6
Modest or moderate support needs (Level 2)	23 to 30	0 to 6	0 to 6
Least/moderate support needs with some behavioral needs (Level 3)	0 to 30	0 to 6	7 to 10

Moderate to high support needs (Level 4)	31 to 36	0 to 6	7 to 10
High to maximum support needs (Level 5)	37 to 52	0 to 6	0 to 10
Extraordinary medical support needs (Level 6)	Any	7 to 32 or verified extraordinary medical risk	0 to 10
Extraordinary behavioral support needs (Level 7)	Any	Any	11 to 26 or verified danger to others or extreme self-injury risk

5. The SIS® shall be administered and analyzed by qualified, trained interviewers designated by DBHDS.

B. The Virginia Supplemental Questions (VSQ version 10/26/2014) shall also be used to identify individuals who have unique needs falling outside of the needs identifiable by the SIS® instrument. The VSQ shall also be administered and analyzed by the same qualified, trained interviewers designated by DBHDS.

1. The Virginia Supplemental Questions shall address these topics:

a. Severe medical risk;

b. Severe community safety risk for people with a related legal conviction;

c. Severe community safety risk for people with no related legal conviction; and

d. Severe risk of harm to self.

2. Each Supplemental Question shall have five individual items labeled A through E. A 'yes' response to any of these items shall require a review of the individual's record for verification. After such review, the individual may or may not be assigned to Level 6 (medical) or Level 7 (behavioral).

C. The results of the SIS®, Virginia Supplemental Questions, and, as needed, a document review verification process shall determine the individual's required level of supports. The results of the SIS®, other assessment information, and the person-centered planning process shall establish the basis for the individual support plan.

D. Establishment of supports packages, which means a profile of the mix and extent of services anticipated to be needed by individuals with similar levels, needs, and abilities. (Reserved.)

12VAC30-122-210. Payment for covered services (tiers).

A. Waiver services shall be reimbursed according to the agency fee schedule unless otherwise specified in this section. Units of service and service limits are set out in the section for each service. There shall be no designated formal schedule for annual cost of living or other adjustments and any adjustments to provider rates shall be subject to available funding and approval by the General Assembly. Rate methodologies shall also be subject to the approval of the Centers for Medicare and Medicaid services.

1. All services shall have a Northern Virginia and Rest of State rate and shall be paid based on the individual's place of residence.

2. The following services shall have variable rates based on size:

a. Group homes rates shall vary based on licensed bed size;

b. Group supported employment rates shall vary by group size; and

c. In-home residential rates shall vary by the number of individuals being served in the same home by one direct service professional.

3. There shall be up to four tiers of reimbursement for these services: community engagement, group day support, group home, independent living, sponsored residential support, and supported living residential. Four reimbursement tiers for an individual shall be based on seven levels of support (as detailed in 12VAC30-122-200) from resultant scores of the SIS®, the responses to the Virginia Supplemental Questions, and, as needed, a document review verification process. The DMAS designee shall verify the scores and levels of the individuals, as appropriate.

a. Levels of supports:

(1) Level 1 shall mean low support needs;

(2) Level 2 shall mean low to moderate support needs;

(3) Level 3 shall mean moderate support needs plus some behavior challenges;

(4) Level 4 shall mean moderate to high support needs;

(5) Level 5 shall mean maximum support needs;

(6) Level 6 shall mean significant support needs due to medical challenges, and;

(7) Level 7 shall mean significant support needs due to behavioral challenges.

b. Tiers of reimbursement:

(1) Tier 1 shall be used for individuals having Level 1 support needs.

(2) Tier 2 shall be used for individuals having Level 2 support needs.

(3) Tier 3 shall be used for individuals having either Level 3 or Level 4 support needs.

(4) Tier 4 shall be used for individuals having either Level 5, Level 6, or Level 7 support needs.

For the purposes of this subdivision A 3, "tiers of reimbursement" means tiers that are tied to an individual's level of support so that providers are reimbursed for services provided to individuals consistent with that level of support.

4. Individual-specific support needs, such as the extraordinary medical or behavioral supports needs, may warrant customized rates for additional supports as described in this section, in the following service settings: community coaching service, group day service, in-home support service, group home residential service, sponsored residential service, and supported living residential service.

a. In these cases, providers and support coordinators shall submit to the DMAS designee a written request for a customized reimbursement rate exceeding the reimbursement rate for the assessed level of support of the individual. The request shall include, for example, contact information, increased staffing supports needed for the individual, the types of service for which the request is made, increased program oversight needed for the individual, the individual's behavior or medical support needs, or the individual's need for staff with certain qualifications.

b. The request shall be reviewed by a team of clinical and administrative personnel from the DMAS designee to determine that the documentation substantiates the intense needs of the individual, whether medical, behavioral, or both, and that the provider has employed staff with higher qualifications (e.g., direct support professionals with four-year degrees) or increased the ratio of staff-to-individual support of one staff person to one individual (1:1) or, in the case of services already required to be provided at a 1:1 ratio, a two staff persons to one individual (2:1) ratio.

c. The customized rate methodology shall modify the existing rate methodology assumptions for the following components in the existing rate methodologies: additional hours related to increased or specialized staffing supports and program costs.

d. Customized reimbursement rate determinations may be appealed pursuant to 12VAC30-20-500 et seq.

e. The DMAS designee shall review individuals on at least an annual basis in order for the affected provider to continue to receive the customized reimbursement rate. After the review, adjustment determinations for the customized rate may be made. All such adjustment determinations may be appealed pursuant to 12VAC30-20-500 et seq.

B. Reimbursement rates for individual supported employment shall be the same as set by the Department for Aging and Rehabilitative Services for each individual supported employment provider agency.

C. Reimbursement for assistive technology (AT) service (12VAC30-122-270), electronic home-based support service (12VAC30-122-360), environmental modifications (EM) service (12VAC30-122-370), individual and family/caregiver training service (12VAC30-122-430), and transition service (12VAC30-122-560) shall be reimbursed based on approved costs subject to the following limits:

1. AT and EM approved costs for items and labor shall be reimbursed up to a per individual maximum of $5,000 per calendar year across all home and community-based waivers.

2. Transition services approved costs shall be reimbursed up to a per individual maximum of $5,000 per lifetime across all home and community-based waivers.

3. Electronic home-based support approved costs shall be reimbursed up to a per individual maximum of $5,000 per calendar year.

4. Individual and family/caregiver training approved costs shall be reimbursed up to a per individual maximum of $4,000 per calendar year.

D. Duplication of services.

1. DMAS shall not duplicate the reimbursement for services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (42 USC § 12131 through 42 USC § 12165), the Rehabilitation Act of 1973 (29 USC § 701 et seq.), the Virginians with Disabilities Act (Title 51.5 (§ 51.5-1 et seq.) of the Code of Virginia), or any other applicable statute.

2. Payment for services under individual ISPs shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

3. Payment for services under individual ISPs shall not be made for services that are duplicative of each other.

4. Payment for services shall only be provided for services as set out in an individual's ISP.

5. Payments that are determined to have been made contrary to these limitations shall be recovered by either DMAS or its designee.

12VAC30-122-220. Appeals.

A. Providers shall have the right to appeal actions taken by DMAS or its designee in accordance with § 32.1-325.1 of the Code of Virginia, the Virginia Administrative Process Act (Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia), 12VAC30-10-1000, and 12VAC30-20-500 et seq.

B. Individuals shall have the right to appeal an action taken by DMAS or its designee in accordance with 12VAC30-110-10 through 12VAC30-110-370 and 42 CFR Part 431 subpart E. The individual shall be advised in writing of the action and of his right to appeal consistent with federal requirements and DMAS client appeals regulations (12VAC30-110-10 through 12VAC30-110-370).

12VAC30-122-230. Utilization review and quality management review.

A. Quality management review shall be performed by DMAS or its designee. Utilization review of rendered services shall be conducted by DMAS or its designee.

B. DMAS staff shall conduct utilization review of individual-specific provider documentation, which shall be forwarded by providers upon DMAS or DBHDS request.

12VAC30-122-240. Services covered in the Building Independence Waiver.

A. The Building Independence Waiver is designed to support individuals who reside in an integrated, independent living arrangement who can be supported through the provision of a minimal level of supports.

B. The services covered in the Building Independence Waiver for adults who are 18 years of age or older shall be:

1. Assistive technology service (12VAC30-122-270).

2. Benefits planning service (12VAC30-122-1070 - reserved).

3. Center-based crisis support service (12VAC30-122-290).

4. Community-based crisis support service (12VAC30-122-300).

5. Community coaching service (12VAC30-122-310).

6. Community engagement service (12VAC30-122-320).

7. Community guide service (12VAC30-122-330 - reserved).

8. Crisis support service (12VAC30-122-350).

9. Electronic home-based support service (12VAC30-122-360).

10. Environmental modifications service (12VAC30-122-370).

11. Group day service (12VAC30-122-380).

12. Group and individual supported employment service (12VAC30-122-400).

13. Independent living support service (12VAC30-122-420).

14. Nonmedical transportation service (12VAC30-122-440 - reserved).

15. Peer support service (12VAC30-122-450 - reserved).

16. Personal emergency response system service (12VAC30-122-470).

17. Shared living support service (12VAC30-122-510).

18. Transition service (12VAC30-122-560).

C. Services shall be rendered in compliance with all of the requirements set out in 12VAC30-122-120. Providers claims for reimbursement shall be supported by record documentation in accordance with federal requirements and DMAS regulatory requirements. Claims not supported by record documentation may be subject to recovery of expenditures.

12VAC30-122-250. Services covered in the Community Living Waiver.

A. The Community Living Waiver is the developmental disabilities waiver designed particularly to support those individuals who require some form of a residential service 24 hours per day, seven days per week.

B. The services covered in the Community Living Waiver are:

1. Assistive technology service (12VAC30-122-270).

2. Benefits planning service (12VAC30-122-280 - reserved).

3. Center-based crisis support service (12VAC30-122-290).

4. Community-based crisis support service (12VAC30-122-300).

5. Community coaching service (12VAC30-122-310).

6. Community engagement service (12VAC30-122-320).

7. Community guide service (12VAC30-122-330 - reserved).

8. Companion service (12VAC30-122-340).

9. Crisis support service (12VAC30-122-350).

10. Electronic home-based support service (12VAC30-122-360).

11. Environmental modifications service (12VAC30-122-370).

12. Group day service (12VAC30-122-380).

13. Group home service (12VAC30-122-390).

14. Group and individual supported employment service (12VAC30-122-400).

15. In-home support service (12VAC30-122-410).

16. Nonmedical transportation service (12VAC30-122-440 - reserved).

17. Peer support service (12VAC30-122-450 - reserved).

18. Personal assistance service (12VAC30-122-460).

19. Personal emergency response system service (12VAC30-122-470).

20. Private duty nursing service (12VAC30-122-480).

21. Respite service (12VAC30-122-490).

22. Services facilitation service (12VAC30-122-500).

23. Shared living support service (12VAC30-122-510).

24. Skilled nursing service (12VAC30-122-520).

25. Sponsored residential service (12VAC30-122-530).

26. Supported living residential service (12VAC30-122-540).

27. Therapeutic consultation service (12VAC30-122-550).

28. Transition service (12VAC30-122-560).

29. Workplace assistance service (12VAC30-122-570).

C. Services shall be rendered in compliance with all of the requirements set out in 12VAC30-122-120. Providers claims for reimbursement shall be supported by record documentation in accordance with federal requirements and DMAS regulatory requirements. Claims not supported by record documentation may be subject to recovery of expenditures.

12VAC30-122-260. Services covered in the Family and Individual Support Waiver.

A. The Family and Individual Support Waiver is designed to support individuals who live with their families or in their own homes.

B. The services covered in the Family and Individual Support Waiver are:

1. Assistive technology service (12VAC30-122-270).

2. Benefits planning service (12VAC30-122-280 - reserved).

3. Center-based crisis support service (12VAC30-122-290).

4. Community-based crisis support service (12VAC30-122-300).

5. Community coaching service (12VAC30-122-310).

6. Community engagement service (12VAC30-122-320).

7. Community guide service (12VAC30-122-330 - reserved).

8. Companion service (12VAC30-122-340).

9. Crisis support service (12VAC30-122-350).

10. Electronic home-based support service (12VAC30-122-360).

11. Environmental modifications service (12VAC30-122-370).

12. Group day service (12VAC30-122-380).

13. Group and individual supported employment service (12VAC30-122-400).

14. In-home support service (12VAC30-122-410).

15. Individual and family/caregiver training service (12VAC30-122-430).

16. Nonmedical transportation service (12VAC30-122-440 - reserved).

17. Peer support service (12VAC30-122-450 - reserved).

18. Personal assistance service (12VAC30-122-460).

19. Personal emergency response system service (12VAC30-122-470).

20. Private duty nursing service (12VAC30-122-480).

21. Respite service (12VAC30-122-490).

22. Shared living support service (12VAC30-122-510).

23. Skilled nursing service (12VAC30-122-520).

24. Supported living residential service (12VAC30-122-540).

25. Therapeutic consultation service (12VAC30-122-550).

26. Transition service (12VAC30-122-560).

27. Workplace assistance service (12VAC30-122-570).

C. Services shall be rendered in compliance with all of the requirements set out in 12VAC30-122-120. Providers claims for reimbursement shall be supported by record documentation in accordance with federal requirements and DMAS regulatory requirements. Claims not supported by record documentation may be subject to recovery of expenditures.

12VAC30-122-270. Assistive technology service.

A. Service description. Assistive technology (AT) service shall entail the provision of specialized medical equipment and supplies including those devices, controls, or appliances

specified in the individual support plan but that are not available under the State Plan for Medical Assistance that (i) enable individuals to increase their abilities to perform activities of daily living (ADLs); (ii) enable individuals to perceive, control, or communicate with the environment in which they live; or (iii) are necessary for life support, including the ancillary supplies and equipment necessary to the proper functioning of such items. The AT service shall be covered in the FIS, CL, and BI waivers.

B. Criteria and allowable activities.

1. To qualify for the assistive technology service, the individual shall have a demonstrated need for equipment for remedial or direct medical benefit in the individual's primary home, primary vehicle, community activity setting, or day program to specifically improve the individual's personal functioning. The AT service shall be covered in the least expensive, most cost-effective manner and shall be limited to $5,000 per calendar year. There shall be no carryover of unspent funds from year to year. The equipment and activities shall include:

a. Specialized medical equipment and ancillary equipment;

b. Durable or nondurable medical equipment and supplies that are not otherwise available through the State Plan for Medical Assistance;

c. Adaptive devices, appliances, and controls that enable an individual to be independent in areas of personal care and ADLs; and

d. Equipment and devices that enable an individual to communicate more effectively.

2. Service requirements.

a. An independent professional consultation to determine the level of need that is not performed by the AT service provider shall be obtained from staff knowledgeable of that item for each AT service request prior to approval by DMAS or its designee. Equipment, supplies, or technology not available as durable medical equipment through the State Plan for Medical Assistance may be purchased and billed as the AT service as long as the request for such equipment, supplies, or technology is documented and justified in the individual's ISP, recommended by the support coordinator, service authorized by DMAS or its designee, and provided in the least expensive, most cost-effective manner possible.

b. If required, a rehabilitation engineer or certified rehabilitation specialist may be utilized if (i) the assistive technology will be initiated in combination with environmental modifications involving systems that are not designed to be compatible or (ii) an existing device must be modified or a specialized device must be designed and fabricated.

c. All AT service items to be covered shall meet applicable standards of manufacture, design, and installation.

d. The AT service provider shall obtain, install, and demonstrate, as necessary, that the service was authorized prior to submitting his claim to DMAS for reimbursement. The provider shall provide all warranties or guarantees from the AT manufacturer to the individual and family/caregiver, as appropriate.

C. Service units and limitations. The AT service shall be available to individuals who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting described in subdivision B 1 of this section. The AT service shall be provided in the least expensive manner possible that will accomplish the modification required by the individual enrolled in the waiver.

1. The maximum funded expenditure per individual for all covered procedure codes (combined total of AT service items and labor related to these items) shall be $5,000 per calendar year and shall be completed within the calendar year. The service unit shall always be one for the total cost of all AT service being requested for a specific timeframe.

2. The AT service shall not be approved for purposes of convenience of the caregiver or restraint of the individual, recreation or leisure activities, or educational purposes.

3. AT service providers shall not be the spouse, parent, or guardian of the individual enrolled in the waiver.

4. Requests for AT service via a DD Waiver shall be denied if AT service is available for children under EPSDT (12VAC30-50-130). No duplication of payment for the AT service shall be permitted between the waiver and services covered for adults that are reasonable accommodation requirements of the Americans with Disabilities Act (42 USC § 12101 et seq.), the Virginians with Disabilities Act (Title 51.5 (§ 51.5-1 et seq.) of the Code of Virginia), and the Rehabilitation Act (29 USC § 701 et seq.).

D. Provider qualifications and requirements.

1. Providers shall meet all of the requirements of 12VAC30-122-110 through 12VAC30-122-140.

2. AT service shall be provided by DMAS-enrolled durable medical equipment (DME) providers or DMAS-enrolled CSBs or BHAs with a signed, current waiver provider agreement with DMAS to provide the AT service. DME shall be provided in accordance with 12VAC30-50-165.

3. Independent assessments for the AT service shall be conducted by independent professional consultants. Independent, professional consultants include, for example, speech-language therapists, physical therapists, occupational therapists, physicians, behavioral therapists,

certified rehabilitation specialists, or rehabilitation engineers.

4. Providers that supply AT service for an individual shall not perform assessment or consultation or write specifications. Providers of services shall not be spouses, parents, or guardians of the individual.

5. The AT service shall be delivered within the calendar year or within a year from the start date of the authorization.

6. The plan for supports and service authorization request shall include justification and explanation if a rehabilitation engineer or certified rehabilitation specialist is needed.

7. Providers shall develop and maintain individual-specific documentation that supports the provider's claims for payment. Claims that are not supported by individual-specific documentation shall be subject to payment recovery actions by DMAS.

8. Additional charges for shipping, freight, or delivery are prohibited because these services are considered all-inclusive in a provider's charge for the product.

9. All products must be delivered, demonstrated, installed, and in working order prior to submitting any claim for the products to Medicaid.

10. Providers of the AT service shall not be spouses, parents, or guardians of the individual who is receiving waiver services. Providers that supply the AT service for the waiver individual may not perform assessments or consultation or write specifications for that individual. Any request for a change in cost, either an increase or a decrease, requires justification and supporting documentation of medical need and service authorization by DMAS or its designee. The provider shall receive a copy of the professional evaluation to purchase the items recommended by the professional. If a change is necessary, then the provider shall notify the assessor to ensure the changed items meet the individual's needs.

11. All equipment or supplies already covered by a service provided for in the State Plan shall not be purchased under the AT service.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. The plan for supports per requirements detailed in 12VAC30-122-120. The service authorization to be completed by the support coordinator may serve as the plan for supports for the provision of AT service. The service authorization request shall be submitted to DMAS or its designee in order for service authorization to occur;

b. For AT services, written documentation regarding the process and results of ensuring that the item is not covered by the State Plan for Medical Assistance as durable medical equipment and supplies;

c. Documentation of the recommendation for the item by an independent professional consultant;

d. Documentation of the date services are rendered and the amount of service that is needed;

e. Any other relevant information regarding the device or modification;

f. Documentation in the support coordination record of notification by the designated individual or individual's representative family/caregiver of satisfactory completion or receipt of the service or item; and

g. Instructions regarding any warranty, repairs, complaints, or servicing that may be needed.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-280. Benefits planning service. (Reserved.)

12VAC30-122-290. Center-based crisis support service.

A. Service description. Center-based crisis support service means planned crisis prevention and emergency crisis stabilization services in a crisis therapeutic home using planned and emergency admissions. This service is designed for individuals who will need ongoing crisis supports. Planned admissions shall be provided to individuals receiving crisis services and who need temporary, therapeutic interventions outside of their home setting to maintain stability. Emergency admissions shall be provided to individuals who are experiencing an identified behavioral health need or behavior challenge that is preventing them from reaching stability within their home settings. Center-based crisis support service shall be covered in the FIS, CL, and BI waivers.

B. Criteria and allowable activities.

1. Center-based crisis support service is designed for individuals with a history of at least one of the following:

a. Psychiatric hospitalization;

b. Incarceration;

c. Residential or day placement that was terminated; or

d. Behavior that has significantly jeopardized placement.

2. In addition, the individual shall meet at least one of the following:

a. Is currently experiencing a marked reduction in psychiatric, adaptive, or behavioral functioning;

b. Is currently experiencing an increase in emotional distress;

c. Currently needs continuous intervention to maintain stability; or

d. Is causing harm to himself or others.

3. The individual shall also be:

a. At risk of psychiatric hospitalization;

b. At risk of emergency ICF/IID placement;

c. At immediate risk of loss of community service due to severe situational reaction; or

d. Actually causing harm to himself or others.

4. Allowable activities shall include as appropriate for the individual as documented in the plan for supports:

a. A variety of types of face-to-face assessments (e.g., psychiatric, neuropsychiatric, psychological, behavioral) and stabilization techniques;

b. Medication management and monitoring;

c. Behavior assessment and positive behavior support;

d. Intensive care coordination with other agencies or providers to maintain the individual's community placement;

e. Training for family members/caregivers and providers in positive behavior supports;

f. Skill building related to the behavior creating the crisis such as self-care or ADLs, independent living skills, self-esteem, appropriate self-expression, coping skills, and medication compliance; and

g. Supervising the individual in crisis to ensure his safety and that of other persons in the environment.

C. Service units and limitations. Center-based crisis support service shall be limited to six months per ISP year and shall be authorized in increments of up to a maximum of 30 consecutive days with each authorization. Center-based crisis support service shall not be provided during the occurrence of the following waiver services and shall not be billed concurrently (i.e., same dates and times): (i) group home residential service, (ii) sponsored residential service, (iii) supported living residential service, or (iv) respite service. Center-based crisis support service is available through a waiver only when it is not available through the State Plan.

D. Provider qualifications and requirements.

1. Providers shall meet all of the requirements set out in 12VAC30-122-110 through 12VAC30-122-140.

2. Providers shall have current signed participation agreements with DMAS and shall directly provide the services and bill DMAS for Medicaid reimbursement.

3. Providers shall renew their participation agreements as directed by DMAS.

4. Providers for adults shall be licensed by DBHDS as providers of Group Home Service-REACH (Regional Education Assessment Crisis Services Habilitation) or, for children, a residential group home-REACH for children and adolescents with co-occurring diagnosis of developmental disability and behavioral health needs.

5. Center-based crisis support service shall be provided by a licensed mental health professional (LMHP), LMHP-supervisee, LMHP-resident, LMHP-RP, certified pre-screener, QMHP, QDDP, or a DSP under the supervision of one of the professionals listed in this subdivision D 5.

6. Providers shall ensure that staff meet provider competency training requirements as specified in 12VAC30-122-180.

7. Providers shall develop and maintain individual-specific contemporaneous documentation that supports the provider's claims for payment. Claims that are not supported by individual-specific documentation shall be subject to payment recovery actions by DMAS.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. The provider's plan for supports per requirements detailed in 12VAC30-122-120.

b. Supporting documentation that has been developed (or revised, in the case of a request for an extension) and submitted to the to the support coordinator for authorization within 72 hours of the face-to-face assessment or reassessment.

c. Documentation indicating the dates and times of crisis services, the amount and type of service provided, and specific information about the individual's response to the services and supports shall be recorded in the individual's record.

d. Documentation maintained for routine supervision and oversight of all services provided by direct support professional staff. All significant contacts shall be documented and dated.

2. A supervisor meeting the requirements of 12VAC35-105 shall provide supervision of direct support professional staff. Documentation of supervision shall be (i) completed, (ii) signed by the staff person designated to perform the supervision and oversight, and (iii) include the following:

a. Date of contact or observation;

b. Person contacted or observed;

c. Summary about direct support professional staff performance and service delivery; and

d. Any action planned or taken to correct problems identified during supervision and oversight.

3. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-300. Community-based crisis support service.

A. Service description. Community-based crisis support service means a service provided to individuals experiencing crisis events that put them at risk for homelessness, incarceration, or hospitalization or that creates danger to self or others. This service shall provide ongoing supports to individuals in their homes and other community settings. This service provides temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent other out-of-home placement. This service shall be designed to stabilize the individual and strengthen the current living situation so that the individual can be maintained during and beyond the crisis period. Community-based crisis support service shall be covered in the FIS, CL, and BI waivers.

B. Criteria and allowable activities.

1. Community-based crisis support service provides ongoing supports to the individual who may have:

a. A history of multiple psychiatric hospitalizations, frequent medication changes, or setting changes; or

b. A history of requiring enhanced staffing due to the individual's mental health or behavioral issues.

2. To be approved to receive this service, the individual shall have a history of at least one of the following:

a. Previous psychiatric hospitalization;

b. Previous incarceration;

c. Residential or day placement that was terminated; or

d. Behavior that has significantly jeopardized placement.

3. In addition, the individual shall meet at least one of the following:

a. Is experiencing a marked reduction in psychiatric, adaptive, or behavioral functioning;

b. Is experiencing an increase in extreme emotional distress;

c. Needs continuous intervention to maintain stability; or

d. Is actually causing harm to himself or others.

4. The individual shall also be:

a. At risk of psychiatric hospitalization;

b. At risk of emergency ICF/IID placement;

c. At immediate threat of loss of community service due to a severe situational reaction; or

d. Actually causing harm to himself or others.

5. Community-based crisis support service allowable activities shall be provided in either the individual's home or in community settings, or both. Crisis staff shall work directly with the individual and with his current support provider or his family/caregiver, or both.

6. This service is provided using, for example, coaching, teaching, modeling, role-playing, problem solving, or direct assistance. Allowable activities shall include, as may be appropriate for the individual as documented in his plan for supports:

a. Psychiatric, neuropsychiatric psychological, and behavioral assessments and stabilization techniques;

b. Medication management and monitoring;

c. Behavior assessment and positive behavior support;

d. Intensive care coordination with agencies or providers to maintain the individual's community placement;

e. Family/caregiver training in positive behavioral supports to maintain the individual in the community;

f. Skill building related to the behavior creating the crisis such as self-care or ADLs, independent living skills, self-esteem, appropriate self-expression, coping skills, and medication compliance; and

g. Supervision to ensure the individual's safety and the safety of others in the environment.

C. Service units and limitations. Community-based crisis support service is provided in an hourly service unit and may be authorized for up to 24 hours per day if necessary in increments of no more than 15 days at a time. The annual limit is 1,080 hours. Requests for additional community-based crisis support service in excess of the 1,080-hour annual limit will be considered if justification of medical necessity is provided. This service is only available through a waiver when it is not available through the State Plan.

D. Provider qualifications and requirements.

1. Providers shall meet all of the requirements set out in 12VAC30-122-110 through 12VAC30-122-140.

2. Providers of all community-based crisis support service shall have current signed participation agreements with DMAS and shall directly provide the service and bill

DMAS for Medicaid reimbursement. These providers shall renew their participation agreements as directed by DMAS.

3. Providers shall be licensed by DBHDS as providers of mental health outpatient or crisis stabilization service-REACH (Regional Education Assessment Crisis Services Habilitation). Community-based crisis support service shall be provided by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a certified pre-screener, QMHP, or QDDP.

4. Providers shall ensure that staff providing community-based crisis support service meet provider competency training requirements as specified in 12VAC30-122-180.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. The provider's plan for supports per requirements detailed in 12VAC30-122-120.

b. Supporting documentation that has been developed (or revised, in the case of a request for an extension) and submitted to the support coordinator for authorization within 72 hours of the face-to-face assessment or reassessment.

c. Documentation indicating the dates and times of service, the amount and type of service provided, and specific information about the individual's responses to the services and supports.

d. Documentation confirming the individual's amount of time in the service and providing specific information regarding the individual's response to various settings and supports as agreed to in the plan for supports. Observation of the individual's responses to the service shall be available in at least a daily note. Data shall be collected as described in the plan for supports, analyzed to determine if the strategies are effective, summarized, then clearly documented in the progress notes or support checklist.

e. Documentation to support units of service delivered, and the documentation shall correspond with billing. Providers shall maintain separate documentation for each type of service rendered for an individual. Documentation shall include all correspondence and contacts related to the individual.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting contemporaneous documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-310. Community coaching service.

A. Service description. Community coaching is a service designed for individuals who need one-to-one support in a variety of community settings in order to build a specific skill or set of skills to address particular barriers that prevent individuals from participating in activities of community engagement. In addition to skill building, this service includes routine and safety supports. Community coaching service shall be covered in the FIS, CL, and BI waivers.

B. Criteria and allowable activities. Community coaching service shall be provided to individuals who require one-to-one support to address identified barriers in their plans for supports that prevent them from participating in the community engagement service. Community coaching activities shall be documented in the plan for supports and be sensitive to the individual's age, abilities, and personal preferences. Allowable activities shall include, as may be appropriate for the individual as documented in his plan for supports:

1. One-on-one skill building and coaching to facilitate participation in community activities and opportunities such as:

a. Activities and public events in the community;

b. Community education, activities, and events; and

c. Use of public transportation if available and accessible.

2. Skill building and support in positive behavior, relationship building, and social skills.

3. Routine supports with the individual's self-management, eating, and personal care needs in the community.

4. Assuring the individual's safety through one-to-one supervision in a variety of community settings.

C. Service units and limitations.

1. The unit of service shall be one hour.

2. The community coaching service, alone or in combination with the community engagement service, group day service, workplace assistance service, or supported employment service shall not exceed 66 hours per week.

3. This service shall be provided at a ratio of one staff to one individual. This service shall not be provided within a group setting.

D. Provider qualifications and requirements.

1. Providers shall meet all of the requirements set out in 12VAC30-122-110 through 12VAC30-122-140.

2. Providers shall be licensed by DBHDS as providers of the non-center-based day support service.

3. Providers shall have a current, signed provider participation agreement with DMAS to provide this service. The provider designated in the participation agreement shall directly provide the service and bill DMAS for reimbursement.

4. Providers shall ensure that staff who provide the community coaching service meet provider competency training requirements as specified in 12VAC30-122-180.

5. The DSP providing community coaching service shall not be an immediate family member of an individual receiving the community coaching service. For an individual receiving the sponsored residential service, the DSP providing the community coaching service shall not be a member of the sponsored family residing in the sponsored residential home.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. A copy of the completed, standard, age-appropriate assessment form as detailed in 12VAC30-122-200.

b. The provider's plan for supports per requirements detailed in 12VAC30-122-120.

c. Documentation confirming attendance and the amount of the individual's time in service and providing specific information regarding the individual's response to various settings and supports. Observations of the individual's responses to service shall be available in at least a daily note. Data shall be collected as described in the ISP, analyzed to determine if the strategies are effective, summarized, and then clearly documented in the progress notes or supports checklist.

d. Documentation to support units of service delivered, and the documentation shall correspond with billing. Providers shall maintain separate documentation for each type of service rendered for an individual.

e. A written review supported by documentation in the individuals' record, which is submitted to the support coordinator at least quarterly with the plan for supports, if modified.

f. An attendance log or similar document maintained by the provider that indicates the date, type of service rendered, and the number of hours and units provided, including specific timeframe.

g. All correspondence to the individual and the individual's family/caregiver, as appropriate, the support coordinator, DMAS, and DBHDS.

h. Written documentation of all contacts with the individual's family/caregiver, physicians, providers, and all professionals regarding the individual.

2. A supervisor meeting the requirements of 12VAC35-105 shall provide supervision on a semiannual basis of direct support professional staff. Providers shall make available for inspection documentation of supervision, and this documentation shall be completed, signed by the staff person designated to perform the supervision and oversight, and include the following:

a. Date of contact or observation;

b. Person contacted or observed;

c. A summary about direct support professional staff performance and service delivery;

d. Any action planned or taken to correct problems identified during supervision and oversight; and

e. On a semiannual basis, the supervisor shall document observations concerning the individual's satisfaction with service provision.

3. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-320. Community engagement service.

A. Service description.

1. Community engagement service means a service that supports and fosters an individual's abilities to acquire, retain or improve skills necessary to build positive social behavior, interpersonal competence, greater independence, employability, and personal choices necessary to access typical activities and functions of community life such as those chosen by the general population. The community engagement service may include community education or training and volunteer activities.

2. The community engagement service shall provide a wide variety of opportunities to facilitate and build relationships and natural supports in the community, while utilizing the community as a learning environment. These activities are conducted at naturally occurring times and in a variety of natural settings in which the individual may actively interact with persons without disabilities, other than those who are being paid to support the individual. The activities shall enhance the individual's involvement with the community and facilitate the development of relationships and natural supports.

3. The community engagement service shall be covered in the FIS, CL, and BI waivers.

B. Criteria and allowable activities.

1. The community engagement service shall be provided in the least restrictive and most integrated community settings

possible according to the individual's plan for supports and individual choice.

2. Allowable activities shall include, as appropriate for the individual as documented in his plan for supports:

a. Skill building, education, support, and monitoring that assists the individual with the acquisition and retention of skills in the following areas: (i) activities and public events in the community, (ii) community educational activities and events, (iii) interests and activities that encourage therapeutic use of leisure time, (iv) volunteer experiences, and (v) maintaining contact with family and friends.

b. Skill building and education in self-direction designed to enable the individual to achieve one or more of the following outcomes, particularly through community collaborations and social connections developed by the provider (e.g., partnerships with community entities such as senior centers, arts councils): (i) development of self-advocacy skills; (ii) exercise of civil rights; (iii) acquisition of skills that promote the ability to exercise self-control and responsibility over services and supports received or needed; (iv) acquisition of skills that enable the individual to become more independent, integrated, or productive in the community; (v) development of communication skills and abilities; (vi) furthering spiritual practices as desired by the individual; (vii) participation in cultural activities as desired by the individual; (viii) developing skills that enhance career planning goals in the community; (ix) developing living skills; (x) promotion of health and wellness; (xi) developing orientation to the community and mobility in the community; (xii) access to and utilization of public transportation and the ability to achieve the desired destination; or (xiii) interaction with volunteers from the community in program activities.

C. Service units and limitations.

1. Community engagement service shall be a tiered service for reimbursement purposes.

2. The unit of service shall be one hour.

3. The community engagement service alone or in combination with the group day service, community coaching service, workplace assistance service, or supported employment service shall not exceed 66 hours per week.

4. This service shall be delivered in the community and shall not take place in a licensed residential or day setting or in the individual's residence.

5. This service may be provided in groups no larger than three individuals with a minimum of one DSP.

6. This service may include planning community activities with the individuals present in a group of no more than three individuals, although this shall be limited to no more than 10% of the total number of authorized hours per month.

7. Providers shall only be reimbursed for the tier to which the individual has been assigned based on the individual's assessed and documented needs.

D. Provider qualifications and requirements.

1. Providers shall meet all of the requirements set out in 12VAC30-122-110 through 12VAC30-122-140.

1. Providers shall be licensed by DBHDS as providers of the non-center-based day support service.

2. Providers shall have a current, signed provider participation agreement with DMAS in order to provide this service. The provider designated in the participation agreement shall directly provide the service and bill DMAS for reimbursement.

3. Providers shall ensure that persons providing community engagement service meet provider competency training requirements as specified in 12VAC30-122-180.

4. The DSP providing community engagement service shall not be an immediate family member of an individual receiving the community engagement service. For an individual receiving sponsored residential service, the DSP providing the community engagement service shall not be a member of the sponsored family residing in the sponsored residential home.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. A copy of the completed, standard, age-appropriate assessment form as described in 12VAC30-122-200.

b. The provider's plan for supports per requirements detailed in 12VAC30-122-120.

c. Documentation confirming the individual's attendance and the amount of the individual's time in the service and providing specific information regarding the individual's responses to various settings and supports. Observations of the individual's responses to the service shall be available in at least a daily note. Data shall be collected as described in the ISP, analyzed to determine if the strategies are effective, summarized, and then clearly documented in the progress notes or supports checklist.

d. Documentation to support units of service delivered, and the documentation shall correspond with billing. Providers shall maintain separate documentation for each type of service rendered for an individual.

e. Documentation that shows that a written summary of a review of supporting documentation was performed with the individual or his family/caregiver, as appropriate, and was submitted to the support coordinator at least quarterly with the plan for supports modified as appropriate. For the annual review and every time supporting documentation is updated, the supporting documentation shall be reviewed with the individual or family/caregiver, as appropriate, and such review shall be documented.

f. An attendance log or similar document that is maintained and indicates the date, type of service rendered, and the number of hours and units provided, including the specific timeframe.

g. All correspondence to the individual and individual's family/caregiver, as appropriate, the support coordinator, DMAS, and DBHDS.

h. Written documentation of all contacts with family/caregiver, physicians, providers, and all professionals regarding the individual.

2. A supervisor meeting the requirements of 12VAC35-105 shall provide supervision of direct support professional staff. Documentation of supervision shall be completed, signed by the staff person designated to perform the supervision and oversight, and include the following:

a. Date of contact or observation;

b. Person contacted or observed;

c. A summary about the direct support professional staff performance and service delivery;

d. Any action planned or taken to correct problems identified during supervision and oversight; and

e. Semiannual documentation by the supervisor concerning the individual's satisfaction with service provision.

3. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-330. Community guide service. (Reserved.)

12VAC30-122-340. Companion service.

A. Service description. The companion service provides nonmedical care, socialization, or general support to adults 18 years of age or older. This service shall be provided in either the individual's home or at various locations in the community. The companion service may be coupled only with residential support service as defined in the ISP.

1. The companion service shall be provided in accordance with the individual's plan for supports to meet an assessed need of the individual for assistance with IADLs, community access, reminders for medication self-administration, or for support to ensure his safety and shall not be purely recreational in nature.

2. The companion service may be provided and reimbursed either through an agency-directed or a consumer-directed model (12VAC30-122-150).

3. The companion service shall be covered in the FIS and CL waivers.

B. Criteria and allowable activities.

1. Allowable activities shall include, as may be appropriate for the individual and as documented in his plan for supports:

a. Routine supports with IADLs, including meal preparation, community access and activities, and shopping, but companions do not perform these activities as discrete services.

b. Routine supports with light housekeeping tasks, including bed-making, laundry, dusting, and vacuuming, when such services are specified in the individual's plan for supports and are essential to the individual's health and welfare in order to maintain the individual's home environment in an orderly and clean manner.

c. Safety supports in the home and community settings.

2. Individuals choosing the consumer-directed option shall meet requirements for consumer direction as described in 12VAC30-122-150.

C. Service units and limitations.

1. The unit of service for companion service shall be one hour. The amount that may be included in the plan for supports shall not exceed eight hours per 24-hour day regardless of whether it is an agency-directed or consumer-directed service model, or combination of both.

2. Persons rendering the companion service for reimbursement by DMAS shall not be the individual's spouse.

3. In the consumer-directed service model, any combination of respite service, personal assistance service, and companion service shall be limited to 40 hours per week for a single employer of record (EOR) by the same companion. Companions who live with the individual, either full time or for substantial amounts of time, as set out in 12VAC30-120-935, shall not be restricted to only 40 hours per week for the single EOR.

4. A companion shall not be permitted to provide nursing care procedures, including care of ventilators, tube feedings, suctioning of airways, external catheters, or

wound care. A companion shall not provide routine support with ADLs.

5. The hours that may be authorized shall be based on documented individual need. No more than two unrelated individuals who are receiving waiver services and who live in the same home shall be permitted to share the authorized work hours of the companion. Providers shall not bill for more than one individual at the same time.

6. Companion service shall not be covered for individuals who are younger than 18 years of age.

7. Companion service shall not be provided by adult foster care providers or any other paid caregivers for an individual residing in that foster care home.

8. For an individual receiving sponsored residential service, companion service shall not be provided by a member of the sponsored family residing in the sponsored residential home.

9. For an individual receiving group home service, sponsored residential service, or supported living service, companion service shall not be provided by an immediate family member.

D. Provider qualifications and requirements.

1. Providers shall meet all of the requirements set out in 12VAC30-122-110 through 12VAC30-122-140.

2. Licensure requirements for agency-directed service. For companion service, the provider shall be licensed by DBHDS as either a residential service provider, supportive in-home residential service provider, day support service provider, or respite service provider or shall meet the DMAS criteria to be a personal care service or respite care service provider.

3. Persons functioning as companions shall meet the following requirements:

a. Be at least 18 years of age;

b. Be able to read and write English to the degree required to function in this capacity and create and maintain the required documentation to support billing and possess basic math skills;

c. Be capable of following a plan for supports with minimal supervision and physically able to perform the required work;

d. Possess a valid Social Security Number that has been issued by the Social Security Administration to the person who is to function as the companion;

e. Be capable of aiding in IADLs; and

f. Receive a tuberculosis screening according to the requirements of the Virginia Department of Health.

4. Supervision requirements for agency-directed companion service.

a. A supervisor shall provide ongoing supervision of all companions.

b. For DBHDS-licensed entities, the provider shall employ or subcontract with and directly supervise at least a Qualified Developmental Disabilities Professional (QDDP) who shall provide ongoing supervision of all companions.

c. For companion service providers, the provider shall employ or subcontract with and directly supervise an RN or an LPN who shall provide ongoing supervision of all companions. The supervising RN or LPN shall have at least one year of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/IID, or nursing facility or shall have a bachelor's degree in a human services field and at least one year of experience working with individuals with developmental disabilities.

d. The supervisor shall make a home visit to conduct an initial assessment prior to the start of service for all individuals enrolled in the waiver requesting and who have been approved to receive companion service. The supervisor shall also perform any subsequent reassessments or changes to the plan for supports. All changes that are indicated for an individual's plan for supports shall be reviewed with and agreed to by the individual and, if appropriate, the family/caregiver.

e. The supervisor shall make supervisory home visits as often as needed to ensure both quality and appropriateness of the service. The minimum frequency of these visits shall be every 30 to 90 days under the agency-directed model, depending on the individual's needs.

f. Based on continuing evaluations of the companion's performance and individual's needs, the supervisor shall identify any gaps in the companion's ability to function competently and shall provide training as indicated.

5. Providers shall ensure that all staff providing agency-directed companion service meet provider competency training requirements as specified in 12VAC30-122-180.

6. Service facilitation requirements for companion service shall be the same as those set forth in 12VAC30-122-150.

7. Family members as providers in agency-directed companion service shall meet the same limits and requirements set out in 12VAC30-122-120 B.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. A copy of the completed, standard, age-appropriate assessment form as described in 12VAC30-122-200.

b. The provider's plan for supports per requirements detailed in 12VAC30-122-120.

c. Documentation confirming the individual's amount of time in service and providing specific information regarding the individual's response to various settings and supports. Documentation shall be available in at least a daily note. Data shall be collected as described in the ISP, analyzed to determine if the strategies are effective, summarized, then clearly documented in the progress notes or support checklist.

d. Documentation to support units of service delivered, and the documentation shall correspond with billing. Providers shall maintain separate documentation for each type of service rendered for an individual.

e. A written review supported by documentation in the individual's record that is submitted to the support coordinator at least quarterly with the plan for supports, if modified.

f. All correspondence to the individual and individual's family/caregiver, as appropriate, the support coordinator, DMAS, and DBHDS.

g. Written documentation of all contacts with the individual's family/caregiver, physicians, providers, and all professionals regarding the individual.

h. Documentation that is maintained for routine supervision and oversight of all service provided by the companion. All significant contacts shall be documented and dated.

i. Documentation of supervision that is completed, signed by the staff person designated to perform the supervision and oversight, and includes the following:

(1) Date of contact or observation;

(2) Person contacted or observed;

(3) A summary about the companion's performance and service delivery;

(4) Any action planned or taken to correct problems identified during supervision and oversight; and

(5) On a semiannual basis, documentation of observations concerning the individual's satisfaction with service provision.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-350. Crisis support service.

A. Service description. Crisis support service is designed for individuals experiencing circumstances such as (i) marked reduction in psychiatric, adaptive, or behavioral functioning; (ii) an increase in emotional distress; (iii) needing continuous intervention to maintain stability; or (iv) causing harm to themselves or others. Crisis support service means intensive supports by trained and, where applicable, licensed staff in crisis prevention, crisis intervention, and crisis stabilization for an individual who is experiencing an episodic behavioral or psychiatric event in the community that has the potential to jeopardize the current community living situation. This service is designed to prevent the individual from experiencing an episodic crisis that has the potential to jeopardize his current community living situation, to intervene in such a crisis, or to stabilize the individual after the crisis. This service shall prevent escalation of a crisis, maintain safety, stabilize the individual, and strengthen the current living situation so that the individual can be supported in the community beyond the crisis period. Crisis support service shall be covered in the FIS, CL, and BI waivers.

B. Criteria and allowable activities. Crisis support service may include as appropriate and necessary:

1. Crisis prevention services, which provide ongoing assessment of an individual's medical, cognitive, and behavioral status as well as predictors of self-injurious, disruptive, or destructive behaviors, with initiation of positive behavior supports to resolve and prevent future occurrence of crisis situations. Crisis prevention services shall also include training for family/caregivers to avert further crises and to maintain the individual's typical routine to the maximum extent possible. Crisis prevention services shall also encompass supporting the family and individual through team meetings, revising the behavior plan or guidelines, and other activities as changes to the behavior support plan are implemented and residual concerns from the crisis situation are addressed.

2. Crisis intervention services, which shall be used during a crisis to prevent further escalation of the situation and to maintain the immediate personal safety of those involved. Crisis intervention services shall be a short-term service providing highly structured intervention that can include, for example, temporary changes to the person's residence, changes to the person's daily routine, and emergency referral to other care providers. Crisis intervention staff shall model verbal deescalation techniques including active listening, reflective listening, validation, and suggestions for immediate changes to the situation.

3. Crisis stabilization, which entails gaining a full understanding of the factors that contributed to the crisis once the immediate threat has resolved and there is no longer an immediate threat to the health and safety of the individual or others. Crisis stabilization services shall be

geared toward gaining a full understanding of all of the factors that precipitated the crisis and may have maintained it until trained staff from outside the immediate situation arrived. These services result in the development of new plans that may include environmental modifications, interventions to enhance communication skills, or changes to the individual's daily routine or structure. Crisis stabilization staff shall train family/caregivers and other persons significant to the individual in techniques and interventions to avert future crises.

C. Service units and limitations.

1. Crisis support service shall be authorized or reauthorized following a documented face-to-face assessment conducted by a QDDP.

a. Crisis prevention. The unit of the service shall be one hour and billing may occur up to 24 hours per day if necessary. Medically necessary crisis prevention may be authorized for up to 60 days per ISP year. Crisis prevention services include supports during the provision of any other waiver service and may be billed concurrently (i.e., same dates and times).

b. Crisis intervention. The unit of the service shall be one hour and billing may occur up to 24 hours per day if necessary. Medically necessary crisis intervention may be authorized in increments of no more than 15 days at a time for up to 90 days per ISP year. Crisis intervention services include supports during the provision of any other waiver service and may be billed concurrently (i.e., same dates and times).

c. Crisis stabilization. The unit of the service shall be one hour and billing may occur up to 24 hours per day if necessary. Medically necessary crisis stabilization may be authorized in increments of no more than 15 days at a time for up to 60 days per ISP year. Crisis stabilization services include supports during the provision of any other waiver service and may be billed concurrently (i.e., same dates and times).

2. The crisis support service shall only be available through a waiver when they are not available through the State Plan.

D. Provider qualifications and requirements.

1. Providers shall meet the requirements of 12VAC30-122-110 through 12VAC30-122-140.

2. Providers of crisis support service shall have current signed participation agreements with DMAS and shall directly provide the service and bill DMAS for Medicaid reimbursement. These providers shall renew their participation agreements as directed by DMAS.

3. Crisis support service shall be provided by entities licensed by DBHDS as providers of outpatient crisis stabilization service, residential crisis stabilization service, or nonresidential crisis stabilization service. Providers shall employ or utilize QDDPs, licensed mental health professionals, or other qualified personnel licensed to provide clinical or behavioral interventions.

4. Providers shall ensure that staff who are providing community-based crisis support service meet provider competency training requirements as specified in 12VAC30-1220-180.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. The provider's plan for supports per requirements detailed in 12VAC30-122-120.

b. Supporting documentation that is developed (or revised, in the case of a request for an extension) and submitted to the support coordinator for authorization within 72 hours of the face-to-face assessment or reassessment.

c. Documentation indicating the dates and times of service, the amount and type of service provided, and specific information about the individual's responses to service in the supporting documentation.

d. Documentation of provider qualifications that is maintained for review by DMAS or DBHDS staff and provided upon request from either agency.

e. Documentation confirming attendance and the individual's amount of time in service and providing specific information regarding the individual's response to various settings and supports as agreed to in the plan for supports. Observation results shall be available in at least a daily note. Data shall be collected as described in the plan for supports, analyzed to determine if the strategies are effective, summarized, then clearly documented in the progress notes or support checklist.

f. Documentation to support units of service delivered, and the documentation shall correspond with billing. Providers shall maintain separate documentation for each type of service rendered for an individual. Documentation shall include all correspondence and contacts related to the individual.

g. Documentation that is maintained for routine supervision and oversight of all service provided by direct support professional staff. All significant contacts shall be documented and dated.

2. A supervisor meeting the requirements of 12VAC35-105 shall supervise direct support professional staff. Documentation of supervision shall be completed, signed by the staff person designated to perform the supervision and oversight, and include the following:

a. Date of contact or observation;

b. Person contacted or observed;

c. A summary about direct support professional staff performance and service delivery;

d. Any action planned or taken to correct problems identified during supervision and oversight; and

e. On a semiannual basis, the supervisor shall document observations concerning the individual's satisfaction with service provision.

3. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-360. Electronic home-based support service.

A. Service description. Electronic home-based support service shall provide devices, equipment, or supplies, based on current technology to enable the individual to more safely live and participate in his community while decreasing the need for other services such as staff supports. The equipment or devices shall be purchased for the individual and typically shall be installed in the individual's home. Portable hand-held devices may be used by the individual at home or in the community. These devices and this service shall support the individual's greater independence and self-reliance in the community. This service may also include ongoing electronic monitoring, which is the provision of oversight and monitoring within the home through off-site monitoring. The electronic home-based service shall be covered in the FIS, CL, and BI waivers.

B. Criteria and allowable activities.

1. In order to qualify for the electronic home-based support (EHBS) service, the individual shall be at least 18 years of age and physically capable of using the equipment provided via EHBS service.

2. A preliminary needs assessment shall be completed by a technology specialist to determine the best type and use of technology and overall cost effectiveness of various options. This assessment shall be submitted to the DMAS designee for service authorization prior to the delivery of any goods and services and prior to the submission of any claims for Medicaid reimbursement. The technology specialist conducting the preliminary assessment may be an occupational therapist, or other similarly credentialed specialist, who is licensed or certified by the Commonwealth and specializes in assistive technologies, mobile technologies, and current accommodations for individuals with developmental disabilities.

3. EHBS service shall support training in the use of these goods and services, ongoing maintenance, and monitoring to address an identified need in the individual's ISP, including improving and maintaining the individual's opportunities for full participation in the community.

4. Items or services purchased through EHBS service shall be designed to decrease the need for other Medicaid services, such as reliance on staff supports, promote inclusion in the community, and increase the individual's safety in the home environment.

C. Service units and limits.

1. The ISP year limit for this service shall be $5,000. No unspent funds from one plan year shall be accumulated and carried over to subsequent plan years.

2. Receipt of EHBS service shall not be tied to the receipt of any other covered waiver or Medicaid service. Equipment or supplies already covered by any other Medicaid covered service shall be excluded from coverage by this waiver service.

3. EHBS service shall be provided in the least expensive manner possible that will meet the identified need of the individual enrolled in the waiver and shall be completed within the calendar year.

4. EHBS service shall not be covered for individuals who are receiving residential supports that are reimbursed on a daily basis, such as group home, or sponsored or supported living residential service.

D. Provider requirements.

1. Providers shall meet all of the requirements of 12VAC30-122-110 through 12VAC30-122-140.

2. An EHBS service provider shall be one of the following:

a. A Medicaid-enrolled licensed personal care agency;

b. A Medicaid-enrolled durable medical equipment provider;

c. A CSB or BHA;

d. A center for independent living;

e. A licensed and Medicaid-enrolled home health provider;

f. An EHBS manufacturer that has the ability to provide electronic home-based equipment, direct services (i.e., installation, equipment maintenance, and service calls), and monitoring; or

g. A PERS manufacturer that is Medicaid-enrolled and has the ability to provide electronic home-based equipment, direct services (i.e., installation, equipment maintenance, and service calls), and monitoring services.

3. Providers of this service shall have a current, signed participation agreement with DMAS. Providers as designated on this agreement shall render this service directly and shall bill DMAS for Medicaid reimbursement.

4. The provider of ongoing monitoring systems shall provide an emergency response center with fully trained operators who are capable of (i) receiving signals for help from an individual's equipment 24 hours a day, 365 or 366 days per year as appropriate; (ii) determining whether an emergency exists; and (iii) notifying the appropriate responding organization or an emergency responder that the individual needs help.

5. The EHBS service provider shall have the primary responsibility to furnish, install, maintain, test, and service the equipment, as required, to keep it fully operational. The provider shall replace or repair the device within 24 hours of the individual's notification of a malfunction of the unit or device.

6. The EHBS service provider shall properly install all equipment and shall furnish all supplies necessary to ensure that the system is installed and working properly.

7. The EHBS service provider shall install, test, and demonstrate to the individual and family/caregiver, as appropriate, the unit or device before submitting a claim to DMAS. The provider responsible for installation of devices shall document the date of installation and training in use of the devices.

8. The provider of off-site monitoring shall document each instance of action being taken on behalf of the individual. This documentation shall be maintained in this provider's record for the individual and shall be provided to either DMAS or DBHDS upon demand. The record shall document all of the following:

a. Delivery date and installation date of the EHBS;

b. The signature of the individual or his family/caregiver, as appropriate, verifying receipt of the EHBS device;

c. Verification by a test that the EHBS device is operational, monthly or more frequently as needed;

d. Updated and current individual responder and contact information, as provided by the individual or the individual's care provider or support coordinator/case manager; and

e. A case log documenting the individual's utilization of the system and contacts and communications with the individual or his family/caregiver, as appropriate, support coordinator, or responder.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. The provider's plan for supports per requirements detailed in 12VAC30-122-120. The appropriate service authorization to be completed by the support coordinator may serve as the plan for supports for the provision of EHBS service. A rehabilitation engineer may be involved for EHBS service if disability expertise is required that a general contractor may not have. The service authorization request documentation shall include justification and explanation if a rehabilitation engineer is needed. The service authorization request shall be submitted to the state-designated agency or its designee in order for service authorization to occur;

b. Written documentation regarding the process and results of ensuring that the item is not covered by the State Plan for Medical Assistance as durable medical equipment (DME) and supplies, and that the item is not available from a DME provider;

c. Documentation of the recommendation for the item by an independent professional consultant;

d. Documentation of the date service is rendered and the amount of service that is needed;

e. Any other relevant information regarding the device or modification;

f. Documentation in the support coordination record of notification by the designated individual or individual's representative family/caregiver of satisfactory completion or receipt of the service or item; and

g. Instructions regarding any warranty, repairs, complaints, or servicing that may be needed.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-370. Environmental modifications service.

A. Service description. Environmental modifications service shall be defined as set out in 12VAC30-122-20 and includes equipment or modifications of a remedial or medical benefit offered in an individual's primary home or the primary vehicle used by the individual to specifically improve the individual's personal functioning. Environmental modifications service shall be covered in the FIS, CL, and BI waivers.

B. Criteria and allowable activities.

1. To qualify for environmental modifications (EM) service, the individual enrolled in the waiver shall have a demonstrated need for:

a. Installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or

installation of specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies that are necessary for the individual and are consistent with the plan for supports requirements.

b. Modifications to a primary automotive vehicle in which the individual is transported that is owned by the individual, a family member with whom the individual lives or has consistent and ongoing contact, or a nonrelative who provides primary long-term support to the individual and is not a paid provider of environmental modifications.

2. EM service shall encompass those items not otherwise covered in the State Plan for Medical Assistance or through another program.

C. Service units and limits.

1. Environmental modifications (EM) service shall be provided in the least expensive manner possible that will accomplish the modification required by the individual enrolled in the waiver and shall be completed within the calendar year.

2. The maximum funded expenditure per individual for all EM service covered procedure codes (i.e., combined total of EM service items and labor related to these items) shall be $5,000 per calendar year for individuals regardless of the waiver for which EM service is approved and regardless of whether or not the individual changes waivers over the course of the calendar year. The service unit shall always be one for the total cost of all EM being requested for a specific timeframe.

3. EM service shall only be available to individuals enrolled in the waiver who are receiving at least one other waiver service. EM service shall be service authorized by the state-designated agency or its designee for each calendar year with no carry-over of authorized unspent funds across calendar years.

4. Providers of EM service shall not be the spouse, parents, or legal guardians of the individual enrolled in the waiver.

5. Modifications shall not be used to bring a substandard dwelling up to minimum habitation standards.

6. Excluded from coverage under the EM service shall be those adaptations or improvements to the home that are of general utility and that are not of direct medical or remedial benefit to the individual enrolled in the waiver, including carpeting, roof repairs, and central air conditioning. Also excluded shall be modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, (42 USC § 12101 et seq.), the Virginians with Disabilities Act (Title 51.5 (§ 51.5-1 et seq.) of the Code of Virginia), and the Rehabilitation Act (29 USC § 701 et seq.). Adaptations that add to the total square footage of the home shall be excluded from this service. Except when EM service is furnished in the individual's own home, it shall not be provided to individuals who receive residential support service.

7. Modifications shall not be service authorized or covered to adapt living arrangements that are owned or leased by providers of waiver services or those living arrangements that are sponsored by a DBHDS-licensed provider. Specifically, provider-owned or leased settings where residential support service is furnished shall already be compliant with the Americans with Disabilities Act.

8. Environmental modifications to a primary vehicle shall exclude:

a. Adaptations or improvements to the vehicle that are of general utility and are not of direct medical or remedial benefit to the individual;

b. Purchase or lease of a vehicle; and

c. Regularly scheduled upkeep and maintenance of a vehicle, except upkeep and maintenance of the modifications that were covered under the environmental modifications service.

9. EM service shall be provided in accordance with all applicable federal, state, or local building codes and laws.

D. Provider requirements.

1. Providers shall meet all of the requirements set forth in 12VAC30-122-110 through 12VAC30-122-140.

2. An EM service provider shall be one of the following:

a. A Medicaid-enrolled durable medical equipment provider; or

b. A CSB or BHS.

3. Providers of environmental modifications service shall have a current, signed participation agreement with DMAS. Providers as designated on this agreement shall render environmental modifications directly and shall bill DMAS for Medicaid reimbursement.

4. If a provider has previously made environmental modifications, such previous work shall have been completed satisfactorily in order to be authorized for future jobs. A provider shall perform all servicing and repairs that the modification may require for the individual's successful use.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. The provider's plan for supports per requirements detailed in 12VAC30-122-120. The appropriate service authorization to be completed by the support coordinator

may serve as the plan for supports for the provision of EM service. A rehabilitation engineer may be involved for EM service if disability expertise is required that a general contractor may not have. The service authorization shall include justification and explanation if a rehabilitation engineer is needed. The service authorization request shall be submitted to the state-designated agency or its designee in order for service authorization to occur;

b. Written documentation regarding the process and results of ensuring that the item is not covered by the State Plan for Medical Assistance, for example as durable medical equipment (DME) and supplies and that it is not otherwise available from a DME provider;

c. Documentation of the recommendation for the item by an independent professional consultant if an independent professional consultant is required for the individual's needs;

d. Documentation of the date EM service is rendered and the amount of service that is needed;

e. Any other relevant information regarding the device or modification;

f. Documentation in the support coordinator's record of notification by the designated individual or individual's representative family/caregiver of satisfactory completion or receipt of the service or item; and

g. Instructions regarding any warranty, repairs, complaints, or servicing that may be needed.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-380. Group day service.

A. Service description. Group day service means a service provided to help the individual acquire, retain, or improve skills of self-help, socialization, community integration, career planning, and adaptation via opportunities for peer interactions, community integration, and enhancement of social networks. This service typically shall be offered in a nonresidential setting. Skill-building shall be a component of this service unless the individual has a documented progressive condition, in which case group day service may focus on maintaining skills and functioning and preventing or slowing regression rather than acquiring new skills or improving existing skills. Group day service shall be covered in the FIS, CL, and BI waivers.

B. Criteria and allowable activities. For group day service, an individual shall demonstrate the need for skill-building or supports offered primarily in settings other than the individual's own residence that allows the individual an opportunity for being a productive and contributing member of his community. In addition, group day service shall be available for individuals who can benefit from the supported employment service, but who need group day service as an appropriate alternative or in addition to the supported employment service.

1. Allowable activities shall include, as may be appropriate for the individual as documented in his plan for supports:

a. Developing problem-solving abilities; sensory, gross, and fine motor control abilities; and communication and personal care skills;

b. Developing self, social, and environmental awareness skills;

c. Developing skills as needed in (i) positive behavior, (ii) using community resources, (iii) community safety and positive peer interactions, (iv) volunteering and participating in educational programs in integrated settings, and (v) forming community connections or relationships;

d. Supporting older adults in participating in meaningful retirement activities in their communities (i.e., clubs and hobbies);

e. Providing safety supports in a variety of community settings; and

f. Career planning and resume developing based on career goals, personal interests, and community experiences.

2. Group day service shall be coordinated with the therapeutic consultation plan, as applicable.

C. Service units and limits.

1. This service unit shall be one hour. Group day service, alone or in combination with the community engagement service, community coaching service, workplace assistance service, or supported employment service, shall not exceed 66 hours per week. Group day service shall occur one or more hours per day on a regularly scheduled basis for one or more days per week in settings that are separate from the individual's home.

2. Group day service shall be a tiered service for reimbursement purposes. Providers shall only be reimbursed for the individual's assigned level and tier.

3. Group day service staffing ratios shall be based on the activity and the individual's needs as set out in the individual's plan for supports and shall be at least one staff to seven individuals.

4. Providers shall be reimbursed only for the amount of group day service that are rendered as established in the individual's approved plan for supports based on the

setting, intensity, and duration of the service to be delivered.

5. In instances where group day service staff are required to ride with the individual to and from group day service, the group day service staff time may be billed as group day service, provided that the billing for this time does not exceed 25% of the total time the individual spent in the group day service activity for that day. Documentation shall be maintained to verify that billing for group day service staff coverage during transportation does not exceed 25% of the total time spent in the group day service for that day.

D. Provider requirements.

1. Providers shall meet all of the requirements of 12VAC30-122-110 through 12VAC30-122-140.

2. Providers of the group day service shall hold either day support or community-based day support current licenses issued by DBHDS.

3. Providers of the group day service shall also be currently enrolled as providers with DMAS. Providers designated on the DMAS provider agreement shall:

a. Render this service directly;

b. Ensure that appropriate documentation of the delivery of service supports claims that are filed for reimbursement; and

c. Comply with HCBS setting requirements per 42 CFR 441.301.

4. Claims that are not supported by appropriate documentation may be subject to recovery by DMAS or its designee due to utilization reviews or audits.

5. Supervision of direct support staff shall be provided by a supervisor meeting the requirements of 12VAC35-105. Documentation of supervision shall be completed, signed, and dated by the supervisor and shall include, at a minimum, the following:

a. Date of contact or observation;

b. Person contacted or observed;

c. A summary about the direct support professional's performance and service delivery;

d. Any action planned or taken to correct problems identified during supervision and oversight; and

e. On a semiannual basis, the supervisor shall document observations concerning the individual's satisfaction with service provision.

6. Providers shall ensure that individuals providing group day service meet provider competency training requirements as specified in 12VAC30-122-180.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. A copy of the most current, completed, standard, age-appropriate assessment form.

b. The provider's plan for supports containing, at a minimum, the items detailed in 12VAC30-122-120 A 10 f.

c. Documentation that confirms the individual's attendance and the amount of the individual's time in service and provides specific information regarding the individual's responses to various settings and supports. Observations of the individual's responses to the service shall be available in a daily note. Such documentation shall be provided to DMAS or DBHDS upon request. Data shall be collected as described in the ISP, analyzed to determine if the strategies are effective, summarized, then clearly documented in the progress notes or supports checklist.

d. Documentation to support units of service delivered, and the documentation shall correspond with billing. Providers shall maintain separate documentation for each type of service rendered for an individual.

e. A written review supported by documentation in the individuals' record that is submitted to the support coordinator at least quarterly with the plan for supports, if modified.

f. An attendance log or similar document that is maintained and that indicates the date, type of service rendered, and the number of hours and units provided, including specific timeframe.

g. All correspondence to the individual and the individual's family/caregiver, as appropriate, the support coordinator/case manager, DMAS, and DBHDS.

h. Written documentation of all contacts with the individual's family/caregiver, physicians, providers, and all professionals regarding the individual.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims submitted for reimbursement that are not supported by provider documentation made available to DMAS or its designee shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-390. Group home residential service.

A. Service description. Group home residential service shall consist of skill-building, routine supports, general supports, and safety supports that are provided to enable an individual to acquire, retain, or improve skills necessary to successfully live in the community. This service shall be provided to

individuals who are living in (i) a group home or (ii) the home of an adult foster care provider. Group home residential service shall be a tiered service for reimbursement purposes (as described in 12VAC30-122-210) based on the individual's assigned level and tier and licensed bed capacity of the home. Group home residential service shall be provided to the individual continuously up to 24 hours per day performed by paid staff that shall be physically present. This service may be provided either individually or simultaneously to more than one individual living in that home, depending on the required support. Group home residential service shall be covered in the CL waiver.

B. Criteria and allowable activities.

1. The allowable activities shall include, as may be appropriate for the individual as documented in his plan for supports:

a. Skill-building and providing routine supports related to ADLs and IADLs;

b. Skill-building and providing routine supports and safety supports related to the use of community resources, such as transportation, shopping, restaurant dining, and participating in social and recreational activities;

c. Supporting the individual in replacing challenging behaviors with positive, accepted behavior for home and community environments;

d. Monitoring the individual's health and physical condition and providing supports with medication and other medical needs;

e. Providing routine supports and safety supports with transportation to and from community locations and resources;

f. Providing general supports, as needed; and

g. Providing safety supports to ensure the individual's health and safety.

2. Group home residential service shall include a skill-building component along with the provision of supports as may be needed by the individuals who are participating.

C. Service units and limits.

1. The unit of service shall be a day. Providers may bill the unit of service if any portion of the plan for supports is provided during that day.

2. Group home residential service shall be authorized for Medicaid reimbursement only when the individual in the CL waiver requires this service and the service is set out in the plan for supports.

3. Group home residential service settings shall comply with the HCBS setting requirements per 42 CFR 441.301.

D. Provider qualifications and requirements.

1. Providers shall meet all of the requirements set forth in 12VAC30-122-110 through 12VAC30-122-140.

2. The provider of group home residential service for adults who are 18 years of age or older shall be licensed by DBHDS as a provider of the group home residential service or a provider approved by the local department of social services as an adult foster care provider (12VAC35-105-20). Providers of the group home residential service for children (up to the child's 18th birthday) shall be licensed by DBHDS as children's residential providers.

3. All providers of group home residential service shall have a current provider participation agreement with DMAS. Providers designated on this agreement shall render the group home residential service and shall bill DMAS directly for reimbursement.

4. Providers shall ensure that staff providing the group home residential service meet provider competency training requirements specified in 12VAC30-122-180.

5. A supervisor meeting the requirements of 12VAC35-105 shall provide supervision of direct support professional staff. Documentation of supervision shall be completed, signed, and dated by the supervisor who performs the supervision and oversight and shall include the following:

a. Date of contact or observation;

b. Person contacted or observed;

c. A summary about the direct support professional's performance and service delivery;

d. Any action planned or taken to correct problems identified during supervision and oversight, and

e. Individual's satisfaction with the provision of this service documented semiannually by the supervisor.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. A copy of the completed, standard, age-appropriate assessment form as specified in 12VAC30-122-200.

b. The provider's plan for supports per requirements detailed in 12VAC30-122-120.

c. Documentation confirming the individual's days in service and providing specific information regarding the individual's responses to various settings and supports. Observations of the individual's responses to the service shall be available in at least a daily note. Data shall be collected as described in the ISP, analyzed to determine if the strategies are effective, summarized, then clearly documented in the progress notes or supports checklist.

d. Documentation to support units of service delivered, and the documentation shall correspond with billing. Providers shall maintain separate documentation for each type of service rendered for an individual. Providers' claims that are not adequately supported by corresponding documentation may be subject to recovery of expenditures made.

e. A written review supported by documentation in the individuals' record will be submitted to the support coordinator at least quarterly with the plan for supports, if modified.

f. All correspondence to the individual and the individual's family/caregiver, as appropriate, the support coordinator, DMAS, and DBHDS.

g. Written documentation of contacts made with the individual's family/caregiver, physicians, providers, and all professionals concerning the individual.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-400. Group and individual supported employment service.

A. Service description. Group and individual supported employment service may be performed for a single individual (as in individual supported employment (ISE)) or in small groups (as in group supported employment) of individuals (two to eight individuals). This service shall consist of ongoing supports provided by a job coach that enable individuals to be employed in an integrated work setting and may include assisting the individual, either as a sole individual or in small groups, to locate a job or develop a job on behalf of the individual, as well as activities needed by the individual to sustain paid work. Group and individual supported employment service shall be covered in the FIS, CL, and BI waivers.

1. Group and individual supported employment service shall be provided in work settings where persons without disabilities are employed. Group and individual supported employment service shall be designed especially for individuals with developmental disabilities who face impediments to employment due to the nature and complexity of their disabilities, irrespective of age or vocational potential, that is, the individual's ability to perform work.

2. Group and individual supported employment service shall be available to individuals for whom competitive employment at or above the minimum wage is unlikely without ongoing supports and who because of their disabilities need ongoing support to perform in a work setting. The individual's assessment and ISP shall clearly reflect the individual's need for employment-related skill-building.

3. Group and individual supported employment service shall be provided in one of two models: individual or group.

a. Individual supported employment service shall be one-on-one ongoing support that enables individuals to work in an integrated setting. The outcome of this service shall be sustained paid employment at or above minimum wage in an integrated setting in the general workforce in a job that meets personal and career goals. For this service, reimbursement of supported employment shall be limited to actual documented interventions or collateral contacts by the provider as required by the individual receiving waiver services, but reimbursement shall not be limited for the supervisory activities rendered as a normal part of the regular business setting and not for the amount of time the individual enrolled in the waiver is in the supported employment situation.

b. Group supported employment service shall be continuous support provided by staff in a naturally occurring place of employment to groups of two to eight individuals with disabilities and involves interactions with the public and coworkers who do not have disabilities. This service shall be provided in a community setting that promotes integration into the workplace and interaction in the workplace between participants and people without disabilities. Examples include mobile crews and other business-based workgroups employing small groups of workers with disabilities in the community. Group supported employment settings shall comply with the HCBS setting requirements per 42 CFR 441.301.

B. Criteria and allowable activities.

1. Only activities that specifically pertain to the individual shall be allowable activities under the supported employment service, and DMAS shall cover this service only after determining that this service is not available from DARS or the local school system, for individuals younger than 22 years of age, for the individual enrolled in the waiver.

2. To qualify for this service, the individual shall have demonstrated that competitive employment at or above the minimum wage is unlikely without ongoing supports and that because of the individual's disability, he needs ongoing support to perform in a work setting.

3. The plan for supports shall document the amount of supported employment required by the individual.

4. Allowable activities for both individual and group supported employment service include the following job

development tasks, supports, and training. For DMAS reimbursement to occur, the individual shall be present, unless otherwise noted, when these activities occur:

a. Vocational or job-related discovery or assessment;

b. Person-centered employment planning that results in employment related outcomes;

c. Individualized job development, with or without the individual present, that produces an appropriate job match for the individual and the employer to include job analysis or determining job tasks, or both. This element shall be limited to individual supported employment service only and shall not be permitted for group supported employment service.

d. Negotiation with prospective employers, with or without the individual present;

e. On-the-job training in work skills required to perform the job;

f. Ongoing evaluation, supervision, and monitoring of the individual's performance on the job, which does not include supervisory activities rendered as a normal part of the business setting;

g. Ongoing support necessary to ensure job retention, with or without the individual present;

h. Supports to ensure the individual's health and safety;

i. Development of work-related skills essential to obtaining and retaining employment, such as the effective use of community resources, break or lunch areas, and transportation systems; and

j. Staff provision of transportation between the individual's place of residence and the workplace when other forms of transportation are unavailable or inaccessible. The job coach shall be present with the individual during the provision of transportation.

C. Service units and limits.

1. Providers shall be reimbursed only for the amount and type of supported employment included in the individual's plan for supports. The unit of service for individual supported employment shall be one hour, and the service shall be limited to 40 hours per week per individual. The unit of service for group supported employment shall be one hour, and the service shall be limited to 40 hours per week per individual.

2. Reimbursement for group supported employment service shall be based on the size of the group. Individual supported employment service shall be billed according to the DARS fee schedule.

3. Group and individual supported employment service alone or in combination with the community engagement service, community coaching service, workplace assistance service, or group day service shall not exceed 66 hours per week. Group and individual supported employment service shall take place in nonresidential settings separate from the individual's home.

4. For time-limited and service authorized periods (not to exceed 24 hours) individual supported employment service may be provided in combination with day service or residential service for purposes of job discovery.

5. Group and individual supported employment service shall include a skills development component along with the provision of supports, as needed.

6. Individual supported employment service can be provided simultaneously with the workplace assistance service to ensure that the workplace assistant is trained and appropriately supervised about supporting an individual through the best practices of individual supported employment.

a. Individual supported employment may be provided with workplace assistance (WPA) when the individual is nearing stability in his job and the employment specialist will be transitioning the individual's case to the workplace assistance. Individual supported employment and workplace assistance may be provided concurrently for no more than three weeks prior to stability.

b. Individual supported employment and WPA may also occur together for the purpose of follow along services as defined by DARS. During follow along, the job coach would oversee the plan implementation as well as continue to interface with the employment provider and the individual's systems to ensure continuity of employment services.

7. Individual ineligibility for supported employment service through DARS or IDEA shall be documented in the individual's record, as applicable. If the individual is ineligible to receive service through IDEA, documentation is required only for lack of DARS funding. Acceptable documentation for the lack of DARS or IDEA funding would include a letter from either DARS or the local school system or a record of a telephone call, including name, date, and person contacted, documented either in the individual's file maintained by the support coordinator, on the ISP, or on the supported employment provider's supporting documentation. Unless the individual's circumstances change, for example, the individual is seeking a new job, the original verification may be forwarded into the current record or repeated on the supporting documentation on an annual basis.

D. Provider requirements.

1. Providers shall meet all of the requirements set forth in 12VAC30-122-110 through 12VAC30-122-140.

2. Providers shall have a current, signed provider participation agreement with DMAS. The provider designated in this agreement shall directly provide the service and bill DMAS for reimbursement.

3. Providers shall be DARS-contracted providers of supported employment service. DARS shall verify that these providers meet criteria to be providers through a DARS-recognized accrediting body. DARS shall provide the documentation of this accreditation verification to DMAS and DBHDS upon request.

4. Providers shall maintain their accreditation in order to continue to receive Medicaid reimbursement. Providers who lose their accreditation, regardless of the reason, shall not be eligible to receive Medicaid reimbursement and shall have their provider agreements terminated by DMAS effective the same date as the date of the loss of accreditation. Reimbursements made to such providers after the date of the loss of the accreditation shall be subject to recovery by DMAS. Providers whose accreditation is restored shall be permitted to re-enroll with DMAS upon presentation of accreditation documentation and a new signed provider participation agreement.

As used in subdivisions 1 and 2 of this subsection, group supported employment service means continuous support provided by a job coach in a naturally occurring place of employment to groups of two to eight individuals with disabilities and involves interactions with the public and coworkers who do not have disabilities. This service shall be provided in a community setting that promotes integration into the workplace and interaction between participants and people without disabilities in the workplace. Examples include mobile crews and other business-based workgroups employing small groups of workers with disabilities in the community.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. A copy of the completed, standard, age-appropriate assessment form as established in 12VAC30-122-200.

b. The provider's plan for supports per requirements detailed in 12VAC30-122-120.

c. Documentation confirming the individual's time in service and providing specific information regarding the individual's responses to various settings and supports. Observations of the individual's responses to service shall be available in at least a daily note. Data shall be collected as described in the ISP, analyzed to determine if the strategies are effective, summarized, then clearly documented in the progress notes or supports checklist.

d. Documentation to support units of service delivered, and the documentation shall correspond with billing. Providers shall maintain separate documentation for each type of service rendered for an individual.

e. A written review supported by documentation in the individuals' record that is submitted to the support coordinator at least quarterly with the plan for supports, if modified.

f. An attendance log or similar document that is maintained and that indicates the date, type of service rendered, and the number of hours provided, including specific timeframe.

g. All correspondence to the individual and the individual's family/caregiver, as appropriate, the support coordinator, DMAS, and DBHDS.

h. Written documentation of contacts made with the individual's family/caregiver, physicians, providers, and all professionals concerning the individual.

i. Documentation of the size of the group.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-410. In-home support service.

A. Service description. In-home support service means a residential service that takes place in the individual's home, family home, or community settings that typically supplement the primary care provided by the individual, family, or other unpaid caregiver and is designed to ensure the health, safety, and welfare of the individual. The individual shall be enrolled in either the FIS or CL waiver and shall be living in his own home or his family home. This service shall include a skill building (formerly called training) component, along with the provision of supports that enable an individual to acquire, retain, or improve the self-help, socialization, and adaptive skills required for successfully living in his community. In-home support service shall be covered in the FIS and CL waivers.

B. Criteria and allowable activities. To be eligible for in-home support service, individuals shall require help with adaptive skills necessary to reside successfully in the home and community-based settings.

Allowable activities include the following as may be appropriate for the individual as documented in his plan for supports:

1. Skill-building and routine supports related to ADLs and IADLs;

2. Skill-building, routine supports, and safety supports related to the use of community resources, such as

transportation, shopping, dining at restaurants, and participating in social and recreational activities;

3. Supporting the individual in replacing challenging behaviors with positive, accepted behaviors for home and community environments;

4. Authorized to provide additional episodic supports when there is a change in the individual's routine schedule, such as the cancellation of work or a day activity because of a holiday or inclement weather, or support is required in accompanying an individual to a medical appointment. An estimate of the monthly requirement for episodic supports should be included in the initial authorization request. Authorized hours for episodic supports shall only be reimbursed when the service is rendered and supported by documentation.

5. Monitoring the individual's health and physical condition and providing routine and safety supports with medication or other medical needs;

6. Providing supports with transportation to and from community sites and resources; and

7. Providing general supports as needed.

C. Service units and limitations.

1. The unit shall be one hour and shall be reimbursed according to the number of individuals served.

2. In-home support service shall not typically be provided 24 hours per day but may be authorized for brief periods up to 24 hours a day when medically necessary.

3. In-home support service shall not be covered for the individual simultaneously with the coverage of the group home residential service, supported living residential service, or sponsored residential service.

4. Individuals may have in-home support service, personal assistance service, and respite service in their ISP but shall not receive these Medicaid-reimbursed services simultaneously (i.e., on the same dates and times).

5. The individual shall have a back-up plan for times when in-home supports cannot occur as regularly scheduled.

D. Provider qualifications and requirements.

1. All providers of the in-home support service shall have current, signed participation agreements with DMAS. The provider designated in this agreement shall directly submit claims to DMAS for reimbursement.

2. Providers of the in-home support service shall be licensed by DBHDS as providers of supportive in-home service.

3. Providers shall ensure that staff providing in-home supports meet provider competency training requirements as specified in 12VAC30-122-180.

4. Supervision of direct support staff shall be provided by a supervisor meeting the requirements of 12VAC35-105. Documentation of supervision shall be completed, signed, and dated by the supervisor and shall include, at a minimum, the following:

a. Date of contact or observation;

b. Person contacted or observed;

c. A summary about the direct support professional's performance and service delivery;

d. Any action planned or taken to correct problems identified during supervision and oversight; and

e. On a semiannual basis, observations documented by the supervisor concerning the individual's satisfaction with service provision.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. A copy of the completed, standard, age-appropriate assessment form as described in 12VAC30-122-200.

b. The provider's plan for supports per requirements detailed in 12VAC30-122-120.

c. Documentation confirming the individual's amount of time in service and providing specific information regarding the individual's response to various settings and supports. Data shall be collected as described in the ISP, analyzed to determine if the strategies are effective, summarized, then clearly documented in the progress notes or supports checklist.

d. Documentation to support units of service delivered, and the documentation shall correspond with billing. Providers shall maintain separate documentation for each type of service rendered for an individual.

e. A written review supported by documentation in the individual's record that is submitted to the support coordinator at least quarterly with the plan for supports, if modified.

f. An attendance log or similar document that is maintained and that indicates the date, type of service rendered, and the number of hours and units provided, including specific timeframe.

g. All correspondence to the individual and the individual's family/caregiver, as appropriate, the support coordinator, DMAS, and DBHDS.

h. Written documentation of all contacts with the individual's family/caregiver, physicians, providers, and all professionals regarding the individual.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims that are not supported by appropriate documentation shall be subject to recovery by DMAS as a result of utilization reviews and audits.

12VAC30-122-420. Independent living support service.

A. Service description. Independent living support service means a service provided to adults 18 years of age and older that offers skill building and supports necessary to secure and reside in an independent living situation in the community and maintain community residence. An individual receiving this service typically lives alone or with roommates in the individual's own home or apartment. The supports may be provided in the individual's residence or in other community settings. Independent living support service shall be covered in the BI waiver.

B. Criteria and allowable activities. The need for independent living support service shall be clearly indicated in the ISP. Independent living support service shall be authorized for Medicaid reimbursement only when the individual requires this service and the service is set out in the plan for supports. This service shall include a skills development component along with the provision of supports as needed. Allowable activities include the following:

1. Skill-building and supports to promote the individual's community participation and inclusion in meaningful activities;

2. Skill-building and supports to increase socialization skills and maintain relationships;

3. Skill-building and supports to improve and maintain the individual's health, safety, and fitness, as necessary;

4. Skill-building and supports to promote the individual's decision-making and self-determination;

5. Skill-building and supports to improve and maintain, as needed, the individual's skills with ADLs and IADLs;

6. Routine supports with transportation to and from community locations and resources; and

7. General supports, as needed.

C. Service units and limits.

1. The independent living support service unit of service delivery shall be a month or, when beginning or ceasing the service, may be a partial month. Sufficient hours of service shall be provided to meet the requirements set forth in the plan for supports.

2. Independent living support service shall not be provided in a licensed residential setting.

3. Independent living support service is a tiered service for reimbursement purposes. Providers shall only be reimbursed for the individual's assigned level and tier.

D. Provider requirements.

1. Providers shall meet all of the requirements of 12VAC30-122-110 through 12VAC30-122-140.

2. Independent living support service shall be provided by agencies licensed by DBHDS as providers of supportive in-home service. These providers shall have a signed participation agreement with DMAS.

3. The provider designated on the agreement shall directly render this service and shall directly bill DMAS for reimbursement.

4. Providers shall ensure that staff providing independent living support service meet provider competency training requirements as specified in 12VAC30-122-180.

5. A supervisor meeting the requirements of 12VAC35-105 shall provide supervision of direct support professional staff. Documentation of supervision shall be completed, signed, and dated by the supervisor who performs the supervision and oversight and shall include the following:

a. Date of contact or observation;

b. Person contacted or observed;

c. A summary about the direct support professional's performance and service delivery;

d. Any action planned or taken to correct problems identified during supervision and oversight, and

e. Individual's satisfaction with the provision of service documented semiannually by the supervisor.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. A copy of the completed, standard, age-appropriate assessment form as described in 12VAC30-122-200.

b. The provider's plan for supports per requirements detailed in 12VAC30-122-120.

c. Documentation confirming the individual's participation in service and providing specific information regarding the individual's responses to various settings and supports. Data shall be collected as described in the plan for supports, analyzed to determine if the strategies are effective, summarized, then clearly documented in the progress notes or supports checklist.

d. Documentation to support units of service delivered, and the documentation shall correspond with billing. Providers shall maintain separate documentation for each type of service rendered for an individual.

e. A written review supported by documentation in the individual's record that is submitted to the support coordinator at least quarterly with the plan for supports, if modified.

f. All correspondence to the individual and the individual's family/caregiver, as appropriate, the support coordinator, DMAS, and DBHDS.

g. Written documentation of contacts made with the individual's family/caregiver, physicians, providers, and all professionals concerning the individual.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-430. Individual and family/caregiver training service.

A. Service description. Individual and family/caregiver training service provides training and counseling to individuals, families, or caregivers of individuals enrolled in the waiver including participation in educational opportunities designed to improve the family's or caregiver's ability to care for and support the individual enrolled in the waiver. This service shall also provide educational opportunities for the individual to better understand his disability and increase his self-determination and self-advocacy. Individual and family/caregiver training service shall be covered in the FIS waiver.

B. Criteria and allowable activities.

1. Individuals who are enrolled in the FIS waiver and their family/caregivers, as appropriate, may participate in this service. DMAS shall cover this service as authorized by the individual's ISP.

2. For the purpose of this service, "family" means the unpaid people who live with or provide care to an individual served in the waiver and may include a parent, a guardian, a spouse, children, relatives, a foster family, or in-laws but shall not include persons who are compensated, by any possible means, to care for the individual.

C. Service units and limits.

1. Individual and family/caregiver training service is only available in the FIS waiver.

2. Individual and family/caregiver training service may be authorized for up to $4,000 per ISP year.

3. Travel expenses and room and board expenses shall not be covered.

D. Provider requirements.

1. Providers shall meet all of the requirements of 12VAC30-122-110 through 12VAC30-122-140.

2. Providers shall have a signed, current provider participation agreement with DMAS in order to be reimbursed for providing individual and family/caregiver training.

3. Providers shall have the necessary licensure or certification as required for their profession, that is, RNs shall have a current license to practice nursing in the Commonwealth or shall hold a multistate licensure privilege.

4. Individual and family/caregiver training service shall be provided by enrolled provider entities with expertise in, experience in, or demonstrated knowledge of the training topic set out in the plan for supports.

5. Individual and family/caregiver training service may be provided through seminars and conferences organized by the enrolled provider entities.

6. Individual and family/caregiver training service may also be provided by individual practitioners who have experience in or demonstrated knowledge of the training topics. Individual practitioners may include psychologists, teachers or educators, social workers, medical personnel, personal care providers, therapists, and providers of other services such as day and residential support services.

7. Qualified provider types include:

a. Staff of home health agencies, community developmental disabilities service agencies, developmental disabilities residential providers, community mental health centers, public health agencies, hospitals, clinics, or other agencies or organizations; and

b. Individual practitioners, including licensed or certified personnel such as RNs, LPNs, psychologists, speech-language therapists, occupational therapists, physical therapists, licensed clinical social workers, licensed behavior analysts, and persons with other education, training, or experience directly related to the specified needs of the individual as set out in the ISP.

E. Service documentation and requirements.

1. The support coordinator shall maintain a plan for supports that includes:

a. Identifying information such as provider name, provider number, responsible person and telephone number, effective dates for the service, and if applicable, person-centered review dates;

b. Expected outcomes of the training; and

c. Specific training or activities showing frequency, location, dates and times, and to whom the training was provided.

2. The provider shall maintain and relay to the support coordinator contact notes or a summary documenting:

a. Date, location, hours, and summary of each training event;

b. Plan for support desired outcome that was addressed;

c. Specific details of the training activities conducted, including person to whom activities were directed;

d. Training delivered as planned or modified; and

e. Effectiveness of strategies and satisfaction of the individual or family member/caregiver.

3. Person-centered reviews by the provider (i) shall be required quarterly if the training extends three months or longer, (ii) shall be forwarded to the support coordinator, and (iii) shall include:

a. A summary of the quarter's activities;

b. Training recipient's status and satisfaction with the service; and

c. Training outcomes and effectiveness.

4. Provider and support coordinator documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-440. Nonmedical transportation service. (Reserved.)

12VAC30-122-450. Peer support service. (Reserved.)

12VAC30-122-460. Personal assistance service.

A. Service description. Personal assistance service may be provided either through an agency-directed or a consumer-directed model.

1. Personal assistance service means direct support with (i) ADLs, (ii) IADLs, (iii) access to the community, (iv) monitoring the self-administration of medication or other medical needs, (v) monitoring health status and physical condition, or (vi) work or postsecondary school-related personal assistance. Personal assistance service substitutes for the absence, loss, diminution, or impairment of a physical, behavioral, or cognitive function.

2. When specified in the plan for supports, personal assistance service may include assistance with IADLs. Assistance with IADLs shall be documented in the plan for supports as essential to the health and welfare of the individual, rather than for the individual's family/caregiver's comfort or convenience, or both. In order to be approved for IADL support, the individual shall also require ADL supports.

3. An additional component to personal assistance service is work personal assistance or postsecondary school-related personal assistance that allows the personal assistance service provider to provide assistance and supports to individuals in the workplace and postsecondary educational institutions. Work-related personal assistance service shall not duplicate supported employment service.

4. Personal assistance service shall be covered in the FIS and CL waivers.

B. Criteria and allowable activities.

1. To qualify for personal assistance service, the individual shall demonstrate a need for assistance with ADLs, reminders to take medication, or other medical needs, or monitoring health status or physical condition.

2. Individuals may receive both agency-directed and consumer-directed personal assistance as long as the two service models do not overlap the same days and times.

3. Individuals choosing the consumer-directed option for personal assistance service may receive support from a services facilitator and shall meet requirements for consumer direction as described in 12VAC30-122-150.

4. For personal assistance service, allowable activities shall include:

a. Support with ADLs;

b. Support with monitoring of health status or physical condition;

c. Support with prescribed use of medication and other medical needs;

d. Support with preparation and eating of meals;

e. Support with housekeeping actitivities, such as bed-making, cleaning, or the individual's laundry;

f. Support with participation in social, recreational, and community activities;

g. Assistance with bowel/bladder care needs, range of motion activities, routine wound care that does not include the sterile technique, and external catheter care when supervised by an RN;

h. Accompanying the individual to appointments or meetings; and

i. Safety supports.

C. Service units and limits.

1. The unit of service for personal assistance service shall be one hour. The hours to be authorized shall be based on the individual's assessed and documented need as reflected in the plan for supports.

2. Any combination of respite service, personal assistance service, and companion service in the consumer-directed service model shall be limited to 40 hours per week for an employer of record (EOR) by the same assistant. Assistants who live with the individual, either full time or for substantial amounts of time, shall not be restricted to only 40 hours per week for the EOR.

3. Individuals may receive a combination of personal assistance service, respite service, and in-home support service as documented in their ISPs but shall not simultaneously receive in-home supports service, personal assistance service, or respite service.

4. Individuals shall require assistance with ADLs in order to receive IADL care through personal care service.

5. An individual shall be permitted to share personal assistance service hours with one other individual who is also receiving waiver-covered personal assistance service and who also lives in the same home.

6. Personal assistance service shall not include skilled nursing (neither practical nor professional nursing) service with the exception of skilled nursing tasks that are delegated in accordance with 18VAC90-19-240 through 18VAC90-19-280.

7. Persons rendering personal assistance service for reimbursement by DMAS shall not be the individual's spouse. If the individual is a minor child, service shall not be reimbursed if the service is provided by his parent or guardian.

a. Family members who are approved to be reimbursed by DMAS to provide companion service shall meet all of the companion qualifications.

b. Companion service shall not be provided by adult foster care providers or any other paid caregivers for an individual residing in that foster care home.

8. Work personal assistance or postsecondary school-related personal assistance shall not be provided if they should be provided by DARS or under IDEA, or if they are an employer's responsibility under the Americans with Disabilities Act (42 USC § 12101 et seq.), the Virginians with Disabilities Act (Title 51.5 (§ 51.5-1 et seq.) of the Code of Virginia), or § 504 of the Rehabilitation Act (42 USC § 701 et seq.).

9. Personal assistance shall not be reimbursed by DMAS for individuals who receive group home residential service, sponsored residential service, or supported living residential service; who live in assisted living facilities; or who receive comparable services from another program, service, or payment source, except as noted in subdivision A 3 of this section.

10. Personal assistance service shall not be covered under the waiver if the individual who is younger than 21 years of age is eligible for personal assistance service through Medicaid's Early and Periodic Screening, Diagnosis and Treatment program (12VAC30-50-130).

D. Provider requirements.

1. Providers shall meet all of the requirements of 12VAC30-122-110 through 12VAC30-122-140.

2. For agency-directed personal assistance service, the provider shall be licensed by DBHDS as either a group home provider, residential provider, or supportive in-home residential provider or shall meet the VDH licensing requirements or have accreditation from a CMS-recognized organization to be a personal care or respite care provider.

3. Providers of personal assistance service shall have a current, signed participation agreement with DMAS. Providers as designated on this agreement shall render this service directly and shall bill DMAS directly for Medicaid reimbursement.

4. Supervision requirements for agency-directed personal assistance service.

a. A supervisor shall provide ongoing supervision of all personal assistants.

b. For personal assistance service providers that are licensed by DBHDS, a supervisor meeting the requirements of 12VAC35-105 shall provide supervision of direct support professional staff.

c. For personal assistance service providers that are licensed by the Virginia Department of Health (VDH), the provider shall employ or subcontract with and directly supervise an RN or an LPN who shall provide ongoing supervision of all assistants. The supervising RN or LPN shall have at least one year of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/IID, or nursing facility.

d. The supervisor shall make a home visit to conduct an initial assessment prior to the start of service for all individuals enrolled in the waiver requesting and who have been approved to receive personal assistance. The supervisor shall also perform any subsequent reassessments or changes to the plan for supports. All changes that are indicated for an individual's plan for supports shall be reviewed with and agreed to by the individual and, if appropriate, the individual's family/caregiver.

e. The supervisor shall make supervisory home visits as often as needed to ensure both quality and appropriateness of the service. The minimum frequency of these visits shall be every 30 to 90 days under the

agency-directed model, depending on the individual's needs.

f. Based on continuing evaluations of the assistant's performance and the individual's needs, the supervisor shall identify any gaps in the assistant's ability to function competently and shall provide training as indicated.

5. Service facilitation requirements for the personal assistance service shall be the same as those set forth in 12VAC30-122-150.

6. The provider of personal assistance shall have a back-up plan in case the personal assistant does not report for work as expected or terminates employment without prior notice.

7. In the consumer-directed model, the individual, EOR, or family/caregiver shall also have a back-up plan in case the personal assistant does not report for work as expected or terminates employment without prior notice.

8. Requirements for agency-directed assistants.

a. Providers shall ensure that staff providing the personal assistance service meet provider competency training requirements as specified in 12VAC30-122-180.

b. Assistants employed by personal assistance agencies licensed by VDH shall have completed an educational curriculum of at least 40 hours of study related to the needs of individuals who have disabilities, including intellectual and developmental disabilities. The provider shall ensure, prior to assigning assistants to support an individual, that the assistants have the required skills and training to perform the service as specified in the individual's plan for supports and related supporting documentation. Assistants' required training shall be met in one of the following ways:

(1) Registration with the Board of Nursing as a certified nurse aide;

(2) Graduation from an approved educational curriculum as listed by the Board of Nursing; or

(3) Completion of the provider's educational curriculum, as conducted by a licensed RN who shall have at least one year of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/IID, or nursing facility.

c. Assistants shall have a satisfactory work record, as evidenced by two references from prior job experiences, if applicable, including no evidence of possible abuse, neglect, or exploitation of elderly persons, children, or adults with disabilities.

d. Provider inability to render the service and substitution of assistants. When assistants are absent or otherwise unable to render scheduled supports to individuals enrolled in the waiver, the provider shall be responsible for ensuring that the service continues to be provided to the affected individuals.

(1) The provider may either obtain a substitute assistant from another provider if the lapse in coverage is to be less than two weeks in duration or transfer the individual's services to another personal assistance service provider. The provider who holds the service authorization to provide service to the individual enrolled in the waiver shall contact the support coordinator to determine if additional or modified service authorization is necessary.

(2) If no other provider is available who can supply a substitute assistant, the provider shall notify the individual and the individual's family/caregiver, as appropriate, and the support coordinator so that the support coordinator may find another available provider of the individual's choice.

(3) During temporary, short-term lapses in coverage that are not expected to exceed approximately two weeks in duration, the following procedures shall apply:

(a) The service-authorized provider shall provide the supervision for the substitute assistant;

(b) The provider of the substitute assistant shall send a copy of the assistant's daily documentation signed by the assistant, the individual, and the individual's family/caregiver, as appropriate, to the provider having the service authorization; and

(c) The service authorized provider shall bill DMAS for service rendered by the substitute assistant.

e. If a provider secures a substitute assistant, the provider agency shall be responsible for ensuring that all DMAS requirements continue to be met including documentation of service rendered by the substitute assistant and documentation that the substitute assistant's qualifications meet DMAS requirements. The two providers involved shall be responsible for negotiating the financial arrangements of paying the substitute assistant.

E. Agency-directed service documentation and requirements.

1. The record for agency-directed providers shall at a minimum contain:

a. The most recently updated plan for supports and supporting documentation, and all provider documentation;

b. A copy of the most recently updated age-appropriate assessment form as set out in 12VAC30-122-200, the initial assessment by the DBHDS-licensed agency supervisor or RN supervisory nurse completed prior to or

on the date the service is initiated, subsequent reassessments, and changes to the supporting documentation by the RN supervisory nurse;

c. Supervisor's summarizing notes recorded and dated during any contacts with the personal assistant during supervisory visits to the individual's home;

d. The specific service delivered to the individual enrolled in the waiver by the personal assistant dated the day of service delivery, and the individual's unique, specific responses;

e. The personal assistant's arrival and departure times;

f. The personal assistant's weekly comments or observations about the individual enrolled in the waiver to include individual-specific observations of the individual's physical and emotional condition, daily activities, and responses to the service;

g. The personal assistant's, individual's and the individual's family/caregiver's, as appropriate, weekly signatures recorded on the last day of service delivery for any given week to verify that the personal assistance service during that week has been rendered;

h. A written review supported by documentation in the individuals' record that is submitted to the support coordinator at least quarterly with the plan for supports, if modified;

i. All correspondence to the individual and the individual's family/caregiver, as appropriate, the support coordinator, DMAS, and DBHDS; and

j. Written documentation of all contacts with the individual's family/caregiver, physicians, providers, and all professionals regarding the individual.

2. Personal assistant service records shall be separated from those of other nonwaiver services, such as home health service.

3. Provider progress notes shall meet the standards contained in 12VAC30-122-120 A.

4. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

F. Consumer-directed documentation requirements are set forth in 12VAC30-122-500 E.

12VAC30-122-470. Personal emergency response system service.

A. Service description. Personal emergency response system (PERS) service is an electronic device and monitoring service that enables certain individuals to secure help in an emergency. PERS service shall be limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time and who would otherwise require supervision. PERS service shall be covered in the FIS, CL, and BI waivers.

B. Criteria. PERS may be authorized when there is no one else in the home with the individual enrolled in the waiver who is competent or continuously available to call for help in an emergency.

C. Service units and service limitations.

1. The one-time installation of the unit shall include installation, account activation, individual and caregiver instruction, and removal of PERS equipment. A unit of service is the one-month rental price set by DMAS.

2. PERS service shall be capable of being activated by a remote wireless device and shall be connected to the individual's telephone system. The PERS console unit shall provide hands-free voice-to-voice communication with the response center. The activating device shall be waterproof, automatically transmit to the response center an activator low battery alert signal prior to the battery losing power, and be able to be worn by the individual.

3. PERS service shall not be used as a substitute for providing adequate supervision for the individual enrolled in the waiver.

4. Physician-ordered medication monitoring units shall be provided simultaneously with PERS service.

5. PERS service shall not be covered for individuals who are simultaneously receiving group home residential service, sponsored residential service, or supported living residential service.

D. Provider requirements.

1. Providers shall meet all requirements of 12VAC30-122-110 through 12VAC30-122-140.

2. Providers shall be either a (i) licensed home health or personal care agency, (ii) a durable medical equipment provider, (iii) a hospital, or (iv) a PERS manufacturer that has the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance, and service calls), and PERS monitoring.

3. Providers shall have a current, signed provider participation agreement with DMAS. This agreement shall be renewed promptly when requested by DMAS. The provider named on the participation agreement shall directly render the PERS service and shall submit his claims to DMAS for reimbursement.

4. Providers shall provide an emergency response center staff with fully trained operators who are capable of (i) receiving signals for help from an individual's PERS

equipment 24 hours a day, 365 or 366, as appropriate, days per year; (ii) determining whether an emergency exists; and (iii) notifying an emergency response organization or an emergency responder that the individual needs emergency help.

5. Providers shall comply with all applicable federal and state laws and regulations, all applicable regulations of DMAS, and all other governmental agencies having jurisdiction over the service to be performed.

6. Providers shall have the primary responsibility to furnish, install, maintain, test, and service the PERS equipment, as required to keep it fully operational. The provider shall replace or repair the PERS device within 24 hours of the individual's or family/caregiver's notification of a malfunction of the console unit, activating devices, or medication-monitoring unit while the original equipment is being repaired.

7. Providers shall properly install all PERS equipment into the functioning telephone line or cellular system of an individual receiving PERS and shall furnish all supplies necessary to ensure that the system is installed and working properly.

8. The PERS installation shall include local seize line circuitry, which guarantees that the unit will have priority over the telephone connected to the console unit should the phone be off the hook or in use when the unit is activated.

9. Providers shall install, test, and demonstrate to the individual and the individual's family/caregiver, as appropriate, the PERS system before submitting the claim for reimbursement to DMAS.

10. Providers shall maintain all installed PERS equipment in proper working order.

11. Providers shall maintain a data record for each individual receiving PERS service at no additional cost to DMAS. The record shall document all of the following:

a. Delivery date and installation date of the PERS;

b. The signature of the individual or the individual's family/caregiver, as appropriate, verifying receipt of PERS device;

c. Verification by a test that the PERS device is operational, monthly or more frequently as needed;

d. Updated and current individual responder and contact information, as provided by the individual or the individual's care provider, or support coordinator/case manager; and

e. A case log documenting the individual's utilization of the system and contacts and communications with the individual or the individual's family/caregiver, as appropriate, support coordinator/case manager, or responder.

12. Providers shall have back-up monitoring capacity in case the primary system cannot handle incoming emergency signals.

13. All PERS equipment shall be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) safety standard Number 1635 for Digital Alarm Communicator System Units and Number 1637, which is the UL safety standard for home health care signaling equipment. The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device shall be automatically reset by the response center after every activation ensuring that subsequent signals can be transmitted without requiring manual reset by the individual enrolled in the waiver or family/caregiver, as appropriate.

14. Providers shall instruct the individual, his family/caregiver, as appropriate, and responders in the use of the PERS.

15. The emergency response activator shall be activated either by breath, by touch, or by some other means and shall be usable by persons who have visual or hearing impairments or physical disabilities. The emergency response communicator shall be capable of operating without external power during a power failure at the individual's home for a minimum period of 24 hours and automatically transmit a low battery alert signal to the response center if the back-up battery is low. The emergency response console unit shall also be able to self-disconnect and redial the back-up monitoring site without the individual resetting the system in the event the unit cannot get its signal accepted at the response center.

16. Monitoring agencies shall be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. The provider is responsible for ensuring that the monitoring agency and the agency's equipment meet the requirements of this section. The monitoring agency shall be capable of simultaneously responding to multiple signals for help from multiple individuals' PERS equipment. The monitoring agency's equipment shall include the following:

a. A primary receiver and a back-up receiver, which shall be independent and interchangeable;

b. A back-up information retrieval system;

c. A clock printer, which shall print out the time and date of the emergency signal, the PERS individual's identification code, and the emergency code that

indicates whether the signal is active, passive, or a responder test;

d. A back-up power supply;

e. A separate telephone service;

f. A toll-free number to be used by the PERS equipment in order to contact the primary or back-up response center; and

g. A telephone line monitor, which shall give visual and audible signals when the incoming telephone line is disconnected for more than 10 seconds.

17. The monitoring agency shall maintain detailed technical and operations manuals that describe PERS service elements, including the installation, functioning, and testing of PERS equipment; emergency response protocols; and recordkeeping and reporting procedures.

18. Providers shall document and furnish within 30 calendar days of the action taken a written report to the support coordinator/case manager for each emergency signal that results in action being taken on behalf of the individual. This excludes test signals or activations made in error.

E. Service documentation and requirements:

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. A plan for supports as detailed in 12VAC30-122-120. The appropriate service authorization to be completed by the support coordinator may serve as the plan for supports for the provision of PERS service. A rehabilitation engineer may be involved for PERS service if disability expertise is required that a general contractor may not have. The plan for supports and service authorization shall include justification and explanation if a rehabilitation engineer is needed. The service authorization request shall be submitted to the state-designated agency or its designee in order for service authorization to occur;

b. For PERS service, written documentation regarding the process and results of ensuring that the item is not covered by the State Plan for Medical Assistance as durable medical equipment (DME) and supplies, and that the item is not available from a DME provider;

c. Documentation of the recommendation for the item by an independent professional consultant and the amount of service that is needed;

d. Documentation of the date the service is rendered;

e. Any other relevant information regarding the device or modification;

f. Documentation in the support coordination record of notification by the designated individual or the individual's representative or family/caregiver of satisfactory completion or receipt of the service or item; and

g. Instructions regarding any warranty, repairs, complaints, or servicing that may be needed.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-480. Private duty nursing service.

A. Service description. Private duty nursing (PDN) service means individual and continuous nursing care that may be provided, concurrently with other services, due to the intensity of medical supports required by individuals who have complex health care needs that have been certified by a physician as medically necessary to enable the individual to remain at home rather than in a hospital, nursing facility, or ICF/IID. PDN service shall be rendered to the individual in his residence or other community settings. PDN service shall be covered in the FIS and CL waivers.

B. Criteria and allowable activities.

1. The individual shall require PDN service that has been certified by a Virginia-licensed physician as medically necessary to enable the individual to remain at home or otherwise in the community rather than in a hospital, a nursing facility, an ICF/IID, or any other type of institution.

2. The medical necessity for PDN service shall be documented in the individual's ISP. Once the medical necessity can no longer be demonstrated, this service shall be terminated.

3. Allowable activities shall include:

a. Monitoring of an individual's medical status;

b. Administering medications or other medical treatment; and

c. Training of family and other caregivers, for up to 30 days after an acute care episode or new diagnosis that requires regular intervention by caregivers.

C. Service units and limits.

1. The unit of service shall be a quarter hour.

2. Individuals enrolled in the waiver shall not be authorized to receive private duty nursing service during the same authorized period as with skilled nursing service.

3. Private duty nursing service shall not be covered under the waiver if the individual who is younger than 21 years

of age is eligible for private duty nursing service covered through Medicaid's Early and Periodic Screening, Diagnosis and Treatment program.

D. Provider requirements.

1. Providers shall meet all of the requirements set out in 12VAC30-122-110 through 12VAC30-122-140.

2. If the provider designated in the participation agreement employs LPNs to render direct care, then the provider shall also employ an RN or be an RN himself in order to supervise the LPNs.

3. Private duty nursing service may be provided by either (i) a licensed RN or (ii) licensed LPN who is under the supervision of a licensed RN. The licensed RN or LPN shall be employed by a DMAS-enrolled home health provider or contracted with or employed by a DBHDS-licensed day support service, respite service, or residential service provider.

4. Both RNs and LPNs providing private duty nursing service shall have current licenses issued by the Virginia Board of Nursing or hold current multistate licensure privileges to practice nursing in the Commonwealth.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. A copy of the completed, standard, age-appropriate assessment form as described in 12VAC30-122-200.

b. The provider's plan for supports per requirements detailed in 12VAC30-122-120.

c. Documentation of all training, including the dates and times provided to family/caregivers or staff, or both, including the person being trained and the content of the training. Training of professional staff shall be consistent with the Regulations Governing the Practice of Nursing (18VAC90-19).

d. Documentation that the RN and LPN has the experience or skills necessary to perform the tasks in the plan for supports.

e. Documentation of nursing licenses and qualifications of providers.

f. Documentation of the physician's determination of medical necessity prior to service being rendered.

g. Documentation indicating the dates and times that this service is provided and the amount and type of nursing interventions provided.

h. A review of the supporting documentation with the individual or his family/caregiver, as appropriate, and documentation that shows a written summary of this review was submitted to the support coordinator/case manager at least quarterly with the plan for supports modified as appropriate. For the annual review and anytime supporting documentation is updated, the supporting documentation shall be reviewed with the individual or his family/caregiver, as appropriate, and such review shall be documented.

i. Documentation that the plan for supports has been reviewed by a physician within 30 days of initiation of the service, when any changes are made to the plan for supports, and also reviewed and approved at least annually by a physician.

j. All correspondence to the individual and the individual's family/caregiver, as appropriate, the support coordinator, DMAS, and DBHDS.

k. Written documentation of all contacts with the individual's family/caregiver, physicians, providers, and all professionals regarding the individual.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-490. Respite service.

A. Service description.

1. Respite service is temporary, substitute care that is normally provided by an unpaid, primary caregiver. Service shall be provided on a short-term basis for periodic relief of the primary caregiver. Respite service may be provided either through an agency-directed or consumer-directed model.

2. Respite service may be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities.

3. Respite service shall be covered in the FIS and CL waivers.

B. Criteria.

1. To qualify for respite service, the individual shall demonstrate (i) a need for assistance with ADLs, community access, self-administration of medications or other medical needs, or monitoring of health status or physical condition and (ii) the family or other unpaid caregiver's need for relief of caregiving duties.

2. The need for respite service shall be documented in the plan for supports.

3. Allowable activities shall include:

a. Assistance with ADLs and IADLs;

b. Support with monitoring health status and physical condition;

c. Support with medication and medical needs;

d. Safety supports;

e. Support to participate in social, recreational, or community activities;

f. Accompanying the individual to appointments or meetings; and

g. Assistance with bowel/bladder programs, range of motion exercises, routine wound care that does not include sterile technique, and external catheter care when trained and supervised by an RN.

C. Service units and service limitations.

1. The unit of service shall be one hour. Respite service shall be limited to 480 hours per individual per state fiscal year. If an individual changes waiver programs, this same maximum number of respite hours shall apply. No additional respite hours beyond the 480 hours maximum limit shall be approved for payment. Individuals who are receiving respite service in the FIS or CL waivers through both the agency-directed and consumer-directed models shall not exceed 480 hours per year combined.

2. A person rendering respite service for reimbursement by DMAS shall not be the individual's spouse.

3. Any combination of companion service, personal assistance service, and respite service delivered by a single assistant or companion to one individual in the consumer-directed service model shall be limited to 40 hours per week. Assistants who live with the individual, either full time or for substantial amounts of time, shall not be restricted to only 40 hours per week. Individuals may receive more than 40 hours per week, if needed, of respite service from multiple assistants.

4. When specified in the provider's plan for supports, such supportive service may include assistance with IADLs. Respite assistance shall not include skilled nursing service, with the exception of skilled nursing tasks that are delegated pursuant to 18VAC90-19-240 through 18VAC90-19-280, regulated in Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia, as appropriate.

5. Each provider, the individual, the EOR, and the individual's family/caregiver shall have a back-up plan for the individual's care in case the respite assistant does not report for work as expected or terminates employment without prior notice. The support coordinator/case manager shall review the back-up plan and confirm that it will meet the individual's needs.

6. Respite service shall not be provided for DMAS reimbursement to relieve staff of group homes, supported living service, or sponsored residential service, as defined by 12VAC35-105-20, or assisted living facilities, as defined by 22VAC40-73-10, where residential supports are provided in shifts. Respite service shall not be provided for DMAS reimbursement by adult foster care providers for an individual residing in that foster home.

7. Skill development shall not be provided with respite service.

8. The hours to be authorized shall be based on the individual's need. Two individuals in the same home may share supports delivered by one assistant; however, the number of hours billed shall not exceed the number of hours the assistant worked.

9. Consumer-directed and agency-directed respite service shall meet the same standards for service limits and authorizations.

D. Provider requirements.

1. Providers shall meet the requirements in 12VAC30-122-110 through 12VAC30-122-140.

2. For respite service, the provider shall (i) be licensed by DBHDS as a supportive in-home residential service provider, center-based respite service provider, in-home respite service provider, out-of-home respite service provider or residential respite service provider; (ii) a VDSS-certified foster care home for children or a VDSS-certified adult foster care home for individuals who do not reside in that foster home; (iii) meet the Virginia Department of Health (VDH) licensing requirements; or (iv) have accreditation from a CMS-recognized organization to be a personal care or respite care provider.

3. Providers of respite service shall have a current, signed participation agreement with DMAS. Providers designated on this agreement shall render this service directly and shall bill DMAS directly for Medicaid reimbursement.

4. Supervision requirements for agency-directed respite service.

a. A supervisor shall provide ongoing supervision of all respite assistants.

b. For respite providers that are licensed by DBHDS, a supervisor meeting the requirements of 12VAC35-105 shall provide supervision of direct support professional staff.

c. For respite providers who are licensed by VDH or have accreditation from a CMS-recognized organization to be a personal care or respite care provider, the provider shall employ or subcontract with and directly supervise an RN or an LPN, or be an RN or LPN himself, who shall provide ongoing supervision of all assistants.

The supervising RN or LPN shall have at least one year of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/IID, or nursing facility.

d. The supervisor shall make a home visit to conduct an initial assessment prior to the start of service for all individuals enrolled in a DD Waiver who have been approved to receive respite service. The supervisor shall also perform any subsequent reassessments or changes to the plan for supports. All changes that are indicated for an individual's plan for supports shall be reviewed with and agreed to by the individual and, if appropriate, the individual's family/caregiver.

e. The supervisor shall make supervisory home visits or center-based visits to DBHDS-licensed settings as often as needed to ensure both quality and appropriateness of the service. When respite service is received on a routine basis, the minimum frequency of these supervisory visits shall be at least every 90 days under the agency-directed model, depending on the individual's needs. Documentation of supervision shall be completed, signed, and dated by the supervisor and shall include, at a minimum, the following:

(1) Date of contact or observation;

(2) Person contacted or observed; and

(3) A summary of the contact or observation.

f. When respite service is not received on a routine basis but is episodic in nature, the supervisor shall conduct the initial home visit with the respite assistant immediately preceding the start of service and make a second home visit within the respite service period. The supervisor or services facilitator, as appropriate, shall review the use of the respite service either every six months or upon the use of 240 respite service hours, whichever comes first.

g. When respite service is routine in nature, that is, occurring with a scheduled regularity for specific periods of time and offered in conjunction with personal assistance service, the supervisory visit conducted for personal assistance service may serve as the supervisory visit for the respite service. However, the supervisor or service facilitator, as appropriate, shall document supervision of the respite service separately. For this purpose, the same individual record shall be used with a separate section clearly marked for respite service documentation.

h. Based on continuing evaluations of the assistant's performance and individual's needs, the supervisor shall identify any gaps in the assistant's ability to function competently and shall provide training as indicated.

5. Service facilitation requirements for respite service shall be the same as those set forth in 12VAC30-122-150.

6. Requirements for agency-directed assistants.

a. Providers shall ensure that staff providing respite service meet provider competency training requirements as specified in 12VAC30-122-180.

b. Assistants employed by personal assistance agencies licensed by VDH or having accreditation from a CMS-recognized organization shall have completed an educational curriculum of at least 40 hours of study related to the needs of individuals who have disabilities, including intellectual and developmental disabilities, as ensured by the provider prior to being assigned to support an individual. Assistants shall have the required skills and training to perform the service as specified in the individual's plan for supports and related supporting documentation. An assistant's required training shall be met in one of the following ways:

(1) Registration with the Board of Nursing as a certified nurse aide;

(2) Graduation from an approved educational curriculum as listed by the Board of Nursing; or

(3) Completion of the provider's educational curriculum, as conducted by a licensed RN who shall have at least one year of related clinical nursing experience that may include work in an acute care hospital, public health clinic, home health agency, ICF/IID, or nursing facility.

c. Assistants shall have a satisfactory work record, as evidenced by two references from prior job experiences, if applicable, including no evidence of possible abuse, neglect, or exploitation of elderly persons, children, or adults with disabilities.

d. When assistants are absent or otherwise unable to render scheduled supports to individuals enrolled in the waiver, the provider shall be responsible for ensuring that the service continues to be provided to the affected individuals.

(1) The provider may either provide another assistant, obtain a substitute assistant from another provider if the lapse in coverage is to be less than two weeks in duration, or transfer the individual to another respite provider. The provider who holds the service authorization to provide service to the individual enrolled in the waiver shall contact the support coordinator/case manager to determine if additional or modified service authorization is necessary.

(2) If no other provider is available who can supply a substitute assistant, the provider shall notify the individual and the individual's family/caregiver, as appropriate, and the support coordinator/case manager so that the support coordinator/case manager may find another available provider of the individual's choice.

e. During temporary, short-term lapses in coverage that are not expected to exceed approximately two weeks in duration, the following procedures shall apply:

(1) The service authorized provider shall supervise the substitute assistant;

(2) The provider of the substitute assistant shall send a copy of the assistant's daily documentation signed by the assistant, the individual, and the individual's family/caregiver, as appropriate, to the provider having the service authorization; and

(3) The service authorized provider shall bill DMAS for service rendered by the substitute assistant.

f. If a provider secures a substitute assistant, the provider agency shall be responsible for ensuring that all DMAS requirements continue to be met, including documentation of service rendered by the substitute assistant and documentation that the substitute assistant's qualifications meet DMAS requirements. The two providers involved shall be responsible for negotiating the financial arrangements of paying the substitute assistant.

E. Service documentation and requirements for agency-directed service and consumer-directed service.

1. Agency-directed providers or the services facilitator, or the EOR in the absence of a services facilitator, shall maintain records regarding each individual who is receiving respite service.

2. At a minimum, the records shall contain:

a. A copy of the most recently completed age-appropriate assessment and, as needed, an initial assessment completed by the supervisor or services facilitator prior to or on the date service is initiated.

b. The provider's most recently updated plan for supports detailed in 12VAC30-122-120.

c. Documentation indicating that the plan for supports desired outcomes and support activities have been reviewed by the provider quarterly, annually, and more often as needed. At a minimum, monthly verification by the supervisor of the service and hours rendered and billed to DMAS. The results of the review shall be submitted to the support coordinator. For the annual review and in cases where the plan for supports is modified, the plan for supports shall be reviewed with and agreed to by the individual enrolled in the waiver and the individual's family/caregiver, as appropriate;

d. Supervisor's or services facilitator's summarizing notes recorded and dated during any contacts with the assistant and during supervisory visits to the individual's home;

e. Documentation by the service supervisor or consumer-directed services facilitator in a summary note following significant contacts with the assistant and home visits with the individual the following:

(1) Whether the service continues to be appropriate;

(2) Whether the plan for supports is adequate to meet the individual's needs or changes are needed in the plan;

(3) The individual's satisfaction with the service;

(4) The presence or absence of the assistant during the supervisor's visit;

(5) Any suspected abuse, neglect, or exploitation and to whom it was reported; and

(6) Any hospitalization or change in medical condition, functioning, or cognitive status;

f. All correspondence to the individual and the individual's family/caregiver, as appropriate, the support coordinator/case manager, DMAS, and DBHDS;

g. Contacts made with the individual's family/caregiver, physicians, providers, and all professionals concerning the individual; and

h. The specific service delivered to the individual enrolled in the waiver by the assistant dated the day of service delivery and the individual's unique, specific responses as well as:

(1) The respite assistant's arrival and departure times;

(2) The respite assistant's weekly comments or observations about the individual enrolled in the waiver to include individual-specific observations of the individual's physical and emotional condition, daily activities, and responses to the service rendered; and

(3) The respite assistant's, individual's, and the individual's family/caregiver's, as appropriate, weekly signatures recorded on the last day of service delivery for any given week to verify that respite service during that week have been rendered.

3. Respite service records shall be separated from those of other nonwaiver services, such as home health service.

4. Progress notes shall meet the standards contained in 12VAC30-122-120 A.

5. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-500. Service facilitation service.

A. Service description. Individuals enrolled in the waiver may select the consumer-directed model of service delivery

for certain services, absent any of the specified conditions that preclude such a choice, and may also receive support from a service facilitator. Services facilitation service shall be a separate waiver service and shall be used only in conjunction with consumer-directed personal assistance service, respite service, or companion service.

B. Criteria and allowable activities.

1. Service facilitators shall train individuals enrolled in the waiver, or the individual's employer of record (EOR), as appropriate, to direct, such as select, hire, train, supervise, and authorize timesheets of their own assistants who are rendering personal assistance services, respite services, and companion services.

2. The service facilitator shall also make an initial comprehensive home visit to collaborate with the individual and the individual's family/caregiver, as appropriate, (i) to identify the individual's needs for a requested consumer-directed service; (ii) to assist in the development of the plan for supports with the individual and the individual's family/caregiver, as appropriate; (iii) provide employer management training to the individual or EOR, as appropriate, on his responsibilities as an employer; and (iv) to provide ongoing support of the consumer-directed model of service. The service facilitator shall provide employer management training to the individual or EOR, as appropriate, within seven days of the initial visit.

a. The initial comprehensive home visit shall be completed only once upon the individual's entry into the consumer-directed model of service regardless of the number or type of consumer-directed services that an individual is approved to receive.

b. If an individual changes service facilitators, the new service facilitator shall complete a reassessment visit in lieu of a comprehensive visit.

c. The employer management training shall be completed before the individual or EOR may hire an assistant who is to be reimbursed by DMAS.

d. After the initial visit, the service facilitator shall continue to monitor the individual's plan for supports quarterly (i.e., every 90 days) and more often as needed. If consumer-directed respite service is provided, the service facilitator shall review the utilization of consumer-directed respite service either every six months or upon the use of 240 respite service hours, whichever comes first.

3. A face-to-face meeting shall occur between the service facilitator and the individual at least every six months to reassess the individual's needs and to ensure appropriateness of any consumer-directed service received by the individual. During these visits with the individual, the service facilitator shall observe, evaluate, and consult with the individual, EOR, and the individual's family/caregiver, as appropriate, for the purpose of assessing the adequacy and appropriateness of consumer-directed service with regard to the individual's current functioning, medical needs, and social needs. The service facilitator's written summary of the visit shall include:

a. Discussion with the individual and EOR or individual's family/caregiver, as appropriate, whether the particular consumer-directed service is adequate to meet the individual's needs;

b. Any suspected abuse, neglect, or exploitation and to whom it was reported;

c. Any special tasks performed by the assistant or companion and the assistant's or companion's qualifications to perform these tasks;

d. The individual's and EOR's or individual's family/caregiver's, as appropriate, satisfaction with the assistant's or companion's service;

e. Any hospitalization or change in medical condition, functioning, or cognitive status;

f. The presence or absence of the assistant or companion in the home during the service facilitator's visit; and

g. Any other service received and the amount.

4. The service facilitator, during routine quarterly visits, shall also review and verify timesheets as needed to ensure that the number of hours approved in the plan for supports is not exceeded. If discrepancies are identified, the service facilitator shall discuss these with the individual or EOR to resolve discrepancies and shall notify the fiscal/employer agent as defined in 12VAC30-122-170. If an individual is consistently identified as having discrepancies in his timesheets, the service facilitator shall contact the support coordinator. Failure to review and verify timesheets and maintain documentation of such reviews shall subject the provider to recovery of payments made by DMAS in accordance with 12VAC30-80-130.

5. The service facilitator shall be available during standard business hours to the individual or EOR by telephone.

6. The consumer-directed service facilitator shall assist the individual or EOR with employer issues as requested by either the individual or EOR.

7. The service facilitator shall also complete the assessments, reassessments, and supporting documentation necessary for consumer-directed service.

8. Service facilitation service shall be provided on an as-needed basis as mutually agreed to by the individual, EOR, and service facilitator but at a minimum quarterly routine visits. Service facilitator service shall be documented in the

supporting documentation for consumer-directed service, and the service facilitation provider shall bill consistent with the supporting documentation. Claims that are not adequately supported by this supporting documentation may be subject to a DMAS recovery of expenditures.

9. If an EOR is consistently unable to hire and retain an assistant to provide consumer-directed services, the service facilitator shall contact the support coordinator and DBHDS to transfer the individual, at the choice of the individual, to a provider that provides Medicaid-funded agency-directed companion service, personal assistance service, or respite care service, as may be appropriate.

10. If an individual enrolled in consumer-directed service has a lapse in consumer-directed service for more than 60 consecutive calendar days, the service facilitator, or the individual or family/caregiver functioning as the service facilitator, shall notify the support coordinator so that consumer-directed service may be discontinued, and the option afforded to the individual to change to agency-directed service as long as the individual still qualifies for the service.

C. Service units and limits. The limits and requirements for individuals' selection of consumer-directed service shall be as follows:

1. In order to be approved to use the consumer-directed model of service, the individual enrolled in the waiver shall meet the requirements as specified in 12VAC30-122-150. Support coordinators shall document in the individual support plan the individual's choice for the consumer-directed model and whether or not the individual chooses service facilitation. The support coordinator shall document in the individual's record that the individual can serve as the EOR or if there is a need for another person to serve as the EOR on behalf of the individual.

2. The consumer-directed service facilitator who is to be reimbursed by DMAS shall not be the individual enrolled in the waiver; a direct service provider; the individual's spouse; a parent or legal guardian of the individual who is a minor child; or the EOR who is employing the assistant or companion.

3. The service facilitator shall document the individual's back-up plan in case the assistant or companion does not report for work as expected or terminates employment without prior notice.

4. Should the assistant or companion not report for work or terminate his employment without notice, then the service facilitator shall, upon the individual's or EOR's request, provide management training to ensure that the individual or the EOR is able to recruit and employ a new assistant or companion.

D. Provider requirements.

1. To be enrolled as a service facilitator and maintain provider status, the service facilitator provider shall have sufficient resources to perform the required activities, including the ability to maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the service provided.

2. All consumer-directed service facilitators, whether employed by or contracted with a DMAS enrolled service facilitator provider, shall meet all of the qualifications set out in this subsection. To be enrolled, the service facilitator shall also meet the combination of work experience and relevant education set out in this subsection that indicate the possession of the specific knowledge, skills, and abilities to perform this function.

a. If the service facilitator is not an RN then, within 30 days from the start of such service, the service facilitator shall inform the primary health care provider for the individual enrolled in the waiver that consumer-directed service is being provided and request skilled nursing or other consultation as needed by the individual. Prior to contacting the primary health care provider, the service facilitator shall obtain the individual's written consent to make such contact. This written consent shall be retained by the service facilitator in the individual's record.

b. All service facilitators shall possess, at a minimum, either (i) an associate's degree from an accredited college in a health or human services field or be a registered nurse currently licensed to practice in the Commonwealth or hold a multistate licensure privilege, and demonstrate at least two years of satisfactory direct care experience supporting individuals with disabilities or older adults or children or (ii) have a bachelor's degree in a non-health or human services field and a minimum of three years of satisfactory direct care experience supporting individuals with disabilities or older adults. Service facilitators enrolled prior to January 11, 2016, are not required to meet the education requirements.

c. All consumer-directed service facilitators shall:

(1) Have a satisfactory work record as evidenced by two references from prior job experiences from any human services work. Such references shall not include any evidence of abuse, neglect, or exploitation of elderly individuals, persons with disabilities, or children;

(2) Submit to a criminal background check within 15 days of employment. Proof that the criminal record check was conducted shall be maintained in the record of the service facilitator;

(3) If providing service to minors, submit to a search of the VDSS Child Protective Services Central Registry; and

(4) Not be debarred, suspended, or otherwise excluded from participating in federal health care programs, as listed on the federal List of Excluded Individuals and Entities (LEIE) database at http://www.olg.hhs.govfraud/exclusions/exclusions%20list.asp.

d. The service facilitator shall not be compensated for service provided to the waiver individual after the initial or any subsequent background check verifies that the service facilitator (i) has been convicted of a barrier crime as defined in 12VAC30-122-20; (ii) has a founded complaint confirmed by the VDSS Child Protective Services Central Registry; or (iii) is found to be listed on the LEIE database. In accordance with 12VAC30-80-130, DMAS shall seek refunds of overpayments.

e. All service facilitators shall complete the DMAS-approved service facilitator training and pass the corresponding competency assessment with a score of at least 80% prior to being approved as a service facilitator or being reimbursed for waiver services. The competency assessment and all corresponding competency assessments shall be kept in the service facilitator's personnel record.

f. Failure to complete the competency assessment prior to providing this service shall result in a retraction of Medicaid payment or the termination of the provider agreement, or both.

g. As a component of the renewal of the provider agreement, all consumer-directed service facilitators shall take and pass the competency assessment every five years and achieve a score of at least 80%.

h. The consumer-directed service facilitator shall have access to a computer with secure Internet access that meets the requirements of 45 CFR Part 164 for the electronic exchange of information. Electronic exchange of information shall include, for example, checking individual eligibility, submission of service authorizations, submission of information to the fiscal employer agent, and billing for service.

i. All consumer-directed service facilitators shall possess a demonstrable combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills, and abilities shall be documented on the application form, found in supporting documentation, or be observed during the job interview. Observations during the interview shall be documented. The knowledge, skills, and abilities include:

(1) Knowledge of:

(a) Types of functional limitations and health problems that may occur in individuals with developmental disabilities, as well as strategies to reduce limitations and health problems;

(b) Physical assistance that may be required by individuals with developmental disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(c) Equipment and environmental modifications that may be required by individuals with developmental disabilities that reduce the need for human help and improve safety;

(d) Various long-term care program requirements, including nursing home and ICF/IID placement criteria; Medicaid waiver services; and other federal, state, and local resources that provide personal assistance service, respite service, and companion service;

(e) DD Waivers requirements, as well as the administrative duties for which the service facilitator will be responsible;

(f) Conducting assessments, including environmental, psychosocial, health, and functional factors, and their uses in service planning;

(g) Interviewing techniques;

(h) The individual's right to make decisions about, direct the provisions of, and control his consumer-directed personal assistance service, companion service, and respite service, including hiring, training, managing, approving timesheets, and firing an assistant or companion;

(i) The principles of human behavior and interpersonal relationships; and

(j) General principles of record documentation.

(2) Skills in:

(a) Negotiating with individuals and the individual's family/caregivers, as appropriate, and providers;

(b) Assessing, supporting, observing, recording, and reporting behaviors;

(c) Identifying, developing, or providing service to individuals with developmental disabilities; and

(d) Identifying services within the established system to meet the individual's needs.

(3) Abilities to:

(a) Report findings of the assessment or onsite visit, either in writing or an alternative format, for individuals who have visual impairments;

(b) Demonstrate a positive regard for individuals and their families;

(c) Be persistent and remain objective;

(d) Work independently, performing position duties under general supervision;

(e) Communicate effectively, orally and in writing; and

(f) Develop a rapport and communicate with individuals of diverse cultural backgrounds.

E. Service documentation and requirements.

1. In addition to the documentation required by 12VAC30-122-340, 12VAC30-122-460, and 12VAC30-122-490, the service facilitator shall maintain a record of each individual containing elements as set out in this section. The service facilitator's record about the individual shall contain:

a. Documentation of all employer management training provided to the individual enrolled in the waiver and the EOR, as appropriate, including the individual's or the EOR's, as appropriate, receipt of training on his responsibility for the accuracy and timeliness of the assistant's or companion's timesheets;

b. All documents signed by the individual enrolled in the waiver or the EOR, as appropriate, that acknowledge their legal responsibilities as the employer; and

c. All contacts and consultations documented in the individual's medical record. Failure to document such contacts and consultations shall be subject to a DMAS recovery of payments made.

2. Provider documentation of service rendered that merely constitutes notes that are copied from previous dates of service and redated or that are prepackaged shall not constitute satisfactory progress notes. Progress notes shall meet the standards contained in 12VAC30-122-120.

3. CD service facilitators responsible for individual assessment and reassessment shall maintain the following listed records and documentation in individuals' records:

a. All copies of the consumer-directed plan for support, all supporting documentation related to consumer-directed services, and DMAS-225 (Medicaid Tong-Term Care Communication Form), which is the form used by the support coordinator to report information about patient pay amount changes in an individual's situation.

b. A copy of the most recently completed SIS® assessment or the approved alternative assessment form noted in 12VAC30-122-200 A, and an initial assessment completed by the service facilitator prior to or on the date the service is initiated.

c. Consumer-directed service facilitator's notes recorded and dated at the time of service delivery. The consumer-directed service facilitator's written summary of visits shall include at minimum:

(1) Discussion with the individual and EOR or individual's family/caregiver, as appropriate, whether the particular consumer-directed service is adequate to meet the individual's needs;

(2) Any suspected abuse, neglect, or exploitation and to whom it was reported;

(3) Any special tasks performed by the assistant and the assistant's qualifications to perform these tasks;

(4) The individual's and EOR's or individual's family/caregiver's, as appropriate, satisfaction with the assistant's service;

(5) Any hospitalization or change in medical condition, functioning, or cognitive status; and

(6) The presence or absence of the assistant in the home during the service facilitator's visit.

d. All correspondence to the individual and EOR, as appropriate, to others concerning the individual, and to the support coordinator, DMAS, and DBHDS.

e. All management training provided to the individual or EOR, as appropriate, including the responsibility for the accuracy of the timesheets.

f. All documents signed by the individual or EOR, as appropriate, that acknowledge the responsibilities of the employer.

g. Documentation indicating that desired outcomes and support activities of the plan for supports have been reviewed by the consumer-directed service facilitator provider quarterly, annually, and more often as needed. The results of the review shall be submitted to the support coordinator. For the annual review and in cases where the plan for supports is modified, the plan for supports shall be reviewed with and agreed to by the individual enrolled in the waiver and the individual's family/caregiver, as appropriate, and signed and dated by the individual or the individual's family/caregiver

h. Contacts made with the individual's family/caregiver, physicians, providers, and all professionals concerning the individual.

4. Service facilitation records shall be provided to DMAS or DBHDS upon request.

5. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-510. Shared living support service.

A. Service description. Shared living support service means Medicaid coverage of a portion of the total cost of rent, food, and utilities that can be reasonably attributed to a live-in roommate who has no legal responsibility to financially support the individual who is enrolled in the waiver. The types of assistance provided are expected to vary from individual to individual and shall be set out in a detailed, signed, and dated agreement between the individual and roommate. This service shall require the use of a shared living support service administrative provider enrolled with DMAS that shall be responsible for directly coordinating the service and directly billing DMAS for reimbursement. Shared living support service shall be covered in the FIS, CL, and BI waivers.

B. Criteria and allowable activities.

1. The individual, who shall be at least 18 years of age, shall select his roommate, who shall also be at least 18 years of age, and, together through a planning process, they shall determine the assistance to be provided by the roommate based on the individual's needs and preferences. The individual shall reside in his own home or in a residence leased by the individual.

2. Reimbursable room and board for the roommate shall be established through the service authorization process per the CMS-approved rate methodology.

3. The individual shall be receiving at least one other waiver service in order to receive Medicaid coverage of shared living support service.

4. Allowable activities shall include:

a. Fellowship;

b. Safety supports;

c. Limited help with ADLs and IADLs that shall account for no more than 20% of the anticipated roommate time and may include:

(1) Meal preparation;

(2) Light housework;

(3) Medications reminders; and

(4) Routine prompting or intermittent direct assistance with ADLs.

C. Service units and limits. The unit of service shall be a month or may be a partial month for months in which the service begins or ends.

1. The roommate shall complete and pass background checks, including criminal registry checks required by §§ 37.2-416, 37.2-506, and 37.2-607 of the Code of Virginia.

2. The roommate shall successfully meet the training requirements set out in the written agreement including CPR training, safety awareness, fire safety and disaster planning, and conflict management and resolution.

3. Shared living support service shall not be covered for individuals who are simultaneously receiving group home residential service, sponsored residential service, or supported living residential service.

4. The roommate shall not have the responsibility for providing skill-building or medical services.

5. The roommate shall not be the spouse, parent, or guardian of the individual.

D. Provider requirements.

1. Providers shall meet the service coverage requirements in this section and the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-122-110 through 12VAC30-122-140.

2. Shared living support service administrative providers shall be licensed by DBHDS to provide service to individuals with developmental disabilities and shall manage the administrative aspects of this service, including roommate matching as needed, background checks, training, periodic onsite monitoring, and disbursing funds to the individual.

3. Shared living support service administrative providers shall have a current, signed participation agreement with DMAS in order to provide this service. The provider designated in this agreement shall coordinate the shared living support service and submit claims directly to DMAS for reimbursement. This shared living support service administrative provider shall be reimbursed a flat fee payment for the completion of these duties. DMAS may audit such provider's records for compliance with the requirements in this section.

4. Reimbursement for shared living support service shall be based upon compliance with DMAS submission requirements for claims and supporting progress notes documentation as may be required as proof of service delivery. Claims that are not supported by the required progress notes documentation shall be subject to recovery by DMAS of any expenditures that may have been made.

5. The administrative provider shall ensure that there is a back-up plan in place in the event that the roommate is unable or unavailable to provide the agreed-to supports.

6. The administrative provider shall submit monthly claims for shared living support service for reimbursement based upon the amount determined through the service authorization process.

E. Service documentation and requirements.

1. The administrative provider shall maintain documentation of the actual rent and submit the documentation with the service authorization request for shared living support service.

2. For quality management review and utilization review purposes, the administrative provider shall be required to maintain and present to DMAS, as requested, an agreement that identifies what supports the roommate will provide, and this agreement shall be signed by the individual and the roommate. The individual's support coordinator shall retain a copy of this signed, executed agreement in the particular individual's file.

3. The administrative provider shall submit monthly claims for shared living support service reimbursement based upon the amount determined through the service authorization process.

4. The administrative provider shall maintain weekly summaries of supports provided by the roommate and signed by the roommate.

5. Documentation of the 90-day face-to-face contact with the individual that includes the status of the individual, satisfaction with the service, and resolution of any issues related to service provision. This 90-day face-to-face shall take place in the individual's home. A progress note documenting the face-to-face contact and observations shall be provided to the support coordinator quarterly.

6. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-520. Skilled nursing service.

A. Services description. Skilled nursing service shall provide part-time or intermittent care that may be provided concurrently with other services due to the medical nature of the supports provided. Skilled nursing service shall be provided for individuals enrolled in the waiver having serious medical conditions and complex health care needs who have exhausted their home health benefits and who require specific skilled nursing services that cannot be provided by non-nursing personnel. Skilled nursing service shall be covered in the FIS and CL waivers.

B. Criteria and allowable activities. The individuals who are authorized to receive this service shall require specific skilled nursing service as documented in the plan for supports. This service shall be rendered to the individual in his residence or other community settings on a regularly scheduled or intermittent basis in accordance with the plan for supports. Allowable activities shall be ordered and certified as medically necessary by a Virginia-licensed physician. The ordered services may include:

1. Consultation, assistance to direct support staff, and nurse delegation;

2. Training of family and other caregivers;

3. Monitoring an individual's medical status;

4. Administering medications and other medical treatment; or

5. Assurance that all items listed in subdivisions B 1 through B 4 of this subsection are carried out in accordance with the plan for supports.

C. Service units and limits.

1. Skilled nursing service shall be ordered by a physician and shall be medically necessary.

2. Skilled nursing service shall not be available unless an individual has exhausted all available home health benefits.

3. This service shall be rendered and billed in quarter-hour increments. Individuals receiving this service shall not be required to meet the criteria for the receipt of home health services. Skilled nursing service shall not be limited by the acute, time-limited standards for home health services as contained in the State Plan for Medical Assistance.

4. Individuals enrolled in the waiver shall not be authorized to receive waiver skilled nursing service when private duty nursing service is authorized or concurrently (i.e., the same dates and times) with personal assistance service. For an individual younger than 21 years of age, waiver skilled nursing services shall not be authorized or covered if the necessary service is available under EPSDT. The support coordinator shall assist such a child with obtaining the medically necessary service through the EPSDT benefit.

5. Foster care providers shall not be the skilled nursing service providers for the same individuals for whom they provide foster care.

6. The support coordinator shall assist an individual who has short-term, acute, and limited-in-nature skilled nursing needs in accessing the home health service benefit under the State Plan for Medical Assistance.

7. The support coordinator shall assist an individual who has skilled nursing needs that are expected to be longer term, but intermittent in nature, with accessing waiver skilled nursing service.

D. Provider requirements.

1. Providers shall either employ or subcontract with nurses who are currently licensed as either RNs or LPNs under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia or who hold a current multistate licensure privilege to practice nursing in the Commonwealth.

2. Skilled nursing service may be provided by either (i) a licensed RN or LPN, who is under the supervision of a licensed RN, employed by a DMAS-enrolled home health provider or (ii) a licensed RN or LPN, who is under the supervision of a licensed RN, contracted with or employed by a DBHDS-licensed day support, respite, or residential services provider.

3. Providers shall maintain documentation of required licenses in the appropriate employee personnel records. Such documentation shall be provided to either DMAS or DBHDS upon request.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. A copy of the completed age-appropriate assessment as detailed in 12VAC30-122-200;

b. A plan for supports as detailed in 12VAC30-122-120 and the CMS-485;

c. Progress note documentation of all training, including the dates and times, provided to family/caregivers or staff, or both, including the person being trained and the content of the training. Training of professional staff shall be consistent with the Regulations Governing the Practice of Nursing (18VAC90-19);

d. Documentation of the physician's determination of medical necessity prior to services being rendered;

e. Progress note documentation indicating the dates and times of nursing interventions that are provided and the amount and type of service;

f. A written review supported by documentation in the individuals' record that is submitted to the support coordinator at least quarterly with the plan for supports, if modified;

g. Documentation that the plan for supports has been reviewed by a physician within 30 days of initiation of services, when any changes are made to the plan for supports, and also reviewed and approved at least annually by a physician;

h. All correspondence to the individual and the individual's family/caregiver, as appropriate, the support coordinator, DMAS, and DBHDS; and

i. Written documentation of all contacts with the individual's family/caregiver, physicians, providers, and all professionals regarding the individual.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-530. Sponsored residential service.

A. Service description. Sponsored residential service means a residential service that consists of skill-building, routine supports, general supports, and safety supports that are provided in the homes of families or persons (sponsors) providing supports under the supervision of a DBHDS-licensed provider that enable an individual to acquire, retain, or improve the self-help, socialization, and adaptive skills necessary to reside successfully in home and community settings. This service shall include skills development with the provision of supports, as needed. Sponsored residential service shall be covered in the CL waiver.

B. Criteria and allowable activities.

1. This service shall only be authorized for Medicaid reimbursement when through the person-centered planning process this service is determined necessary to meet the individual's needs. This service may be provided individually or simultaneously to up to two individuals living in the same home, depending on the required support.

2. Allowable activities shall include:

a. Skill-building and routine supports related to ADLs and IADLs;

b. Skill-building and routine and safety supports related to the use of community resources, such as transportation, shopping, restaurant dining, and participating in social and recreational activities. The cost of participation in the actual social or recreational activity shall not be reimbursed;

c. Supporting the individual in replacing challenging behaviors with positive, accepted behaviors for home and community environments;

d. Monitoring and supporting the individual's health and physical condition and providing supports with medication management and other medical needs;

e. Providing routine supports and safety supports with transportation to and from community locations and resources;

f. Providing general supports, as needed; and

g. Providing safety supports to ensure the individual's health and safety.

C. Service units and limits.

1. The unit of service shall be one day and billing shall not exceed 344 days per ISP year, as indicated in the plan for supports of the individuals who are authorized to receive this service.

2. This service shall be provided on an individual-specific basis according to the ISP and service setting requirements.

3. Sponsored residential service shall be a tiered service for reimbursement purposes and providers shall only be reimbursed for the individual's assigned level and tier.

4. DMAS coverage of this service shall be limited to no more than two individuals per residential setting. Providers shall not bill for service rendered to more than two individuals living in the same residential setting.

5. This service shall be provided to individuals up to 24 hours per day by the sponsor family or qualified staff.

6. Room and board shall not be components of this service.

7. This service shall not be simultaneously covered for individuals who are receiving personal assistance or other residential service under the waiver, such as shared living service, supported living service, in-home support service, or group home residential service that provide comparable supports, as determined by DMAS.

D. Provider requirements.

1. Providers shall meet all of the requirements set forth in 12VAC30-122-110 through 12VAC30-122-140.

2. Sponsored residential service shall be provided by agencies licensed by DBHDS as a provider of sponsored residential service.

3. Providers of this service shall have a current, signed participation agreement with DMAS. Providers as designated on this agreement shall render this service directly and shall bill DMAS directly for Medicaid reimbursement.

4. Providers shall ensure that sponsors providing service meet provider competency training requirements as specified in 12VAC30-122-180.

5. A supervisor meeting the requirements of 12VAC35-105 shall provide supervision of the sponsor. Documentation of supervision shall be completed, signed by the sponsor designated to perform the supervision and oversight, and include the following:

a. Date of contact or observation;

b. Person contacted or observed;

c. A summary about the sponsor's performance and service delivery;

d. Any action planned or taken to correct problems identified during supervision and oversight; and

e. On a semiannual basis, observations documented by the supervisor concerning the individual's satisfaction with service provision.

6. Sponsored residential settings shall comply with the HCBS setting requirements per 42 CFR 441.301.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. A copy of the most current, completed, standard, age-appropriate assessment form as detailed in 12VAC30-122-200.

b. The provider's plan for supports per requirements detailed in 12VAC30-122-120.

c. Progress note documentation confirming the amount of the individual's time in service and providing specific information regarding the individual's responses to various settings and supports. Observations of the individual's responses to service shall be available in at least a daily note. Data shall be collected as described in the ISP, analyzed to determine if the strategies are effective, summarized, then clearly documented in the progress notes or checklist.

d. Documentation to support units of service delivered, and the documentation shall correspond with billing. Providers shall maintain separate documentation for each type of service rendered for an individual.

e. A written review supported by documentation in the individuals' record that is submitted to the support coordinator at least quarterly with the plan for supports, if modified.

f. All correspondence to the individual and the individual's family/caregiver, as appropriate, the support coordinator, DMAS, and DBHDS.

g. Written documentation of contacts made with the individual's family/caregiver, physicians, providers, and all professionals concerning the individual.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-540. Supported living residential service.

A. Service description. Supported living residential service shall take place in an apartment setting operated by a DBHDS-licensed provider of supervised living residential service or supportive in-home service. This service shall consist of skill-building, routine and general supports, and safety supports that enable an individual to acquire, retain, or improve the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. Providers shall be reimbursed only for the amount and type of supported living residential service that is included in the individual's ISP. Supported living residential service shall be authorized for Medicaid reimbursement in the plan for supports only when the individual requires this

service. This service shall include a skills development component along with the provision of supports, as needed. Supported living residential service shall be covered in the FIS and CL waivers.

B. Criteria and allowable activities.

1. Skill-building and routine supports related to ADLs and IADLs;

2. Skill-building and routine and safety supports related to the use of community resources such as transportation, shopping, restaurant dining, and participating in social and recreational activities. The cost of participation in the actual social or recreational activity shall not be reimbursed;

3. Supporting the individual in replacing challenging behaviors with positive, accepted behaviors for home and community-based environments;

4. Monitoring and supporting the individual's health and physical conditions and providing supports with medication or other medical needs;

5. Providing routine supports and safety supports with transportation to and from community locations and resources;

6. Providing general supports as needed; and

7. Providing safety supports to ensure the individual's health and safety.

C. Service units and limits.

1. The unit of service shall be one day and billing shall not exceed 344 days per ISP year.

2. Total billing shall not exceed the amount authorized in the ISP. The provider shall maintain progress note documentation of the dates that service has been provided and of specific circumstances that prevented provision of all of the scheduled service, should that occur. This service shall be provided on an individual-specific basis according to the ISP and service setting requirements.

3. Supported living residential service shall not be provided to any individual who receives personal assistance service or other residential service under the FIS or CL waiver, such as group home residential service, shared living service, in-home support service, or sponsored residential service that provide a comparable level of care.

4. Room and board shall not be components of supported residential service.

5. Supported living residential service shall not be used solely to provide routine or emergency respite care for the individual's family/caregiver with whom the individual lives.

6. Medicaid reimbursement shall be available only for supported living residential service when the individual receives supports from the plan of supports and when an enrolled Medicaid provider is providing the service.

7. Supported living residential service shall be a tiered service for reimbursement purposes. Providers shall only be reimbursed for the individual's assigned level and tier.

8. Supported living residential service shall be provided to the individual in the form of around-the-clock availability of paid provider staff who have the ability to respond in a timely manner. This service may be provided individually or simultaneously to more than one individual living in the apartment, depending on the required supports.

D. Provider requirements.

1. The provider shall be licensed by DBHDS as a provider of supervised residential service or supportive in-home service.

2. The provider shall also be currently enrolled with DMAS as a providers. The provider designated on the provider participation agreement shall render this service and submit claims to DMAS for reimbursement.

3. Providers shall ensure that staff providing supported living residential service meets provider competency training requirements as specified in 12VAC30-122-180.

4. A supervisor meeting the requirements of 12VAC35-105 shall provide supervision of direct support professional staff. Documentation of supervision shall be completed, signed by the staff person designated to perform the supervision and oversight, and shall include the following:

a. Date of contact or observation;

b. Person contacted or observed;

c. A summary about direct support professional staff performance and service delivery;

d. Any action planned or taken to correct problems identified during supervision and oversight; and

e. Documentation of observations, on a semiannual basis by the supervisor, concerning the individual's satisfaction with service provision.

5. Supported living residential service shall comply with the HCBS settings requirements when provided in DBHDS licensed settings per 42 CFR 441.301.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. A copy of the completed, standard, age-appropriate assessment form as detailed in 12VAC30-122-200.

b. The provider's plan for supports per requirements detailed in 12VAC30-122-120.

c. Progress note documentation confirming the amount of the individual's time in service and providing specific information regarding the individual's responses to various settings and supports. Observations of the individual's responses to service shall be available in at least a daily note. Data shall be collected as described in the ISP, analyzed to determine if the strategies are effective, summarized, then clearly documented in the progress notes or supports checklist.

d. Documentation to support units of service delivered, and the documentation shall correspond with billing. Providers shall maintain separate documentation for each type of service rendered for an individual.

e. A written review supported by documentation in the individuals' record that is submitted to the support coordinator at least quarterly with the plan for supports, if modified.

f. All correspondence to the individual and the individual's family/caregiver, as appropriate, the support coordinator, DMAS, and DBHDS.

g. Written documentation of contacts made with the individual's family/caregiver, physicians, providers, and all professionals concerning the individual.

2. Documentation shall be provided upon request to DMAS.

3. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-550. Therapeutic consultation service.

A. Service description. Therapeutic consultation service means professional consultation provided by members of psychology, social work, rehabilitation engineering, behavioral analysis/consultation, speech-language pathology therapy, occupational therapy, psychiatry, psychiatric clinical nursing, therapeutic recreation, or physical therapy disciplines that are designed to assist individuals, parents, guardians, family members, and any other providers of support services with implementing the individual support plan. This service shall provide assessments, development of a therapeutic consultation support plan, and teaching in any of these designated specialty areas to assist family members, caregivers, and other providers in supporting the individual enrolled in the waiver. The individual's therapeutic consultation service support plan shall clearly reflect the individual's needs, as documented in the assessment information, for specialized consultation provided to family/caregivers and providers. Therapeutic consultation service shall be covered in the FIS and CL waivers.

A therapeutic consultation service support plan is the report of recommendations resulting from a therapeutic consultation that is developed by the professional consultant after he spends time with the individual to determine the individual's needs in his area of expertise.

B. Criteria and allowable activities.

1. To qualify for therapeutic consultation service, the individual shall have a documented need for consultation. Documented need shall indicate that the ISP cannot be implemented effectively and efficiently without such consultation as provided by this covered service and approved through service authorization. The need for this service shall be based on the individual's ISP and shall be provided to an individual for whom specialized consultation is clinically necessary. Therapeutic consultation service may be provided in individuals' homes and in appropriate community settings, such as licensed or approved homes or day support programs, as long as they are intended to facilitate implementation of individuals' desired outcomes as identified in their ISP.

2. Allowable activities for this service shall include:

a. Interviewing the individual, family members, caregivers, and relevant others to identify issues to be addressed and desired outcomes of consultation;

b. Observing the individual in daily activities and natural environments and observing and assessing the current interventions, support strategies, or assistive devices being used with the individual;

c. Assessing the individual's need for an assistive device for a modification or adjustment of an assistive device, or both, in the environment or service, including reviewing documentation and evaluating the efficacy of assistive devices and interventions identified in the therapeutic consultation plan;

d. Developing data collection mechanisms and collecting baseline data as appropriate for the type of consultation service provided;

e. Designing a written therapeutic consultation plan detailing the interventions, environmental adaptations, and support strategies to address the identified issues and desired outcomes, including recommendations related to specific devices, technology, or adaptation of other training programs or activities. The plan may recommend training relevant persons to better support the individual simply by observing the individual's environment, daily routines, and personal interactions;

f. Demonstrating (i) specialized, therapeutic interventions; (ii) individualized supports; or (iii) assistive devices;

g. Training family/caregivers and other relevant persons to assist the individual in using an assistive device; to implement specialized, therapeutic interventions; or to adjust currently utilized support techniques;

h. Intervening directly, by behavioral consultants, with the individual and demonstrating to family/caregivers or staff such interventions. Such intervention modalities shall relate to the individual's identified behavioral needs as detailed in established specific goals and procedures set out in the ISP; and

i. Consulting related to person centered therapeutic outcomes, in person or over the phone.

C. Service units and limits.

1. The unit of service shall be one hour.

2. The servics shall be explicitly detailed in the plan for supports.

3. Travel time, written preparation, and telephone communication shall be considered as in-kind expenses within therapeutic consultation service and shall not be reimbursed as separate items.

4. Therapeutic consultation shall not be billed solely for purposes of monitoring the individual.

5. Only behavioral consultation in the therapeutic consultation service may be offered in the absence of any other waiver service.

6. Other than behavioral consultation, therapeutic consultation service shall not include direct therapy provided to individuals enrolled in the waiver and shall not duplicate the activities of other services that are available to the individual through the State Plan for Medical Assistance. Behavior consultation may include direct behavioral interventions and demonstration of such interventions to family members or staff.

D. Provider requirements. Professionals rendering therapeutic consultation service, including behavior consultation, shall meet all applicable state licensure or certification requirements.

1. Behavior consultation shall only be provided by (i) a board-certified behavioral analyst or a board-certified associate behavior analyst or (ii) a positive behavioral supports facilitator endorsed by a recognized positive behavioral supports organization or who meets the criteria for psychology consultation.

2. Psychology consultation shall only be provided by the following individuals licensed in the Commonwealth of Virginia: (i) a psychologist, (ii) a licensed professional counselor, (iii) a licensed clinical social worker, (iv) a psychiatric clinical nurse specialist, or (v) a psychiatrist.

3. Speech consultation shall only be provided by a speech-language pathologist who is licensed by the Commonwealth of Virginia.

4. Occupational therapy consultation shall only be provided by an occupational therapist who is licensed by the Commonwealth of Virginia.

5. Physical therapy consultation shall only be provided by a physical therapist who is licensed by the Commonwealth of Virginia.

6. Therapeutic recreation consultation shall only be provided by a therapeutic recreation specialist who is certified by the National Council for Therapeutic Recreation Certification.

7. Rehabilitation consultation shall only be provided by a rehabilitation engineer or certified rehabilitation specialist.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. A copy of the completed age-appropriate assessment as detailed in 12VAC30-122-200.

b. A plan for support, that contains at a minimum the following elements:

(1) Identifying information;

(2) Desired outcomes, support activities, and timeframes; and

(3) Specific consultation activities.

c. A written therapeutic consultation support plan detailing the recommended interventions or support strategies for providers and family/caregivers to better support the individual enrolled in the waiver in the service.

d. Ongoing progress note documentation of rendered consultative service that may be in the form of contact-by-contact or monthly notes that must be contemporaneously signed and dated, that identify each contact, the amount of time spent on the activity, what was accomplished, and the professional who made the contact and rendered the service.

e. If the consultation service extends three months or longer, written quarterly reviews that are completed by the provider and forwarded to the support coordinator. If the consultation service extends beyond one year or when there are changes to the plan for supports, the plan for supports shall be reviewed by the provider with the individual, individual's family/caregiver, as appropriate, and the support coordinator and shall be submitted to the

support coordinator for service authorization, as appropriate.

f. All correspondence to the individual and the individual's family/caregiver, as appropriate, the support coordinator, DMAS, and DBHDS.

g. Written progress note documentation of contacts made with the individual's family/caregiver, physicians, providers, and all professionals concerning the individual.

h. A contemporaneously signed and dated final disposition summary that is forwarded to the support coordinator within 30 days following the end of this service and that includes:

(1) Strategies utilized;

(2) Objectives met;

(3) Unresolved issues; and

(4) Consultant recommendations.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

12VAC30-122-560. Transition service.

A. Service description. Transition service shall be consistent with the requirements and limits set out in 12VAC30-120-2010.

B. Criteria and allowable required activities. This service shall be the same as set out in 12VAC30-120-2000 and 12VAC30-120-2010.

C. Service units and limits shall be the same as those set out in 12VAC30-120-2000 and 12VAC30-120-2010.

D. Provider requirements shall be the same as those set out in 12VAC30-120-2000 and 12VAC30-120-2010. All transition service provided in this waiver shall be reimbursed consistent with the agency's service limits and payment amounts as set out in the fee schedule.

E. Service documentation and requirements shall be the same as those set out in 12VAC30-120-2000 and 12VAC30-120-2010.

F. Transition service is covered in the FIS, CL, and BI waivers.

12VAC30-122-570. Workplace assistance service.

A. Service description. Workplace assistance service means supports provided to an individual who has completed job development and completed or nearly completed job placement training (i.e., individual supported employment) but requires more than the typical job coach services, as in 12VAC30-122-400, to maintain stabilization in his employment. This service is supplementary to individual supported employment service. Workplace assistance service shall be covered in the FIS and CL waivers.

B. Criteria and allowable activities.

1. The activity shall not be work skills training that would normally be provided by a job coach.

2. The service shall be delivered in their natural employment setting, where and when they are needed.

3. The service shall facilitate the maintenance of and inclusion in an employment situation.

4. Allowable activities include:

a. Habilitative supports related to nonwork skills needed for the individual to maintain employment such as appropriate behavior, health maintenance, time management, or other skills without which the individual's continued employment would be endangered;

b. Habilitative supports needed to make and strengthen community connections;

c. Routine supports with personal care needs; however, this cannot be the sole use of workplace assistance service; and

d. Safety supports needed to ensure the individual's health and safety.

C. Service units and limits.

1. A unit shall be one hour. Workplace assistance service may be provided during the time that the individual being served is working, up to and including 40 hours a week. There shall be no annual limit on how long this service may remain authorized.

2. Workplace assistance service shall not be provided simultaneously (i.e., the same dates and times) with work-related personal assistance service. This service shall not be provided solely for the purpose of providing assistance with ADLs to the individual when the individual is working.

3. The service delivery ratio shall be one staff person to one waiver individual.

4. The combination of workplace assistance service, community engagement service, community coaching service, supported employment service, and group day service shall not exceed 66 hours per week.

5. Workplace assistance service can be provided simultaneously with individual supported employment (ISE) service to ensure that the workplace assistant is trained and supervised appropriately in supporting the individual through ISE best practices.

D. Provider requirements. Providers shall meet the following requirements:

1. Providers shall be either:

a. Providers of supported employment services with DARS. DARS shall verify that these providers meet criteria to be providers through a DARS-recognized accrediting body. DARS shall provide the documentation of this accreditation verification to DMAS and DBHDS upon request.

(1) DARS-contracted providers shall maintain their accreditation in order to continue to receive Medicaid reimbursement.

(2) DARS-contracted providers that lose their accreditation, regardless of the reason, shall not be eligible to receive Medicaid reimbursement and shall have their provider agreement terminated by DMAS. Reimbursements made to such providers after the date of the loss of the accreditation shall be subject to recovery by DMAS; or

b. Licensed by DBHDS as a provider of non-center-based day support service.

2. These providers shall hold current provider participation agreements with DMAS. The provider designated on the signed agreement shall submit claims to DMAS for reimbursement and shall maintain the required documentation that supports the claims submitted for reimbursement.

3. Providers shall ensure that staff providing workplace assistance service meet provider competency training requirements as specified in 12VAC30-122-180. In addition, prior to seeking reimbursement for this service from DMAS, these providers shall ensure that staff providing workplace assistance service have completed training regarding the principles of supported employment. The documentation of the completion of this training shall be maintained by the provider and shall be provided to DMAS and DBHDS upon request.

4. The direct support professional providing workplace assistance service shall coordinate his service provision with the job coach if there is one working with the individual providing individual supported employment service to the individual being supported.

E. Service documentation and requirements.

1. Providers shall include signed and dated documentation of the following in each individual's record:

a. A copy of the completed age-appropriate assessment as detailed in 12VAC30-122-200.

b. The provider's plan for supports per requirements detailed in 12VAC30-122-120.

c. Provider documentation confirming the individual's amount of time in service and providing specific information regarding the individual's response to various settings and supports as agreed to in the plan for supports. This documentation shall be available in at least a daily note or a weekly summary. Data shall be collected as described in the plan for supports, reviewed, summarized, and included in the regular progress note supporting documentation.

d. A written review supported by documentation in the individuals' record that is submitted to the support coordinator at least quarterly with the plan for supports, if modified.

e. All correspondence to the individual and the individual's family/caregiver, as appropriate, the support coordinator, DMAS, and DBHDS.

f. Written progress note documentation of contacts made with the individual's family/caregiver, physicians, providers, and all professionals concerning the individual.

2. Provider documentation shall support all claims submitted for DMAS reimbursement. Claims for payment that are not supported by supporting documentation shall be subject to recovery by DMAS or its designee as a result of utilization reviews or audits.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (12VAC30-122)

Supports Intensity Scale - Adult Version™ (ages 16 and up), SIS-A, copyright 2015, American Association on Intellectual and Developmental Disabilities

Supports Intensity Scale - Children's Version™ (ages 5-16), SIS-C, copyright 2016, American Association on Intellectual and Developmental Disabilities

Virginia Supplemental Questions (eff. 10/2014)

Skill Competencies for Professionals and Direct Support Staff in Virginia Supporting Adolescents and Adults with Autism, developed by Virginia Autism Council, June 1, 2014, DMAS-P201 (filed 1/2019)

Medicaid Long-Term Care Communication Form, DMAS-225 (rev. 12/2015)

Virginia Individual Developmental Disabilities Eligibility Survey - Infants' Version, DMAS-P235 (eff. 3/2016)

Virginia Individual Developmental Disabilities Eligibility Survey - Children's Version, DMAS-P236 (eff. 4/2016)

Virginia Individual Developmental Disabilities Eligibility Survey - Adult Version, DMAS-P237 (eff. 3/2016)

Behavioral Support Competencies for Direct Support Providers and Professionals in Virginia Supporting Individuals with Developmental Disabilities, developed by the Virginia Department of Behavioral Health and Developmental Services, August 2015, DMAS-P240a (filed 1/2019)

Virginia's Competencies for Direct Professionals and Supervisors Who Support Individuals with Developmental Disabilities - DSP and Supervisor's Competencies Checklist, DMAS-P241a (eff. 6/2016)

Direct Support Professional Assurance for Non-DBHDS-Licensed Providers to Confirm Successful Completion of Testing and Competency Requirements for the DD Waivers, DMAS-P243a (eff. 6/2016)

Virginia's Health Competencies for Direct Support Professionals and Supervisors Who Support Individuals with Developmental Disabilities - Health Competencies Checklist, DMAS-P244a (eff. 6/2016)

Supervisor Assurance for DBHDS-licensed Providers to Confirm Successful Completion of Training, Testing, and Competency Requirements for the DD Waivers, DMAS-P245a (eff. 7/2016)

Supervisor Assurance for Non-DBHDS-Licensed Services to Confirm Successful Completion of Training and Testing Requirements for the DD Waivers, DMAS-P245a (eff. 7/2016)

VA.R. Doc. No. R17-4614; Filed December 18, 2018, 3:22 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-675).**

Statutory Authority: § 37.2-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 6, 2019.

Effective Date: March 21, 2019.

Agency Contact: Emily Bowles, Legal Coordinator, Office of Licensing, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218, telephone (804) 225-3281, FAX (804) 692-0066, TTY (804) 371-8977, or email emily.bowles@dbhds.virginia.gov.

Basis: Sections 37.2-203 and 37.2-304 of the Code of Virginia authorize the State Board of Behavioral Health and Developmental Services to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner and the Department of Behavioral Health and Developmental Services (DBHDS).

Purpose: DBHDS and the Department of Medical Assistance Services (DMAS) regulations concerning reviews of individual service plans are not aligned, which creates an unnecessary situation in which service providers must adhere to two separate requirements for the same practice. The proposed change will align DBHDS and DMAS regulations as to when a quarterly review or a revised assessment of an individualized services plan (ISP) must be documented. The amendment will allow practitioners to follow the same process rather than two different processes, which will decrease administrative burdens and allow more time to provide services. By decreasing administrative burden through the adjusted timeframe, providers are allowed more time to thoroughly prepare and document the ISP review and changes to the ISP, which will potentially benefit the health and safety of an individual receiving services by ensuring all information is in place to inform a treatment team of an individual's specific needs.

Rationale for Using Fast-Track Rulemaking Process: The amendments are noncontroversial. Input from providers indicates support for this change, and any change that aligns DMAS and DBHDS regulations results in more effective and efficient business and administrative processes.

Substance: Providers licensed by DBHDS are currently required to review the ISP at least every three months from the date of its implementation or whenever there is a revised assessment based upon the individual's changing needs or goals. There is no allowance for additional administrative time to document the review, as is allowed in DMAS regulations. Such administrative "grace periods" are not uncommon.

By amending the current licensing regulations at 12VAC35-105-675, providers will be allowed to provide documentation of each quarterly review or a revised assessment in the individual's record "no later than 15 calendar days from the date the review was due to be completed." The amendments do not change the current quarterly deadline for the review.

Issues: The advantage for the public and the DBHDS system will be that providers can more efficiently use their time because the regulations will no longer conflict. There are no identified disadvantages to the public or the Commonwealth in making this change.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Behavioral Health and Developmental Services (Board) proposes to allow mental health providers a 15-day grace period for documentation of Individualized Services Plans (ISP).

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

Estimated Economic Impact. Currently, mental health providers serving Medicaid patients are allowed under the Medicaid regulations[1] a 15-day grace period to document ISPs. ISPs are updated quarterly or whenever there is a revised assessment based on an individual's changing needs or goals. However, this regulation currently does not provide a grace period for documentation of such reviews, creating a misalignment between Medicaid and Board rules. As a result, Board-licensed providers currently have less time to document the review compared to what is allowed by Medicaid. The Board now proposes to also provide a 15-day grace period so that the providers are subject to the same due dates.

The proposed change is expected to allow more flexibility to the mental health providers licensed through the Board and serving Medicaid population as they will have more time to complete documentation of their reviews. The flexibility provided by this regulation could reduce compliance costs (e.g., possibly reducing the need for overtime pay for staff reviewing ISPs). Also, according to the Department of Behavioral Health and Developmental Services (DBHDS), noncompliance with this documentation requirement has resulted in citations during regular inspections. Therefore, a reduction in citations regarding timeliness of documentation of ISPs is expected.

The proposed amendment would not affect services received by those individuals with an ISP. Given the increased flexibility and reduction in citations for providers, and no adverse elements associated with the 15-day grace period, the proposal would likely produce a net benefit.

Businesses and Entities Affected. According to DBHDS, there are more than 100,000 individuals whose ISPs are reviewed on a regular basis by 3,313 licensed service providers most of which are likely small businesses.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendment should not have any effect on total employment.

Effects on the Use and Value of Private Property. The proposed amendment is unlikely to affect the use and value of private property.

Real Estate Development Costs. The proposed amendment does not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendment is expected to provide more flexibility in documentation of ISPs, and therefore could reduce compliance costs.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

Other Entities. The proposed amendment does not adversely affect other entities.

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[1]12VAC30-50-226

Agency's Response to Economic Impact Analysis: The agency concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

The amendments create a 15-day grace period within which providers must document a quarterly review of or a revised assessment to an individualized services plan, aligning the regulation with Medicaid timeframe requirements.

12VAC35-105-675. Reassessments and ISP reviews.

A. Reassessments shall be completed at least annually and when there is a need based on the medical, psychiatric, or behavioral status of the individual.

B. The provider shall update the ISP at least annually. The provider shall complete a quarterly review of the ISP at least every three months from the date of the implementation of the ISP or whenever there is a revised assessment based upon the individual's changing needs or goals. These reviews shall evaluate the individual's progress toward meeting the plan's goals and objectives and the continued relevance of the ISP's objectives and strategies. The provider shall update the goals, objectives, and strategies contained in the ISP, if indicated, and implement any updates made. Documentation of each review shall be added to the individual's record no later than

15 calendar days from the date the review was due to be completed.

VA.R. Doc. No. R19-5541; Filed January 7, 2019, 3:20 p.m.

Final Regulation

Title of Regulation: **12VAC35-250. Certification of Peer Recovery and Resiliency Specialists (adding 12VAC35-250-10 through 12VAC35-250-50).**

Statutory Authority: §§ 37.2-203 and 37.2-304 of the Code of Virginia.

Effective Date: March 6, 2019.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 11th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 786-8623, TTY (804) 371-8977, or email ruthanne.walker@dbhds.virginia.gov.

Summary:

The State Board of Behavioral Health and Developmental Services is promulgating a new chapter to establish the qualifications, education, and experience necessary for an individual to act as a peer recovery specialist. The new regulation provides individuals acting as peer recovery specialists a pathway to register with the Board of Counseling, which is necessary to provide peer recovery services through the Virginia Medicaid Addiction and Recovery Treatment Services substance use disorder benefit.

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

CHAPTER 250
PEER RECOVERY SPECIALISTS

12VAC35-250-10. Definitions.

"Certifying body" means an organization approved by DBHDS that has as one of its purposes the certification of peer recovery specialists.

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

"DBHDS peer recovery specialist training" means the curriculum developed and approved by DBHDS for the training of persons seeking [~~registration as~~ to meet the Virginia qualifications to be a] peer recovery [~~specialists~~ specialist].

"Individual" means a person who is receiving peer recovery support services. This term includes the terms "consumer," "patient," "resident," "recipient," and "client."

"Peer recovery specialist" means a person who by education and experience is professionally qualified to provide collaborative services to assist individuals in achieving sustained recovery from the effects of mental illness, addiction, or both.

"Peer recovery support services" means collaborative nonclinical, peer-to-peer services that engage, educate, and support an individual's self-help efforts to improve his health, recovery, resiliency, and wellness to assist individuals in achieving sustained recovery from the effects of mental illness, addiction, or both.

"Recovery, resiliency, and wellness plan" means a set of goals, strategies, and actions an individual creates to guide him and his health care team to move the individual toward the maximum achievable independence and autonomy in the community.

"Registered peer recovery specialist" means a peer recovery specialist who is registered by the Virginia Board of Counseling.

12VAC35-250-20. Peer recovery specialist.

A. Any person seeking to be a peer recovery specialist under this chapter shall (i) meet the qualifications, education, and experience requirements established in this chapter and (ii) hold a certification as a peer recovery specialist from a certifying body approved by DBHDS.

B. If the conditions in clauses (i) and (ii) of subsection A of this section are met, a person who is one of the following may act as a peer recovery specialist:

1. A parent of a minor or adult child with a mental illness or substance use disorder or co-occurring mental illness and substance use disorder similar to the individual receiving peer recovery services; or

2. An adult with personal experience with a family member with a mental illness or substance use disorder or co-occurring mental illness and substance use disorder similar to the individual receiving peer recovery services.

C. A registered peer recovery specialist shall provide such services as an employee or independent contractor of DBHDS, a provider licensed by DBHDS, a practitioner licensed by or holding a permit issued from the Department of Health Professions, or a facility licensed by the Department of Health.

D. Any person meeting the qualifications for a peer recovery specialist set forth in this chapter shall be eligible for registration by the Virginia Board of Counseling.

12VAC35-250-30. Qualifications.

A. Any person seeking to be a peer recovery specialist under this chapter shall:

1. Have a high school diploma or equivalent.

2. Sign and abide by the Virginia Peer Recovery Specialist Code of Ethics, Department of Behavioral Health and Developmental Services, effective April 4, 2017.

3. Complete the DBHDS peer recovery specialist training.

4. Show current certification in good standing by the U.S. Department of Veterans Affairs or one of the following certifying bodies:

a. National Association for Alcoholism and Drug Abuse Counselors (NAADAC);

b. A member board of the International Certification and Reciprocity Consortium (IC&RC); or

c. Any other certifying body approved by DBHDS.

B. Individuals certified through the Virginia member board of the IC&RC between April 16, 2015, through December 31, 2016, shall be exempt from completing the DBHDS peer recovery specialist training.

12VAC35-250-40. Minimum standards for certifying bodies.

DBHDS may approve a certification obtained from a certifying body that requires its certificate holders to:

1. Adhere to a code of ethics that is substantially comparable to the Virginia Peer Recovery Specialist Code of Ethics, Department of Behavioral Health and Developmental Services, effective April 4, 2017.

2. Have at least one year of recovery for persons having lived experience with mental illness or substance use disorder conditions, or lived experience as a family member of someone with mental illness or substance use disorder conditions.

3. Complete at least 46 hours of training from the list of curriculum subjects in 12VAC35-250-50.

4. Obtain a passing score on an examination offered by the certifying body testing knowledge of the curriculum subjects identified in 12VAC35-250-50.

5. Obtain and document at least 500 hours of supervised paid or volunteer experience providing peer recovery support services in the three years prior to applying for certification. The experience hours shall have been in nonclinical, peer-to-peer recovery-oriented support activities designed to address an individual's recovery and wellness goals.

12VAC35-250-50. Curriculum requirements.

A. Unless the exception in 12VAC35-250-30 B is met, any person seeking to be a peer recovery specialist under this chapter shall complete the DBHDS peer recovery specialist training.

B. The curriculum of the peer recovery specialist training shall include training on the following topics:

1. The current body of mental health and substance abuse knowledge;

2. The recovery process;

3. Promoting services, supports, and strategies for recovery;

4. Peer-to-peer services;

5. Crisis intervention;

6. The value of the role of a peer recovery specialist;

7. Basic principles related to health and wellness;

8. Recovery, resiliency, and wellness plans;

9. Stage-appropriate pathways in recovery support;

10. Ethics and ethical boundaries;

11. Cultural sensitivity and practice;

12. Trauma and its impact on recovery;

13. Community resources; and

14. Delivering peer services within agencies and organizations.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC35-250)

The Virginia Peer Recovery Support Specialist Code of Ethics, Department of Behavioral Health and Developmental Services (eff. 4/2017)

VA.R. Doc. No. R17-4808; Filed January 14, 2019, 4:46 p.m.

TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Proposed Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is claiming an exemption from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4 of the Code of Virginia.

Title of Regulation: **13VAC10-40. Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income (amending 13VAC10-40-10 through 13VAC10-40-190, 13VAC10-40-210 through 13VAC10-40-280; repealing 13VAC10-40-200; adding 13VAC10-40-15).**

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

Public Hearing Information:

February 5, 2019 - 10 a.m. - Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA

Public Comment Deadline: February 5, 2019.

Agency Contact: Jeff Quann, Senior Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5603, or email jeffrey.quann@vhda.com.

Summary:

The proposed amendments align the regulations with current authority loan programs, policies, and financing sources and incorporate new authority loan programs that have been created since the regulations were last updated in 2009.

Part I
General

13VAC10-40-10. General.

~~The following rules and regulations will be applicable~~ This chapter applies to mortgage loans ~~which~~ that are made or financed or are proposed to be made or financed by the authority to persons and families of low and moderate income for the acquisition (and, where applicable, rehabilitation), construction, refinancing, ownership, and occupancy of single family housing units.

In order to be considered eligible for a mortgage loan ~~hereunder~~ under the provisions of this chapter, the applicant ~~or applicants~~ must have a "gross income" (as determined in accordance with this chapter and the authority's ~~rules and regulations) which~~ origination guide) that does not exceed the applicable income limitation set forth in Part II (13VAC10-40-30 et seq.) ~~hereof~~ of this chapter. Furthermore, the sales price of any single family unit to be financed hereunder must not exceed the applicable sales price limit set forth in Part II ~~(13VAC10-40-30 et seq.) hereof~~. The term "sales price," with respect to a mortgage loan for the combined acquisition and rehabilitation of a single family dwelling unit, shall include the cost of acquisition, plus the cost of rehabilitation and debt service for such period of rehabilitation, not to exceed three months, as the executive director shall determine that such dwelling unit will not be available for occupancy. In addition, each mortgage loan issued a mortgage credit certificate must satisfy all requirements of federal law applicable to ~~loans financed with the proceeds of tax exempt bonds~~ mortgage credit certificates as set forth in ~~Part II (13VAC10-40-30 et seq.) hereof~~ 13VAC10-190.

Mortgage loans may be made or financed pursuant to ~~these rules and regulations~~ this chapter only if and to the extent that the authority has made or expects to make funds available ~~therefor~~ for such loans. ~~Notwithstanding anything to the contrary herein, the~~ The executive director is authorized with respect to any mortgage loan ~~hereunder~~ made or financed under the provisions of this chapter to waive or modify any provisions of ~~these rules and regulations~~ this chapter where deemed appropriate by him for good cause, to the extent not inconsistent with the Virginia Housing Development Authority Act (§ 36-55.24 et seq. of the Code of Virginia).

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

The rules and regulations set forth ~~herein~~ in this chapter are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the originating and administration of mortgage loans under the authority's single family housing program. These rules and regulations ~~are subject to change at any time by the authority and~~ may be supplemented by the authority's origination guide and other policies~~,~~ and rules ~~and regulations~~ adopted by the authority from time to time, to the extent such are not inconsistent with the provisions of this chapter.

13VAC10-40-15. Definitions.

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

"Act" means the Virginia Housing Development Authority Act (§ 36-55.24 et seq. of the Code of Virginia).

"Applicant" means a person who has applied for an authority mortgage loan.

"Authority" means the Virginia Housing Development Authority.

"Borrower" means a person who has obtained an authority mortgage loan.

"Delegated lender" means an originating lender that has received approval from the authority to act in a delegated capacity to approve authority mortgage loans without prior review by the authority.

"Fannie Mae" means the Federal National Mortgage Association.

"Fannie Mae loan" means a mortgage loan made pursuant to the requirements of Fannie Mae.

"FHA" means the U.S. Federal Housing Administration.

"FHA loan" means a mortgage loan insured by FHA.

"First mortgage loan" means a mortgage loan that is in a first lien position.

"Freddie Mac" means the Federal Home Loan Mortgage Corporation.

"Freddie Mac loan" means a mortgage loan made pursuant to the requirements of Freddie Mac.

"Gross income" means the combined annualized gross income of all borrowers and nonborrower occupants taking title to a dwelling unit from whatever source derived and before taxes or withholdings.

"Median family income" has the meaning set forth in § 143(f)(4) of the Internal Revenue Code of 1986.

"Nondelegated lender" means an originating lender that has not received approval from the authority to act in a delegated capacity, such that authority mortgage loans must be submitted to the authority for approval.

"Origination guide" means that authority document prepared and revised from time to time, setting forth the accounting and other procedures to be followed by all originating lenders responsible for the origination, closing, and selling of mortgage loans under the applicable purchase agreements.

"Originating agents" means mortgage brokers, financial institutions, and other private firms and individuals and governmental entities approved by the authority for the purpose of receiving applications for mortgage loans.

"Originating lenders" means commercial banks, savings and loan associations, credit unions, private mortgage bankers, redevelopment and housing authorities, and agencies of local government approved by the authority to make mortgage loans pursuant to authority loan programs.

"Present ownership interest" means an ownership interest in a principal residence including:

1. A fee simple interest;

2. A joint tenancy, a tenancy in common, or a tenancy by the entirety;

3. The interest of a tenant shareholder in a cooperative;

4. A life estate;

5. A land contract, under which possession and the benefits and burdens of ownership are transferred although legal title is not transferred until some later time; and

6. An interest held in trust for the eligible borrower (whether or not created by the eligible borrower) that would constitute a present ownership interest if held directly by the eligible borrower.

Interests that do not include a present ownership interest include:

1. A remainder interest;

2. An ordinary lease with or without an option to purchase;

3. A mere expectancy to inherit an interest in a principal residence;

4. The interest that a purchaser of a resident acquires on the execution of an accepted offer to purchase real estate; and

5. An interest in other than a principal residence during the previous three years.

"Purchase agreement" means an agreement entered into between an originating lender and the authority containing such terms and conditions as the executive director shall require with respect to the origination and selling of mortgage loans to the authority.

"Rural Development loan" means the U.S. Department of Agriculture Rural Development mission area, and one of its agencies, the Rural Housing Service.

"Targeted areas" means those areas which are a qualified census tract or an area of chronic economic distress. A qualified census tract is a census tract in the Commonwealth in which 70% or more of the families have an income of 80% or less of the statewide median family income based on the most recent "safe harbor" statistics published by the U.S. Treasury. An area of chronic economic distress is an area designated as such by the Commonwealth and approved by the Secretaries of Housing and Urban Development and the Treasury under criteria specified in the tax code. Originating lenders will be informed by the authority as to the location of areas so designated.

"Tax code" means the Internal Revenue Code of 1986, as amended (26 USC § 1 et seq.).

"VA" means the U.S. Department of Veterans Affairs.

"VA loan" means a mortgage loan that is guaranteed by VA.

13VAC10-40-20. Origination and servicing of mortgage loans.

A. The originating of mortgage loans and the processing of applications for the making or financing thereof in accordance ~~herewith~~ with this chapter shall, except as noted in subsection ~~G~~ L of this section, be performed through ~~commercial banks, savings and loan associations, private mortgage bankers, redevelopment and housing authorities, and agencies of local government approved as~~ originating ~~agents~~ lenders ~~("originating agents") of the authority~~. The servicing of mortgage loans shall~~, except as noted in subsection H of this section, be performed through commercial banks, savings and loan associations and private mortgage bankers approved as servicing agents ("servicing agents") of the authority~~ be performed by the authority.

B. To be initially approved as an originating ~~agent or as a servicing agent~~ lender and to continue to be so approved, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia and be licensed as a mortgage lender or broker, as applicable, under the Virginia Mortgage Lender and Broker Act as set forth in Chapter 16 (§ ~~6.1-408~~ 6.2-1600 et seq.) of Title ~~6.1~~ 6.2 of the Code of Virginia (including nonprofit corporations that may be exempt from licensing when making mortgage loans on their own behalf under subdivision 4 of § ~~6.1-411~~ 6.2-1602 of the Code of Virginia); provided, however, that such licensing requirement shall not apply to persons exempt from licensure under:

a. Subdivision 2 of § ~~6.1-411~~ 6.2-1602 of the Code of Virginia (any person subject to the general supervision of or subject to examination by the Commissioner of the Bureau of Financial Institutions of the Virginia State Corporation Commission);

b. Subdivision 3 of § ~~6.1-411~~ 6.2-1602 of the Code of Virginia (any lender authorized to engage in business as a bank, savings institution, or credit union under the laws of the United States~~,~~ or any state ~~or territory of the United States, or the District of Columbia~~, and subsidiaries and affiliates of such entities~~,~~ which lender, subsidiary or affiliate is subject to the general supervision or regulation of or subject to audit or examination by a regulatory body or agency of the United States~~,~~ or any ~~state or territory of the United States, or the District of Columbia)~~ state); or

c. Subdivision 5 of § ~~6.1-411~~ 6.2-1602 of the Code of Virginia (agencies of the federal government, or any state or municipal government, or any quasi-governmental agency making or brokering mortgage loans under the specific authority of the laws of any state or the United States).

2. Have a net worth equal to or in excess of ~~$500,000 or such other amount as the executive director shall from time to time deem appropriate~~ requirements mandated by FHA or any other guarantor or investor, as applicable to the programs in which the originating lender participates, except that this qualification requirement shall not apply to redevelopment and housing authorities and agencies of local government;

3. Have a staff with demonstrated ability and experience in mortgage loan origination, underwriting, processing, and closing ~~(in the case of an originating agent applicant) or servicing (in the case of a servicing agent applicant)~~;

4. ~~To be approved as an originating agent, have~~ Have a physical office located in Virginia that is open to the general public during commercially reasonable business hours, staffed with individuals qualified to take mortgage loan applications, and to which the general public may physically go to make an application for a mortgage loan, unless the executive director determines that it is reasonable or necessary to waive or modify such requirement after taking into consideration current industry and market conditions;

5. ~~To be approved as an originating agent, be~~ Be eligible to, and have a staff qualified to (as set forth in subdivision 3 of this subsection), originate mortgage loans under all of the authority's single-family mortgage loan programs (not including the Rural Development loan program), unless otherwise approved for originating lenders originating mortgage loans in underserved markets;

6. Have a fidelity bond and mortgage errors and omissions coverage in an amount at least equal to ~~$500,000~~ requirements mandated by FHA or any other guarantor or investor as applicable to the programs in which the originating lender participates and provide the authority a certificate from the insurance carrier naming the authority as a party in interest to the bond, or the policies or bonds shall name the authority as one of the parties insured. The policy's deductible clause ~~may be for any amount up to the greater of $100,000 or 5.0% of the face amount of the policy~~ must also meet the requirements mandated by FHA or any other guarantor or investor as applicable to the programs in which the originating lender participates;

7. Have a past history of satisfactory performance in the authority's and other mortgage lenders', insurers', guarantors', and investors' mortgage programs that, in the determination of the executive director, demonstrates that the applicant will be capable of meeting its obligations under the authority's programs, and provided further that, any applicant that has been previously terminated as an originating lender by the ~~Authority~~ authority shall not be eligible to reapply for 24 months after the effective date of such termination; and

8. Meet such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

The executive director may modify or waive any of the requirements in this subsection if he determines (i) that it is reasonable or necessary to do so after taking into consideration any mitigating factors and (ii) that the financial interests of the authority are adequately protected. In making this determination, the executive director may require such other requirements as he deems reasonable or necessary to adequately protect the financial interests of the authority.

~~Notwithstanding the foregoing, in~~ In the event that the executive director determines that it is reasonable or necessary (after taking into consideration the number of existing ~~origination and servicing agents~~ originating lenders, the current and expected level of loan production and demand for mortgage loans, and the current and expected resources available to the authority to make mortgage loans) to cease approving additional originating ~~and servicing agents~~ lenders,

the authority may at any time decline to accept further applications and to approve applications previously submitted.

C. Each originating ~~agent~~ lender approved by the authority shall enter into ~~an originating~~ a purchase agreement ~~("originating agreement"),~~ with the authority ~~containing such terms and conditions as the executive director shall require with respect to the origination and processing of mortgage loans hereunder~~. ~~Each servicing agent approved by the authority shall enter into a servicing agreement with the authority containing such terms and conditions as the executive director shall require with respect to the servicing of mortgage loans~~.

~~An applicant may be approved as both an originating agent and a servicing agent ("originating and servicing agent"). Each originating and servicing agent shall enter into both an originating agreement and a servicing agreement.~~

Once ~~such agreements are~~ the purchase agreement is executed, continued participation in the authority's programs shall be subject to the terms and conditions in ~~such agreements~~ the agreement.

~~For the purposes of this chapter, the term "originating agent" shall hereinafter be deemed to include the term "originating and servicing agent," unless otherwise noted or the context indicates otherwise. The term "servicing agent" shall continue to mean an agent authorized only to service mortgage loans.~~

D. Originating ~~agents and servicing agents~~ lenders shall maintain adequate books and records with respect to mortgage loans which they originate and ~~process or service, as applicable~~ sell to the authority, shall permit the authority to examine such books and records, and shall submit to the authority such reports (including annual financial statements) and information as the authority may require. The fees payable to the originating ~~agents and servicing agents~~ lenders for originating and ~~processing or for servicing~~ selling mortgage loans ~~hereunder~~ shall be established from time to time by the executive director and shall be set forth in the ~~originating agreements and servicing agreements applicable to such originating agents and servicing agents~~ origination guide.

~~B.~~ E. The executive director shall allocate funds for the making or financing of mortgage loans ~~hereunder~~ in such manner, to such persons and entities, in such amounts, for such period, and subject to such terms and conditions as he shall deem appropriate to best accomplish the purposes and goals of the authority. Without limiting the foregoing, the executive director may allocate funds (i) to mortgage loan applicants on a first-come, first-serve or other basis, (ii) to originating ~~agents~~ lenders and state and local government agencies and instrumentalities for the origination of mortgage loans to qualified applicants ~~and/or~~, (iii) to builders for the permanent financing of residences constructed or rehabilitated or to be constructed or rehabilitated by them and to be sold to qualified applicants, or (iv) for permanent or interim construction or renovation financing of eligible properties to be sold to qualified applicants. In determining how to ~~so~~ allocate the funds, the executive director may consider such factors as he deems relevant, including any of the following:

1. The need for the expeditious commitment and disbursement of such funds for mortgage loans;

2. The need and demand for the financing of mortgage loans with such funds in the various geographical areas of the Commonwealth;

3. The cost and difficulty of administration of the allocation of funds;

4. The capability, history, and experience of any originating ~~agents~~ lenders, state and local governmental agencies and instrumentalities, builders, or other persons and entities (other than mortgage loan applicants) who are to receive an allocation; and

5. Housing conditions in the Commonwealth.

F. In the event that the executive director shall determine to make allocations of funds to builders as described ~~above~~ in subsection E of this section, the ~~following requirements must be satisfied by each such builder:~~

~~1. The builder must have a valid contractor's license in the Commonwealth;~~

~~2. The builder must have at least three years' experience of a scope and nature similar to the proposed construction or rehabilitation; and~~

~~3. The builder must submit to the authority plans and specifications for the proposed construction or rehabilitation which are acceptable to the authority.~~ builder shall satisfy the requirements as the executive director shall establish with respect to builder qualifications.

G. The executive director may from time to time take such action as he may deem necessary or proper in order to solicit applications for allocation of funds ~~hereunder~~. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement ~~which~~ that the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations, and conditions with respect to the submission of applications as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which funds of the authority are to be allocated and such other matters as he shall deem appropriate relating thereto. The authority may also consider and approve

applications for allocations of funds submitted from time to time to the authority without any solicitation therefor on the part of the authority.

~~C. This chapter constitutes a portion of the originating guide of the authority. The originating guide and all exhibits and other documents referenced herein are not included in, and shall not be deemed to be a part of this chapter.~~ H. The executive director is authorized to prepare and from time to time revise an ~~originating~~ origination guide ~~and a servicing guide which shall set forth the accounting and other procedures to be followed by all originating agents and servicing agents responsible for the origination, closing and servicing of mortgage loans under the applicable originating agreements and servicing agreements~~. Copies of the ~~originating~~ origination guide ~~and the servicing guide~~ shall be available upon request. The executive director shall be responsible for the implementation and interpretation of the provisions of the ~~originating~~ origination guide ~~(including the originating guide) and the servicing guide~~.

~~D.~~ I. The authority may from time to time (i) make mortgage loans directly to mortgagors with the assistance and services of its originating ~~agents and~~ lenders, (ii) agree to purchase individual mortgage loans from its originating ~~agents or servicing agents~~ lenders upon the consummation of the closing thereof, and (iii) make mortgage loans directly to mortgagors in underserved markets. The review and processing of applications for such mortgage loans, the issuance of mortgage loan ~~commitments therefor~~ approvals, the closing ~~and servicing (and,~~ and, if applicable, the ~~purchase)~~ purchase of such mortgage loans, and the terms and conditions relating to such mortgage loans shall be governed by and shall comply with the provisions of the ~~applicable originating~~ purchase agreement ~~or servicing agreement~~, the ~~originating~~ origination guide, ~~the servicing guide,~~ the Act, and this chapter.

J. If the applicant and the application for a mortgage loan meet the requirements of the Act and this chapter, the ~~executive director~~ authority may issue ~~on behalf of the authority~~ a mortgage loan ~~commitment~~ approval to the applicant for the financing of the single family dwelling unit. Such mortgage loan commitment shall be issued only upon the determination of the authority that such a mortgage loan is not otherwise available from private lenders upon reasonably equivalent terms and conditions, and such determination shall be set forth in the mortgage loan ~~commitment~~ approval. The original principal amount and term of such mortgage loan, the amortization period, the terms and conditions relating to the prepayment thereof, and such other terms, conditions, and requirements as the executive director deems necessary or appropriate shall be set forth or incorporated in the mortgage loan ~~commitment~~ approval issued on behalf of the authority with respect to such mortgage loan.

~~E. The authority may purchase from time to time existing mortgage loans with funds held or received in connection with bonds issued by the authority prior to January 1, 1981, or with other funds legally available therefor. With respect to any such purchase, the executive director may request and solicit bids or proposals from the authority's originating agents and servicing agents for the sale and purchase of such mortgage loans, in such manner, within such time period and subject to such terms and conditions as he shall deem appropriate under the circumstances. The sales prices of the single family housing units financed by such mortgage loans, the gross family incomes of the mortgagors thereof, and the original principal amounts of such mortgage loans shall not exceed such limits as the executive director shall establish, subject to approval or ratification by resolution of the board. The executive director may take such action as he deems necessary or appropriate to solicit offers to sell mortgage loans, including mailing of the request to originating agents and servicing agents, advertising in newspapers or other publications and any other method of public announcement which he may select as appropriate under the circumstances. After review and evaluation by the executive director of the bids or proposals, he shall select those bids or proposals that offer the highest yield to the authority on the mortgage loans (subject to any limitations imposed by law on the authority) and that best conform to the terms and conditions established by him with respect to the bids or proposals. Upon selection of such bids or proposals, the executive director shall issue commitments to the selected originating agents and servicing agents to purchase the mortgage loans, subject to such terms and conditions as he shall deem necessary or appropriate. Upon satisfaction of the terms of the commitments, the executive director shall execute such agreements and documents and take such other action as may be necessary or appropriate in order to consummate the purchase and sale of the mortgage loans. The mortgage loans so purchased shall be serviced in accordance with the applicable originating agreement or servicing agreement and the servicing guide. Such mortgage loans and the purchase thereof shall in all respects comply with the Act and the authority's rules and regulations.~~

~~F.~~ K. The executive director may, in his discretion, delegate to one or more originating ~~agents~~ lenders all or some of the responsibility for underwriting, issuing ~~commitments~~ approvals for mortgage loans, and disbursing the proceeds ~~hereof~~ without prior review and approval by the authority. ~~The executive director may delegate to one or more servicing agents all or some of the responsibility for underwriting and issuing commitments for the assumption of existing authority mortgage loans without prior review and approval by the authority.~~ If the executive director determines to make any such delegation, he shall establish criteria under which originating ~~agents~~ lenders may qualify for such delegation. If such delegation has been made, the originating ~~agents~~ lenders shall submit all required documentation to the authority at

such time as the authority may require. If the executive director determines that a mortgage loan does not comply with any requirement under the ~~originating~~ origination guide, the applicable ~~originating~~ purchase agreement, the Act, or this chapter for which the originating ~~agent~~ lender was delegated responsibility, he may require the originating ~~agents~~ lender to purchase such mortgage loan, subject to such terms and conditions as he may prescribe.

~~G.~~ L. The authority may utilize ~~financial institutions, mortgage brokers and other private firms and individuals and governmental entities ("field originators") approved by the authority~~ originating agents for the purpose of receiving applications for mortgage loans. To be approved as ~~a field originator~~ an originating agent, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia~~;~~ and be licensed as a mortgage lender or broker, as applicable, under the Virginia Mortgage Lender and Broker Act as set forth in Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2 of the Code of Virginia (including nonprofit corporations that may be exempt from licensing when making mortgage loans on their own behalf under subdivision 4 of § 6.2-1602 of the Code of Virginia); provided, however that such licensing requirement shall not apply to persons exempt from licensure under:

a. Subdivision 2 of § 6.2-1602 of the Code of Virginia (any person subject to the general supervision of or subject to examination by the Commissioner of the Bureau of Financial Institutions of the Virginia State Corporation Commission);

b. Subdivision 3 of § 6.2-1602 of the Code of Virginia (any lender authorized to engage in business as a bank, savings institution, or credit union under the laws of the United States or any state, and subsidiaries and affiliates of such entities which lender, subsidiary or affiliate is subject to the general supervision or regulation of or subject to audit or examination by a regulatory body or agency of the United States or any state); or

c. Subdivision 5 of § 6.2-1602 of the Code of Virginia (agencies of the federal government, or any state or municipal government, or any quasi-governmental agency making or brokering mortgage loans under the specific authority of the laws of any state or the United States);

~~2. Have made any necessary filings or registrations and have received any and all necessary approvals or licenses in order to receive applications for mortgage loans in the Commonwealth of Virginia;~~

~~3.~~ 2. Have the demonstrated ability and experience in the receipt and processing of mortgage loan applications; and

~~4.~~ 3. Have such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

Each ~~field originator~~ originating agent approved by the authority shall enter into such agreement as the executive director shall require with respect to the receipt of applications for mortgage loans. ~~Field originators~~ Originating agents shall perform ~~such of~~ the duties and responsibilities of originating ~~agents~~ lenders under this chapter as the authority may require in such agreement.

M. ~~Field originators~~ Originating agents shall maintain adequate books and records with respect to mortgage loans for which they accept applications, shall permit the authority to examine such books and records, and shall submit to the authority such reports and information as the authority may require. The fees to the ~~field originators~~ originating agents for accepting applications shall be payable in such amount and at such time as the executive director shall determine.

N. In the case of mortgage loans for which applications are received by ~~field originators~~ originating agents, the authority may process and originate the mortgage loans; accordingly, unless otherwise expressly provided, the provisions of this chapter requiring the performance of any action by originating ~~agents~~ lenders shall not be applicable to the origination and processing by the authority of such mortgage loans, and any or all of such actions may be performed by the authority on its own behalf.

~~H. The authority may service mortgage loans for which the applications were received by field originators or any mortgage loan which, in the determination of the authority, originating agents and servicing agents will not service on terms and conditions acceptable to the authority or for which the originating agent or servicing agent has agreed to terminate the servicing thereof.~~

Part II
Program Requirements

13VAC10-40-30. Eligible persons and citizenship.

A. One person or multiple persons are eligible to be a borrower ~~or borrowers~~ of a single family loan if such person or all such persons satisfy the criteria and requirements in ~~these rules and regulations~~ this chapter. All references in ~~these rules and regulations~~ this chapter to an applicant or borrower shall, in the case of multiple applicants or borrowers, be deemed to refer to each applicant or borrower individually, unless the provision containing such reference expressly refers to the applicants or borrowers collectively.

B. Each applicant for an authority mortgage loan must either be a United States citizen, a lawful permanent resident alien as determined by the U.S. ~~Department of Immigration and Naturalization Service~~ Citizenship and Immigration Services or a nonpermanent resident alien provided the applicant has a

social security number and is eligible to work in the United States. In addition, applicants must meet any stricter citizenship or residency requirements of the insurer, guarantor, or investor with respect to the applicable authority loan program.

C. Each applicant must be 18 years of age or older or have been declared emancipated by order or decree of a court having jurisdiction.

13VAC10-40-40. Compliance with certain requirements of ~~the Internal Revenue Code of 1986, as amended ("~~the tax code~~").~~

A. The tax code imposes certain requirements and restrictions on the eligibility of mortgagors and residences for (i) the financing with the proceeds of tax-exempt bonds (as well as requirements and restrictions on the assumption of mortgage loans so financed); and (ii) the issuance of mortgage credit certificates.

B. The authority requires the following:

1. The mortgage revenue bond residence requirements;

2. The requirement that each applicant must not have had a present ownership interest in his principal residence within the preceding three years (the first-time homebuyer or three-year requirement); and

3. The mortgage revenue bond income requirements.

Notwithstanding the foregoing, certain authority loan programs described in 13VAC10-40-230, 13VAC10-40-250, 13VAC10-40-260, and 13VAC10-40-270 contain exceptions to the mortgage revenue bond requirements in this subsection.

C. In order to comply with these federal requirements and restrictions, as well as other authority requirements, the authority has established certain procedures ~~which~~ must be performed by the originating ~~agent~~ lender in order to determine such eligibility. The eligibility requirements for ~~the~~ each borrower ~~or the borrowers and,~~ the dwelling, and the procedures to be performed are described ~~below as well as the procedures to be performed~~ in this subsection. The originating ~~agent~~ lender will perform these procedures and evaluate ~~a~~ each borrower's ~~or borrowers'~~ eligibility prior to the authority's approval of each loan. No loan will be approved by the authority unless all of the federal eligibility requirements are met as well as the usual requirements of the authority set forth ~~in other parts of~~ this ~~originating~~ chapter and the origination guide, unless the executive director determines that it is reasonable or necessary to waive or modify any such requirements and that the financial interests of the authority are adequately protected.

~~The~~ In addition to the three mortgage revenue bond requirements set forth in subsection B of this section, the executive director may apply some or all of the ~~above-referenced tax-exempt~~ other tax-exempt bond requirements and restrictions set forth in the tax code to authority mortgage loans ~~that are not funded with tax-exempt bonds if the executive director determines that such requirement and restrictions are necessary~~ to enable the authority to effectively and efficiently allocate its current and anticipated financial resources so as to best meet the current and future housing needs of ~~the citizens throughout the Commonwealth~~ low and moderate income Virginians.

13VAC10-40-50. Eligible borrowers.

A. In order to be considered eligible for an authority mortgage loan, an applicant must, among other things, meet all of the following ~~federal~~ criteria:

1. Each applicant must not have had a present ownership interest in his principal residence within the three years preceding the date of execution of the mortgage loan documents (see subsection B of this section);

2. Each applicant must agree to occupy and use the residential property to be purchased as his permanent, principal residence within 60 days ~~(90 days,~~ or such longer amount of time as the executive director determines is reasonable in the case of a purchase and rehabilitation loan ~~as described in 13VAC10-40-200),~~ after the date of the closing of the mortgage loan (see subsection C of this section);

~~3. Each applicant must not use the proceeds of the mortgage loan to acquire or replace an existing mortgage or debt, except in the case of certain types of temporary financing (see subsection D of this section);~~

~~4.~~ 3. Each applicant must have contracted to purchase an eligible dwelling (see 13VAC10-40-60, Eligible dwellings);

~~5.~~ 4. Each applicant must execute an affidavit of borrower (Exhibit ~~E)~~ E2) at the time of loan application; and

~~6. The~~ 5. No applicant ~~or applicants must not~~ may receive income in an amount in excess of the applicable federal income limit imposed by the tax code (see 13VAC10-40-100, Maximum gross income)~~;~~.

~~7. Each applicant must agree not to sell, lease or otherwise transfer an interest in the residence or permit the assumption of his mortgage loan unless certain requirements are met (see 13VAC10-40-140, Loan assumptions); and~~

~~8. Each applicant must be over the age of 18 years or have been declared emancipated by order or decree of a court having jurisdiction.~~

B. An eligible borrower does not include any borrower who, at any time during the three years preceding the date of execution of the mortgage loan documents, had a ~~"~~present ownership interest~~" (as hereinafter defined)~~ in his principal residence. Each borrower must certify on the affidavit of

borrower that at no time during the three years preceding the execution of the mortgage loan documents has he had a present ownership interest in his principal residence. This requirement does not apply to residences located in "targeted areas" (see 13VAC10-40-70, Targeted areas); however, even if the residence is located in a "targeted area," the tax returns for the most recent taxable year (or the letter described in subdivision 3 below) must be obtained for the purpose of determining compliance with other requirements.

1. "Present ownership interest" includes:

a. A fee simple interest;

b. A joint tenancy, a tenancy in common, or a tenancy by the entirety;

c. The interest of a tenant shareholder in a cooperative;

d. A life estate;

e. A land contract, under which possession and the benefits and burdens of ownership are transferred although legal title is not transferred until some later time; and

f. An interest held in trust for the eligible borrower (whether or not created by the eligible borrower) that would constitute a present ownership interest if held directly by the eligible borrower.

Interests which do not constitute a present ownership interest include:

a. A remainder interest;

b. An ordinary lease with or without an option to purchase;

c. A mere expectancy to inherit an interest in a principal residence;

d. The interest that a purchaser of a residence acquires on the execution of an accepted offer to purchase real estate; and

e. An interest in other than a principal residence during the previous three years.

2. This requirement The present ownership interest limitation applies to any person who will execute the mortgage document or note and will have a present ownership interest (as defined above) in the eligible dwelling.

3. To verify that each eligible borrower meets the three-year requirement, the originating agent lender must obtain copies of signed federal income tax returns filed by the eligible borrower for the three tax years immediately preceding execution of the mortgage documents (or certified copies of the returns) or a copy of a letter from the Internal Revenue Service stating that its Form 1040A or 1040EZ was filed by the eligible borrower for any of the three most recent tax years for which copies of such returns are not obtained. If the eligible borrower was not required by law to file a federal income tax return for any of these three years and did not so file, and so states on the borrower affidavit, the requirement to obtain a copy of the federal income tax return or letter from the Internal Revenue Service for such year or years is waived: (i) the fully executed affidavit of borrower (Exhibit E2) signed by all borrowers and nonborrower occupants taking title; (ii) a completed Uniform Residential Loan Application (Form 1003); and (iii) the credit report. If the originating lender is unable to confirm from the affidavit of borrower, Form 1003, or the credit report that the borrowers or nonborrower occupants taking title meet the three-year requirement, additional documentation may be required, such as three years of federal tax returns or tax transcripts, rent verification, and other reports.

The If reviewing tax returns or tax transcripts, the originating agent lender shall examine the tax returns or tax transcripts particularly for any evidence that an eligible borrower may have claimed deductions for property taxes or for interest on indebtedness with respect to real property constituting his principal residence.

4. The originating agent lender must, with due diligence, verify the representations in the affidavit of borrower (Exhibit E) E2) regarding each eligible borrower's prior residency by reviewing any information including the Form 1003, a credit report and the, tax returns furnished by each eligible borrower or tax transcripts, rent verification, and other reports for consistency, and make a determination that on the basis of its review each borrower has not had present ownership interest in a principal residence at any time during the three-year period prior to the anticipated date of the loan closing.

C. Each eligible borrower must intend at the time of closing to occupy the eligible dwelling as a principal residence within 60 days (90 days (or such longer amount of time as the executive director determines is reasonable in the case of a purchase and rehabilitation loan) after the closing of the mortgage loan. Unless the residence can reasonably be expected to become the principal residence of each eligible borrower within 60 days (90 days (or such longer amount of time as the executive director determines is reasonable in the case of a purchase and rehabilitation loan) of the mortgage loan closing date, the residence will not be considered an eligible dwelling and may not be financed with a mortgage loan from the authority. Each eligible borrower must covenant to intend to occupy the eligible dwelling as a principal residence within 60 days (90 days (or such longer amount of time as the executive director determines is reasonable in the case of a purchase and rehabilitation loan) after the closing of the mortgage loan on the affidavit of borrower (to be updated at the closing of the mortgage loan) and as part of the attachment to the deed of trust.

1. A principal residence does not include any residence ~~which~~ that can reasonably be expected to be used: (i) primarily in a trade or business, (ii) as an investment property, or (iii) as a recreational or second home. A residence may not be used in a manner ~~which~~ that would permit any portion of the costs of the eligible dwelling to be deducted as a trade or business expense for federal income tax purposes or under circumstances where more than 15% of the total living area is to be used primarily in a trade or business.

2. The land financed by the mortgage loan may not provide, other than incidentally, a source of income to an eligible borrower. Each eligible borrower must indicate on the affidavit of borrower that, among other things:

a. No portion of the land financed by the mortgage loan provides a source of income (other than incidental income);

b. He does not intend to farm any portion (other than as a garden for personal use) of the land financed by the mortgage loan; and

c. He does not intend to subdivide the property.

3. Only such land as is reasonably necessary to maintain the basic ~~liveability~~ livability of the residence may be financed by a mortgage loan. The financed land must not exceed the customary or usual lot in the area. Generally, the financed land will not be permitted to exceed two acres, even in rural areas. However, exceptions may be made to permit lots larger than two acres, but in no event in excess of five acres: (i) if the land is owned free and clear and is not being financed by the loan, the lot may be as large as five acres, (ii) if difficulty is encountered locating a well or septic field, the lot may include the additional acreage needed, (iii) local city and county ordinances ~~which~~ that require more acreage will be taken into consideration, or (iv) if the lot size is determined by the authority, based upon objective information provided by the borrower, to be usual and customary in the area for comparably priced homes. The executive director may modify or waive such requirements if he determines that it is reasonable or necessary to do so and that the financial interests of the authority are adequately protected.

4. The affidavit of borrower (Exhibit ~~E)~~ E2) must be reviewed by the originating ~~agent~~ lender for consistency with each eligible borrower's ~~federal income tax returns and the credit report~~ Form 1003, credit report, tax returns or tax transcripts, rent verifications, and other reports, and the originating ~~agent~~ lender must, based on such review, make a determination that each borrower has not used any previous residence or any portion thereof primarily in any trade or business.

5. The originating ~~agent~~ lender shall establish procedures to (i) review correspondence, checks, and other documents received from ~~the~~ each borrower ~~or borrowers~~ during the 120-day period following the loan closing for the purpose of ascertaining that the address of the residence and the address of ~~the~~ each borrower ~~or borrowers~~ are the same and (ii) notify the authority if such addresses are not the same. Subject to the authority's approval, the originating ~~agent~~ lender may establish different procedures to verify compliance with this requirement.

~~D. Mortgage loans may be made only to an eligible borrower who did not have a mortgage (whether or not paid off) on the eligible dwelling at any time prior to the execution of the mortgage. Mortgage loan proceeds may not be used to acquire or replace an existing mortgage or debt for which an eligible borrower is liable or which was incurred on behalf of an eligible borrower, except in the case of construction period loans, bridge loans or similar temporary financing which has a term of 24 months or less.~~

~~1. For purposes of applying the new mortgage requirement, a mortgage includes deeds of trust, conditional sales contracts (i.e. generally a sales contract pursuant to which regular installments are paid and are applied to the sales price), pledges, agreements to hold title in escrow, a lease with an option to purchase which is treated as an installment sale for federal income tax purposes and any other form of owner financing. Conditional land sale contracts shall be considered as existing loans or mortgages for purposes of this requirement.~~

~~2. In the case of a mortgage loan (having a term of 24 months or less) made to refinance a loan for the construction of an eligible dwelling, the authority shall not make such mortgage loan until it has determined that such construction has been satisfactorily completed.~~

~~3. Prior to closing the mortgage loan, the originating agent must examine the affidavit of borrower (Exhibit E), the affidavit of seller (Exhibit F), and related submissions, including (i) each eligible borrower's federal income tax returns for the preceding three years, and (ii) credit report, in order to determine whether the eligible borrower will meet the new mortgage requirements. Based upon such review, the originating agent shall make a determination that the proceeds of the mortgage loan will not be used to repay or refinance an existing mortgage debt of any borrower and that each borrower did not have a mortgage loan on the eligible dwelling prior to the date hereof, except for permissible temporary financing described above.~~

~~E.~~ D. Any eligible borrower may not have more than one outstanding authority first mortgage loan.

13VAC10-40-60. Eligible dwellings.

~~A.~~ In order to qualify as an eligible dwelling for which an authority loan may be made, the residence must:

1. Be located in the Commonwealth;

2. Be a one-family detached residence, a ~~townhouse~~ one-family attached residence, or one unit of ~~an authority approved~~ a condominium meeting the requirements of the authority;

~~3. Satisfy the acquisition cost requirements set forth below;~~ and

~~4.~~ 3. Be owned or to be owned by the applicant in the form of fee simple interest.

The authority may decline to finance more than 25% of the units in any one condominium project, planned unit development (PUD), or subdivision if the executive director determines that financing additional units would be detrimental to the authority's financial interests after taking into consideration the ~~then~~ current and expected demand and supply of housing in the applicable geographic region.

~~B. The acquisition cost of an eligible dwelling may not exceed certain limits established by the U.S. Department of the Treasury in effect at the time of the application. Note: In all cases for new loans such federal limits equal or exceed the authority's sales price limits shown in 13VAC10-40-80. Therefore, for new loans the residence is an eligible dwelling if the acquisition cost is not greater than the authority's sales price limit. In the event that the acquisition cost exceeds the authority's sales price limit, the originating agent must contact the authority to determine if the residence is an eligible dwelling.~~

~~1. To determine if the acquisition cost is at or below the federal limits for assumptions, the originating agent or, if applicable, the servicing agent must in all cases contact the authority (see 13VAC10-40-140).~~

~~2. Acquisition cost means the cost of acquiring the eligible dwelling from the seller as a completed residence.~~

~~a. Acquisition cost includes:~~

~~(1) All amounts paid, either in cash or in kind, by the eligible borrower (or a related party or for the benefit of an eligible borrower) to the seller (or a related party or for the benefit of the seller) as consideration for the eligible dwelling. Such amounts include amounts paid for items constituting fixtures under state law, but not for items of personal property not constituting fixtures under state law. (See Exhibit R for examples of fixtures and items of personal property.)~~

~~(2) The reasonable costs of completing or rehabilitating the residence (whether or not the cost of completing construction or rehabilitation is to be financed with the mortgage loan) if the eligible dwelling is incomplete or is to be rehabilitated. As an example of reasonable completion cost, costs of completing the eligible dwelling so as to permit occupancy under local law would be included in the acquisition cost. A residence which includes unfinished areas (i.e. an area designed or intended to be completed or refurbished and used as living space, such as the lower level of a tri-level residence or the upstairs of a Cape Cod) shall be deemed incomplete, and the costs of finishing such areas must be included in the acquisition cost.~~

~~(3) The cost of land on which the eligible dwelling is located and which has been owned by an eligible borrower for a period no longer than two years prior to the construction of the structure comprising the eligible dwelling.~~

~~b. Acquisition cost does not include:~~

~~(1) Usual and reasonable settlement or financing costs. Such excluded settlement costs include title and transfer costs, title insurance, survey fees and other similar costs. Such excluded financing costs include credit reference fees, legal fees, appraisal expenses, points which are paid by an eligible borrower, or other costs of financing the residence. Such amounts must not exceed the usual and reasonable costs which otherwise would be paid. Where the buyer pays more than a pro rata share of property taxes, for example, the excess is to be treated as part of the acquisition cost.~~

~~(2) The imputed value of services performed by an eligible borrower or members of his family (brothers and sisters, spouse, ancestors and lineal descendants) in constructing or completing the residence.~~

~~3. The originating agent is required to obtain from each eligible borrower a completed affidavit of borrower which shall include a calculation of the acquisition cost of the eligible dwelling in accordance with this subsection B. The originating agent shall assist each eligible borrower in the correct calculation of such acquisition cost. The affidavit of seller shall also certify as to the acquisition cost of the eligible dwelling.~~

~~4. The originating agent shall for each new loan determine whether the acquisition cost of the eligible dwelling exceeds the authority's applicable sales price limit shown in 13VAC10-40-80. If the acquisition cost exceeds such limit, the originating agent must contact the authority to determine if the residence is an eligible dwelling for a new loan. (For an assumption, the originating agent or, if applicable, the servicing agent must contact the authority for this determination in all cases, see 13VAC10-40-140). Also, as part of its review, the originating agent must review the affidavit of borrower submitted by each mortgage loan applicant and must make a determination that the acquisition cost of the eligible dwelling has been calculated in accordance with this subsection B. In addition, the originating agent must compare the information contained in the affidavit of borrower with the~~

~~information contained in the affidavit of seller and other sources and documents such as the contract of sale for consistency of representation as to acquisition cost.~~

~~5. The authority reserves the right to obtain an independent appraisal in order to establish fair market value and to determine whether a dwelling is eligible for the mortgage loan requested.~~

The authority may finance a dwelling located on land owned by a community land trust, provided that (i) the first mortgage loan is secured by a leasehold estate on the property owned by the community land trust and a fee simple interest in the improvements on the property; (ii) the dwelling and the first mortgage loan meet all applicable insurer, guarantor, or investor requirements; and (iii) the term of the leasehold estate created by the ground lease must extend for at least five years beyond the maturity date of the first mortgage loan.

13VAC10-40-70. Targeted areas.

~~A. In accordance with the tax code, the authority will make a portion of the proceeds of an issue of its bonds available for financing eligible dwellings located in targeted areas for at least one year following the issuance of a series of bonds. The authority will exercise due diligence in making mortgage loans in targeted areas by advising originating agents and certain localities of the availability of such funds in targeted areas and by advising potential eligible borrowers of the availability of such funds through advertising and/or news releases. The amount, if any, allocated to an originating agent exclusively for targeted areas will be specified in a forward commitment agreement between the originating agent and the authority.~~

~~B.~~ Mortgage loans for eligible dwellings located in targeted areas ~~must comply in all respects with the requirements in 13VAC10-40-40 and elsewhere in this guide for all mortgage loans, except for~~ do not need to meet the three-year requirement described in 13VAC10-40-50 B. ~~Notwithstanding this exception, each applicant must still submit certain federal income tax records. However, they will be used to verify income and to verify that previously owned residences have not been primarily used in a trade or business (and not to verify nonhomeownership), and only those records for the most recent year preceding execution of the mortgage documents (rather than the three most recent years) are required. See that section for the specific type of records to be submitted.~~

~~The following definitions are applicable to targeted areas.~~

~~1. A targeted area is an area which is a qualified census tract, as described in b below, or an area of chronic economic distress, as described in c below.~~

~~2. A qualified census tract is a census tract in the Commonwealth in which 70% or more of the families have an income of 80% or less of the state-wide median family income based on the most recent "safe harbor" statistics published by the U.S. Treasury.~~

~~3. An area of chronic economic distress is an area designated as such by the Commonwealth and approved by the Secretaries of Housing and Urban Development and the Treasury under criteria specified in the tax code. PDS agents will be informed by the authority as to the location of areas so designated.~~

13VAC10-40-80. Sales price limits.

A. The executive director shall, from time to time, establish the applicable maximum allowable sales prices. Each such maximum allowable sales price shall be expressed as a percentage of the applicable maximum purchase price permitted or approved by the U.S. Department of the Treasury pursuant to the federal tax code or as a dollar amount, which percentage or dollar amount may vary by loan program and geographic region as determined by the executive director, after taking into consideration such factors as he deems appropriate, including, without limitation, the following factors:

1. The current and anticipated financial resources available to the authority to make mortgage loans;

2. The current and anticipated financial resources available to potential applicants from sources other than the authority to finance mortgage loans;

3. The current and anticipated demand for mortgage loans;

4. The prevailing mortgage loan terms available to potential applicants; and

5. The current and anticipated need for targeted or subsidized lending in each region based upon financial conditions and the housing market in such region.

B. The executive director shall apply the ~~foregoing~~ factors in subsection A of this section to establish the maximum allowable sales prices that enable the authority to effectively and efficiently allocate its current and anticipated financial resources so as to best meet the current and future housing needs of the citizens throughout the Commonwealth.

The authority shall from time to time inform its originating ~~agents and servicing agents~~ lenders by written notification ~~thereto~~ of the ~~foregoing~~ maximum allowable sales prices under this section expressed in dollar amounts for each area of the state, as established by the executive director. Any changes to the dollar amounts of such maximum allowable sales prices shall be effective as of such date as the executive director shall determine (subject to any exceptions for ~~pending loan reservations or applications~~ locked loans as the executive director may determine), and ~~authority is reserved to~~ the executive director ~~to~~ may implement any such changes on such date ~~or dates~~ as he shall deem necessary or appropriate to best accomplish the purposes of the program.

13VAC10-40-90. Net worth.

To be eligible for authority financing, ~~the~~ no applicant ~~or applicants cannot~~ may have a net worth exceeding 50% of the sales price of the eligible dwelling. (The value of life insurance policies, retirement plans, furniture, and household goods shall not be included in determining net worth.) In addition, the portion of ~~the~~ an applicant's ~~or applicants'~~ liquid assets ~~which~~ that are used to make the down payment and to pay closing costs, up to a maximum of 25% of the sale price, will not be included in the net worth calculation.

Any income producing assets needed as a source of income in order to meet the minimum income requirements for an authority loan will not be included in ~~the~~ an applicant's ~~or applicants'~~ net worth for the purpose of determining whether this net worth limitation has been violated. The executive director may modify or waive the net worth requirement if he determines that it is reasonable or necessary to do so and that the financial interests of the authority are adequately protected.

13VAC10-40-100. Maximum gross income.

A. As provided in 13VAC10-40-50 A ~~6~~ 5, the gross income of ~~the~~ an applicant ~~or applicants~~ for an authority mortgage loan may not exceed the applicable income limitation imposed by the U.S. Department of the Treasury. Because the income limits of the authority imposed by this section apply to all loans to which such federal limits apply and are in all cases below such federal limits, the requirements of 13VAC10-40-50 A ~~6~~ 5 are automatically met if ~~the~~ an applicant's ~~or applicants'~~ gross income does not exceed the applicable limits set forth in this section.

~~For the purposes hereof, the term "gross income" means the combined annualized gross income of all persons residing or intending to reside in a dwelling unit, from whatever source derived and before taxes or withholdings. For the purpose of this definition, annualized gross income means gross monthly income multiplied by 12. "Gross monthly income" is, in turn, the sum of monthly gross pay plus any additional income from overtime, part-time employment, bonuses, dividends, interest, royalties, pensions, Veterans Administration compensation, net rental income plus other income (such as alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income received from trusts, and income received from business activities or investments)~~ B. Gross income is calculated by projecting gross income forward for the 12-month period beginning on the date of loan application. Typically, income such as bonuses, overtime, and commissions will be averaged for the most recent 12-month period. If information is unavailable for this period, the originating lender may average the past year and year-to-date bonuses, overtime, and commissions. This average multiplied by 12 will be added to current base salary to determine gross income. All such earnings must be included in gross income unless the employer documents that such earnings will not be continued. The following are included in gross income: base salary, overtime, part-time employment, bonuses, dividends, interest, royalties, pensions, Veterans Administration compensation, net rental income, alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income from trusts, and income from business activities or investments.

C. The executive director shall, from time to time, establish the applicable maximum gross incomes. Each such maximum gross income shall be expressed as a percentage (which may be based on the number of persons expected to occupy the dwelling upon financing of the mortgage loan) of the applicable median family income ~~(as defined in Section 143(f)(4) of the Internal Revenue Code of 1986, as amended and referred to herein as the "median family income")~~ or as a dollar amount, which percentage or dollar amount may vary by loan program and geographic region as determined by the executive director, after taking into consideration such factors as he deems appropriate, including, without limitation, the following factors:

1. The current and anticipated financial resources available to the authority to make mortgage loans;

2. The current and anticipated financial resources available to potential applicants from sources other than the authority to finance mortgage loans;

3. The current and anticipated demand for mortgage loans;

4. The prevailing mortgage loan terms available to potential applicants; and

5. The current and anticipated need for targeted or subsidized lending in each region based upon financial conditions and the housing market in such region.

D. The executive director shall apply the ~~foregoing~~ factors in subsection C of this section to establish the maximum gross incomes that enable the authority to effectively and efficiently allocate its current and anticipated financial resources so as to best meet the current and future housing needs of ~~the citizens throughout the Commonwealth~~ low and moderate income Virginians.

The authority shall from time to time inform its originating ~~agents and servicing agents~~ lenders by written notification ~~thereto~~ of the ~~foregoing~~ maximum gross incomes under this section expressed in dollar amounts for each area of the state, as established by the executive director, and the number of persons to occupy the dwelling, if applicable. Any changes to the dollar amounts of such maximum gross incomes shall be effective as of such date as the executive director shall determine (subject to any exceptions for ~~pending loan reservations or applications~~ locked loans as the executive director may determine), and ~~authority is reserved to~~ the executive director ~~to~~ may implement any such changes on

such date ~~or dates~~ as he shall deem necessary or appropriate to best accomplish the purposes of the program.

13VAC10-40-110. Calculation of maximum loan amount.

~~Single family detached residence, townhouse (fee simple ownership) and approved condominium Maximum~~ A maximum of 100% ~~(or,~~ or in the case of an FHA, VA, Rural Development, Fannie Mae, or Freddie Mac loan or a loan with private mortgage insurance, such other percentage as may be permitted by FHA, VA, Rural Development, Fannie Mae, Freddie Mac, or the private mortgage insurance ~~provider)~~ provider of the lesser of the sales price or appraised value~~, except as may otherwise be approved by the executive director; provided, however,~~. However, the executive director may establish ~~lower~~ other percentages if the executive director determines that ~~lower~~ other percentages are necessary to protect the authority's financial interests or to enable the authority to effectively and efficiently allocate its current and anticipated financial resources so as to best meet the current and future housing needs of the citizens throughout the Commonwealth.

In the case of an FHA, VA, or Rural Development loan, the FHA, VA, or Rural Development insurance fees or guarantee fees charged in connection with such loan ~~(and, if an FHA loan, the FHA permitted closing costs as well)~~, and other costs as allowed by the applicable insurer or guarantor, may be included in the calculation of the maximum loan amount in accordance with applicable FHA, VA or Rural Development requirements~~; provided, however, that~~. However, in no event shall this revised maximum loan amount, which includes such fees and closing costs, be permitted to exceed the authority's maximum allowable sales price limits set forth ~~herein~~ in this chapter.

13VAC10-40-120. Mortgage insurance requirements.

A. Unless the loan is an FHA, VA, or Rural Development loan, ~~the borrower or~~ all borrowers are required to purchase at time of loan closing ~~full~~ private mortgage insurance ~~(in an amount equal to the percentage of the loan that exceeds 80% of the lesser or sales price or appraised value of the property or such higher percentage as the executive director may determine is necessary to protect the authority's financial interests) on each loan the amount of which exceeds 80% of the lesser of sales price or appraised value of the property to be financed~~ in such amount as required by the applicable investor or such other amount as required by the executive director. Such insurance shall be issued by a company acceptable to the authority. The originating ~~agent~~ lender is required to escrow for annual payment of mortgage insurance, unless an alternative payment plan is approved by the authority. If the authority requires FHA, VA, or Rural Development insurance or guarantee, the loan will ~~either, at the election of the authority, (a) be closed in the authority's name in accordance with the procedures and requirements herein or (b)~~ be closed in the originating ~~agent's~~ lender's name and purchased by the authority once the FHA Certificate of Insurance, VA Guaranty, or Rural Development Guarantee has been obtained ~~or subject to the condition that such FHA Certificate of Insurance, VA Guaranty or Rural Development Guarantee be obtained. In the event that the authority purchases an FHA, VA or Rural Development loan, the originating agent must enter into a purchase and sale agreement on such form as shall be provided by the authority~~. For assumptions of conventional loans (i.e., loans other than FHA, VA, or Rural Development loans), ~~full~~ private mortgage insurance as described ~~above~~ in this subsection is required unless waived by the authority.

B. The executive director may waive the requirements for private mortgage insurance in ~~the preceding paragraph~~ subsection A of this section for a loan having a principal amount in excess of 80% of the lesser of sales price or appraised value of the property to be financed if ~~the applicant satisfies the criteria set forth in subdivisions 11 through 17 of 13VAC10-40-230 or if~~ the executive director otherwise determines that the financial integrity of the program is protected by the financial strength of ~~the~~ an applicant ~~or applicants~~ or the terms of the financing.

C. If the executive director determines it to be necessary to protect the authority's financial interests, the executive director may require that the company issuing such private mortgage insurance have a Moody's Investors Service Insurance Financial Strength rating not lower than Aa3 or a Standard & Poor's Ratings Services Financial Strength rating not lower than AA-.

13VAC10-40-130. Underwriting.

A. In general, to be eligible for authority financing, an applicant ~~or applicants~~ must satisfy the following underwriting criteria, which demonstrate the willingness and ability to repay the mortgage debt and adequately maintain the financed property.

1. ~~The~~ An applicant ~~or applicants~~ must document the receipt of a stable current income which indicates that the applicant ~~or applicants~~ will receive future income ~~which~~ that is sufficient to enable the timely repayment of the mortgage loan as well as other existing obligations and living expenses.

2. ~~The~~ Each applicant ~~or, in the case of multiple applicants, the applicants individually and collectively~~ must possess a credit history ~~which~~ that reflects the ability to successfully meet financial obligations and a willingness to repay obligations in accordance with established credit repayment terms.

3. ~~An applicant having a foreclosure instituted by the authority on his property financed by an authority mortgage loan will not be eligible for a mortgage loan hereunder. The authority will consider previous foreclosures (other than on authority financed loans) on an~~

~~exception basis based upon circumstances surrounding~~ ~~the~~ ~~cause of~~ ~~the~~ ~~foreclosure, length of time since~~ ~~the~~ ~~foreclosure,~~ ~~the~~ ~~applicant's subsequent credit history and overall financial stability. Under no circumstances will an applicant be considered for an authority loan within three years from~~ ~~the~~ ~~date of~~ ~~the~~ ~~foreclosure.~~ Applicants with prior significant mortgage events (foreclosure, deed in lieu, or short sale) must meet the applicable insurer, guarantor, or investor requirements in addition to any additional requirements imposed by the executive director. The authority has complete discretion to decline to finance a loan when a previous foreclosure is involved.

4. The ~~applicant or~~ applicants must document that sufficient funds will be available for required down payment and closing costs. ~~a. The terms and sources of any loan to be used as a source for down payment or closing costs must be reviewed and approved in advance of loan approval by the authority. b.~~ Sweat equity, the imputed value of services performed by an eligible borrower or members of ~~his~~ the borrower's family ~~(brothers and sisters~~ (siblings, spouse, ancestors, and lineal descendants) in constructing or completing the residence, generally is not an acceptable source of funds for ~~down payment~~ downpayment and closing costs. Any sweat equity allowance must be approved by the authority prior to loan approval.

5. Proposed monthly housing expenses compared to current monthly housing expenses will be reviewed. If there is a substantial increase in such expenses, ~~the~~ an applicant ~~or applicants~~ must demonstrate his ability to pay the additional expenses.

6. All applicants are encouraged to attend a home ownership educational program to be better prepared to deal with the home buying process and the responsibilities related to homeownership. The authority may require all applicants applying for certain authority loan programs to complete an authority approved homeownership education program prior to loan approval.

B. In addition to the requirements set forth in subsection A of this section, ~~the following requirements must be met in order to satisfy the authority's underwriting requirements for conventional loans~~ to be eligible for authority financing, an applicant must satisfy the specific underwriting criteria of the insurer, guarantor, or investor with respect to the applicable authority loan program. However, additional or more stringent requirements may be imposed (i) by private mortgage insurance companies with respect to those loans on which private mortgage insurance is required~~; (ii) on loans as described in the last paragraph of 13VAC10-40-120; or (iii) on loans that may be sold by the authority to an investor (including, without limitation, Fannie Mae, Freddie Mac, and Ginnie Mae)~~ or (ii) by the executive director, in which ~~case~~ cases such additional or more stringent requirements ~~of the investor~~ will apply.

C. The authority reserves the right to obtain an independent appraisal in order to establish the fair market value of the property and to determine whether the dwelling is eligible for the mortgage loan requested.

D. The FHA mortgage insurance premium fee, the VA funding fee, and the Rural Development guarantee fee can be included in the loan amount provided the final loan amount does not exceed the authority's maximum allowable sales price.

~~1. The following rules apply to the authority's employment and income requirement.~~

~~a. Employment for the preceding two-year period must be documented. Education or training for employment during this two-year period shall be considered in satisfaction of this requirement if such education or training is related to an applicant's current line of work and adequate future income can be anticipated because such education and training will expand the applicant's job opportunities. The applicant must be employed a minimum of six months with present employer. An exception to the six-month requirement can be granted by the authority if it can be determined that the type of work is similar to previous employment and previous employment was of a stable nature.~~

~~b. Note: Under the tax code, the residence may not be expected to be used in trade or business. (See 13VAC10-40-50 C.) Any self-employed applicant must have a minimum of two years of self-employment with the same company and in the same line of work. In addition, the following information is required at the time of application:~~

~~(1) Federal income tax returns for the two most recent tax years.~~

~~(2) Balance sheets and profit and loss statements prepared by an independent public accountant.~~

~~In determining the income for a self-employed applicant, income will be averaged for the two-year period.~~

~~c. The following rules apply to income derived from sources other than primary employment.~~

~~(1) When considering alimony and child support. A copy of the legal document and sufficient proof must be submitted to the authority verifying that alimony and child support are court ordered and are being received. Child support payments for children 15 years or older are not accepted as income in qualifying an applicant or applicants for a loan.~~

~~(2) When considering social security and other retirement benefits. Social Security Form No. SSA-2458 must be~~

submitted to verify that applicant is receiving social security benefits. Retirement benefits must be verified by receipt or retirement schedules. VA disability benefits must be verified by the VA. Educational benefits and social security benefits for dependents 15 years or older are not accepted as income in qualifying an applicant or applicants for a loan.

(3) All part-time employment must be continuous for a minimum of 24 months, except that the authority may consider part-time employment that is continuous for more than 12 months but less than 24 months if such part-time employment is of a stable nature and is likely to continue after closing of the mortgage loan.

(4) Overtime earnings must be guaranteed by the employer or verified for a minimum of two years. Bonus and commissions must be reasonably predictable and stable and the applicant's employer must submit evidence that they have been paid on a regular basis and can be expected to be paid in the future.

2. The following rules apply to each applicant's credit:

a. The authority requires that an applicant's previous credit experience be satisfactory. Poor credit references without an acceptable explanation will cause a loan to be rejected. Satisfactory credit references and history are considered to be important requirements in order to obtain an authority loan. The executive director may impose a minimum credit score requirement if the executive director determines that such a requirement is standard and customary in the single family mortgage loan industry and is necessary to protect the authority's financial interests.

b. An applicant will not be considered for a loan if the applicant has been adjudged bankrupt within the past two years. If longer than two years, the applicant must submit a written explanation giving details surrounding the bankruptcy. The authority has complete discretion to decline a loan when a bankruptcy is involved.

c. An applicant is required to submit a written explanation for all judgments and collections. In most cases, judgments and collections must be paid before an applicant will be considered for an authority loan.

3. The authority reserves the right to obtain an independent appraisal in order to establish the fair market value of the property and to determine whether the dwelling is eligible for the mortgage loan requested.

4. The applicant or applicants satisfy the authority's minimum income requirement for financing if the monthly principal and interest (at the rate determined by the authority), tax, insurance ("PITI") and other additional monthly fees such as condominium association fees (excluding unit utility charges), townhouse assessments, etc. do not exceed 32% of monthly gross income and if the monthly PITI plus outstanding monthly debt payments with more than 10 months duration (and payments on debts lasting less than 10 months, if making such payments will adversely affect the applicant's or applicants' ability to make mortgage loan payments in the months following loan closing) do not exceed 40% of monthly gross income (see Exhibit B). However, with respect to those mortgage loans on which private mortgage insurance is required, the private mortgage insurance company may impose more stringent requirements. If either of the percentages set forth are exceeded, compensating factors may be used by the authority, in its sole discretion, to approve the mortgage loan.

5. Funds necessary to pay the downpayment and closing costs must be deposited at the time of loan application. The authority does not permit an applicant to borrow funds for this purpose unless approved in advance by the authority. If the funds are being held in an escrow account by the real estate broker, builder or closing attorney, the source of the funds must be verified. A verification of deposit from the parties other than financial institutions authorized to handle deposited funds is not acceptable.

6. The applicant may receive a gift from only a relative, employer or nonprofit entity not involved in the transfer or financing of the property. The individual(s) making the gift must provide a letter to the authority confirming that the transfer of funds is a gift with no obligation on the part of an applicant to repay the funds at any time. The party making the gift must submit proof that the funds are available. The executive director may approve gifts from other sources provided the executive director determines that such transfer of funds to the applicant is not subject to repayment by the applicant and is not made in consideration of any past or future obligation of the applicant or in consideration of any terms of the property transfer or mortgage loan transaction.

7. Seller contributions for settlement or financing costs (including closing costs, discount points and upfront mortgage insurance premiums) may not exceed the lesser of 6.0% of the sales price or the amount permitted by the applicable mortgage insurer guidelines.

C. The following rules are applicable to FHA loans only.

1. The authority will normally accept FHA underwriting requirements and property standards for FHA loans. However, the applicant or applicants must satisfy the underwriting criteria set forth in subsection A of this section and most of the authority's basic eligibility requirements including those described in 13VAC10-40-30 through 13VAC10-40-100 hereof remain in effect due to treasury restrictions or authority policy. In addition, the executive director may impose one or more of the requirements of subsection B of this section to FHA loans

on the same or less stringent basis as they apply to the authority's conventional loans if the executive director determines that such requirements are necessary to protect its financial interests.

2. The applicant's or applicants' mortgage insurance premium fee may be included in the FHA acquisition cost and may be financed provided that the final loan amount does not exceed the authority's maximum allowable sales price. In addition, in the case of a condominium, such fee may not be paid in full in advance but instead is payable in annual installments.

3. The FHA allowable closing fees may be included in the FHA acquisition cost and may be financed provided the final loan amount does not exceed the authority's maximum allowable sales price.

4. FHA appraisals are acceptable. VA certificates of reasonable value (CRV's) are acceptable if acceptable to FHA.

D. The following rules are applicable to VA loans only.

1. The authority will normally accept VA underwriting requirements and property guidelines for VA loans. However, the applicant or applicants must satisfy the underwriting criteria set forth in subsection A of this section and most of the authority's basic eligibility requirements (including those described in 13VAC10-40-30 through 13VAC10-40-100) remain in effect due to treasury restrictions or authority policy. In addition, the executive director may impose one or more of the requirements of subsection B of this section to VA loans on the same or less stringent basis as they apply to the authority's conventional loans if the executive director determines that such requirements are necessary to protect its financial interests.

2. The funding fee can be included in loan amount provided the final loan amount does not exceed the authority's maximum allowable sales price.

3. VA certificates of reasonable value (CRV's) are acceptable in lieu of an appraisal.

E. The following rules are applicable to Rural Development loans only.

1. The authority will normally accept Rural Development underwriting requirements and property standards for Rural Development loans. However, the applicant or applicants must satisfy the underwriting criteria set forth in subsection A of this section and most of the authority's basic eligibility requirements including those described in 13VAC10-40-30 through 13VAC10-40-100 remain in effect due to treasury restrictions or authority policy. In addition, the executive director may impose one or more of the requirements of subsection B of this section to Rural Development loans on the same or less stringent basis as they apply to the authority's conventional loans if the executive director determines that such requirements are necessary to protect its financial interests.

2. The Rural Development guarantee fee can be included in loan amount provided the final loan amount does not exceed the authority's maximum allowable sales price.

F. With respect to FHA, VA, RD and conventional loans, the authority permits the deposit of a sum of money (the "buydown funds") by a party (the "provider") with an escrow agent, a portion of which funds are to be paid to the authority each month in order to reduce the amount of the borrower's or borrowers' monthly payment during a certain period of time. Such arrangement is governed by an escrow agreement for buydown mortgage loans (see Exhibit V) executed at closing (see 13VAC10-40-180 for additional information). The escrow agent will be required to sign a certification (Exhibit X) in order to satisfy certain insurer or guarantor requirements. E. For the purposes of underwriting buydown buy-down mortgage loans, the reduced monthly payment amount may be taken into account based on the applicable insurer or, guarantor, or investor guidelines then in effect (see also subsection C, D or E of this section, as applicable).

G. Unlike the program described in subsection E of this section which permits a direct buydown of the borrower's or borrowers' monthly payment, the authority also from time to time permits the buydown of the interest rate on a conventional, FHA or VA mortgage loan for a specified period of time.

13VAC10-40-140. Loan assumptions.

A. VHDA The authority may from time to time, in its discretion, permit assumptions of all or some of its single family mortgage loans, subject to satisfaction of (i) the applicable requirements in this section of the insurer, guarantor, or investor with respect to the applicable authority loan program and (ii) the requirements of the tax code if the mortgage loan was funded with the proceeds of tax-exempt bonds; provided, however, that assumptions shall be permitted when required by the mortgage insurer or, guarantor, or investor rules or applicable law. if the applicable requirements in this section are met. For all loans closed prior to January 1, 1991, except FHA loans which were closed during calendar year 1990, the maximum gross income for the person or persons assuming a loan shall be 100% of the applicable median family income. For such FHA loans closed during 1990, if assumed by a household of three or more persons, the maximum gross income shall be 115% of the applicable median family income (140% for a residence in a targeted area) and if assumed by a household of fewer than three persons, the maximum gross income shall be 100% of the applicable median family income (120% for a residence in a targeted area). For all loans closed after January 1, 1991, the maximum gross income for the person or persons assuming loans shall be the highest percentage, as then in effect under

~~13VAC10-40-100 A, of applicable median family income for the number or persons to occupy the dwelling upon assumption of the mortgage loan, unless otherwise provided in the deed of trust. The requirements for each of the two different categories of mortgage loans listed below (and the subcategories within each) are as follows:~~

~~1. The following rules apply to assumptions of conventional loans, if permitted by the authority.~~

~~a. For assumptions of conventional loans financed by the proceeds of bonds issued on or after December 17, 1981, the requirements of the following sections hereof must be met:~~

~~(1) Maximum gross income requirement in 13VAC10-40-140 A~~

~~(2) 13VAC10-40-50 C (Principal residence requirement)~~

~~(3) 13VAC10-40-130 (Authority underwriting requirements)~~

~~(4) 13VAC10-40-50 B (Three-year requirement)~~

~~(5) 13VAC10-40-60 B (Acquisition cost requirements)~~

~~(6) 13VAC10-40-120 (Mortgage insurance requirements).~~

~~b. For assumptions of conventional loans financed by the proceeds of bonds issued prior to December 17, 1981, the requirements of the following sections hereof must be met:~~

~~(1) Maximum gross income requirement in 13VAC10-40-140 A~~

~~(2) 13VAC10-40-50 C (Principal residence requirements)~~

~~(3) 13VAC10-40-130 (Authority underwriting requirements)~~

~~(4) 13VAC10-40-120 (Mortgage insurance requirements).~~

~~2. The following rules apply to assumptions of FHA, VA or Rural Development loans, if permitted by the authority.~~

~~a. For assumptions of FHA, VA or Rural Development loans financed by the proceeds of bonds issued on or after December 17, 1981, the following conditions, if applicable, must be met:~~

~~(1) Maximum gross income requirement in this 13VAC10-40-140 A~~

~~(2) 13VAC10-40-50 C (Principal residence requirement)~~

~~(3) 13VAC10-40-50 B (Three-year requirement)~~

~~(4) 13VAC10-40-60 B (Acquisition cost requirements).~~

~~In addition, all applicable FHA, VA or Rural Development underwriting requirements, if any, must be met.~~

~~b. For assumptions of FHA, VA or Rural Development loans financed by the proceeds of bonds issued prior to December 17, 1981, only the applicable FHA, VA or Rural Development underwriting requirements, if any, must be met.~~

B. If the authority ~~will permit~~ permits an assumption, the authority will determine whether or not the applicable requirements ~~referenced above~~ in subsection A of this section for assumption of the loan have been met and will advise the originating ~~agent or servicing agent~~ lender of such determination in writing. The authority will further advise the originating ~~agent or servicing agent~~ lender of all other requirements necessary to complete the assumption process. Such requirements may include but are not limited to the submission of satisfactory evidence of hazard insurance coverage on the property, approval of the deed of assumption, satisfactory evidence of mortgage insurance or mortgage guaranty ~~including, if applicable, pool insurance~~, submission of an escrow transfer letter, and execution of ~~a Recapture Requirement Notice (VHDA Doc. R-1)~~ the programs disclosure and borrower affidavit (Exhibit E2) containing a recapture tax notice.

13VAC10-40-150. ~~Leasing, loan~~ Loan term~~,~~ and owner occupancy.

~~A. The owner may not lease the property without first contacting the authority.~~

~~B. Loan~~ A. No loan terms may ~~not~~ exceed 30 years.

~~C.~~ B. No loan will be made unless the residence is to be occupied by the owner as the owner's principal residence.

13VAC10-40-160. ~~Reservations/fees~~ Loan lock-in and fees.

A. ~~The authority currently reserves funds for each mortgage loan on a first come, first serve basis. Reservations are made by specific originating agents or field originators with respect to specific applicants and properties. No substitutions are permitted. Similarly, locked in interest rates are also nontransferable. However, if the applicant can document circumstances beyond the applicant's control constituting good cause, the executive director may permit such substitution and transfer. Funds will not be reserved longer than 60 days unless the originating agent requests and receives an additional one time extension prior to the 60 day deadline; provided, however, the foregoing time periods may be shortened by the executive director as he deems necessary if the mortgage loan is to be sold by the authority to an investor (including, without limitation, Fannie Mae, Freddie Mac, and Ginnie Mae). Locked in interest rates on all loans, including those on which there may be a VA Guaranty, cannot be reduced under any circumstances~~ Authority loans

may be locked-in by originating lenders for specific borrowers and properties. The interest rate is locked-in after loan application and after the originating lender has determined that the borrower meets the eligibility requirements and guidelines for the loan program. No substitutions of borrower, property, or originating lender are permitted. A change in loan program may require the loan to be relocked at different terms.

B. ~~The applicant or applicants, including an applicant or applicants for a loan to be guaranteed by VA, may request a second reservation if the first has expired or has been cancelled. If the second reservation is made within 12 months of the date of the original reservation, the interest rate will be the greater of (i) the locked-in rate or (ii) the current rate offered by the authority at the time of the second reservation. However, if the applicant can document circumstances beyond the applicant's control constituting good cause, the executive director may waive the requirement in the preceding sentence~~ Loans may be locked-in at an interest rate for different periods of time. The loan must close by the lock-in expiration date.

C. ~~The originating agent or field originator shall collect a nonrefundable reservation fee in such amount and according to such procedures as the authority may require from time to time. Under no circumstances is this fee refundable. A second reservation fee must be collected for a second reservation. No substitutions of applicants or properties are permitted~~ The originating lender may request extensions to the rate lock period, up to a maximum period of time. Lock extension requests must be submitted on or before the lock expiration date. Each extension may be subject to a fee. This cost will be deducted from the net price of the loan. Extensions will not be processed on expired locks.

D. ~~The following other fees shall be collected.~~

~~1. In connection with the origination and closing of the loan, the originating agent shall collect at closing or, at the authority's option, simultaneously with the acceptance of the authority's commitment, an amount equal to 1.0% of the loan amount (please note that for FHA loans the loan amount for the purpose of this computation is the base loan amount only); provided, however, that the executive director may require the payment of an additional fee not in excess of 1.0% of the loan amount in the case of a step loan (i.e., a loan on which the initial interest rate is to be increased to a new interest rate after a fixed period of time). If the loan does not close, then the origination fee shall be waived.~~

~~2. The originating agent shall collect at the time of closing an amount equal to 1.0% of the loan amount.~~

~~If the executive director determines that the financial integrity of the program is protected by an adjustment to the rate of interest charged to the applicant or applicants or otherwise, the authority may provide the applicant or applicants with the option of an alternative fee requirement~~ Unless otherwise stated in specific program guidelines, the originating lender may not earn compensation in excess of such amount set forth in the origination guide, including any points charged and the service release premium, on each loan. Any excess compensation must be applied as a lender credit to the borrower. In addition, the originating lender may collect fees for reimbursement of costs incurred, such as credit reports, appraisals, tax service fees, or flood certification fees, as applicable.

E. Unless otherwise stated in specific program guidelines, a service release premium will be paid to the originating lender by the authority at the time of purchase in such amount set forth in the origination guide. The premium will be for both first and second mortgages if applicable. This will be included in the net price of the loan when purchased by the authority.

F. For all loan programs, originating lenders are allowed to collect customary miscellaneous fees (i.e., underwriting, document review fees) that have been properly disclosed to the applicant at the time of loan application.

13VAC10-40-170. ~~Commitment~~ Loan decision.

A. ~~Upon approval of the applicant or applicants, the authority will send a mortgage loan commitment to the borrower or borrowers in care of the originating agent. The originating agent shall ask the borrower or borrowers to indicate acceptance of the mortgage loan commitment by signing and returning it to the originating agent prior to settlement~~ Nondelegated lenders or delegated lenders submitting loans for programs that are not eligible for the delegated process, will submit loans to the authority for approval. Upon approval of an applicant, the authority will send a loan approval to the originating lender. If a loan is denied, the authority will send a notification to the originating lender.

~~A commitment must be issued in writing by an authorized officer of the authority and signed by the applicant or applicants before a loan may be closed. The term of a commitment may be extended in certain cases upon written request by the applicant or applicants and approved by the authority. If an additional commitment is issued to an applicant or applicants, the interest rate may be higher than the rate offered in the original commitment and additional fees may be charged. Such new rate and the availability of funds therefor shall in all cases be determined by the authority in its discretion.~~

B. ~~If the application fails to meet any of the standards, criteria and requirements herein, a loan rejection letter will be issued by the authority (see Exhibit L). In order to have the application reconsidered, the applicant or applicants must resubmit the application within 30 days after loan rejection. If~~

~~the application is so resubmitted, the credit documentation cannot be more than 90 days old and the appraisal not more than six months old.~~ Delegated lenders will approve the loan without prior review by the authority.

C. For mortgage loans to be made by the authority directly to borrowers in underserved markets, the authority will issue the loan approval or loan denial directly to the loan applicant.

13VAC10-40-180. Buy-down ~~points~~ mortgage loans.

~~With respect to checks for buy-down points under both the monthly payment buydown program described in 13VAC10-40-130 F above and the interest rate buydown program described in 13VAC10-40-130 G), A certified or cashier's check made payable to the authority is to be provided at loan closing for buy-down points, if any. Under the tax code, the original proceeds of a bond issue may not exceed the amount necessary for the "governmental purpose" thereof by more than 5.0%. If buy-down points are paid out of mortgage loan proceeds (which are financed by bonds), then this federal regulation is violated because bond proceeds have in effect been used to pay debt service rather than for the proper "governmental purpose" of making mortgage loans. Therefore, it is required that buy-down fees be paid from the seller's own funds and not be deducted from loan proceeds. Because of this requirement, buy-down funds may not appear as a deduction from the seller's proceeds on the HUD-1 Settlement Statement~~ The authority may permit buy-down mortgage loan options. Such buy-down mortgage loan options must meet all applicable insurer, guarantor, or investor requirements.

13VAC10-40-190. Property guidelines.

~~A.~~ For each application the authority must make the determination that the property will constitute adequate security for the loan. That determination ~~shall in turn~~ may be based ~~solely~~ in whole or in part upon a real estate appraisal's determination of the value and condition of the property, unless an appraisal is not required based upon the applicable insurer, guarantor, or investor program requirements. Such appraisal must be performed by an appraiser licensed in the Commonwealth of Virginia.

When the residence is located in an area experiencing a decline in property values as determined by the appraiser or the executive director based upon objective quantitative data, the executive director may establish additional requirements, including~~, without limitation,~~ lower loan to value ratios, for such loan as determined necessary by the executive director to protect the financial interests of the authority.

All properties must be structurally sound and in adequate condition to preserve the continued marketability of the property and to protect the health and safety of the occupants. Eligible properties must possess features ~~which~~ that are acceptable to typical purchasers in the subject market area and provide adequate amenities. Eligible properties must meet ~~Fannie Mae and Freddie Mac property guidelines unless otherwise approved by the authority~~ the property guidelines of the applicable insurer, guarantor, or investor.

~~All properties must be structurally sound and in adequate condition to preserve the continued marketability of the property and to protect the health and safety of the occupants. Eligible properties must possess features that are acceptable to typical purchasers in the subject market area and provide adequate amenities. Eligible properties must meet FNMA and FHLMC property guidelines unless otherwise approved by the authority.~~

In addition, manufactured housing, both new construction and certain existing, may be financed only if the loan ~~is insured 100% by FHA (see subsection C of this section).~~ meets the requirements of the applicable insurer, guarantor, or investor. Manufactured housing must also meet federal manufactured home construction and safety standards administered by the U.S. Department of Housing and Urban Development; be permanently attached to the land and anchored per manufacturer specifications or state and local building codes; and have the wheels, axles, and trailer hitches removed. In addition, the property must be assessed and taxed as real estate, and there must be evidence that the title has been surrendered to DMV and all personal property liens released. The authority may also impose other property requirements and offer other financing terms for manufactured housing, provided that the executive director determines that such property requirements and financing terms adequately protect the financial integrity of the program.

~~B. The following rules apply to conventional loans.~~

~~1. The following requirements apply to both new construction and existing housing to be financed by a conventional loan: (i) all property must be located on a state maintained road; provided, however, that the authority may, on a case-by-case basis, approve financing of property located on a private road acceptable to the authority if the right to use such private road is granted to the owner of the residence pursuant to a recorded right-of-way agreement providing for the use of such private road and a recorded maintenance agreement provides for the maintenance of such private road on terms and conditions acceptable to the authority (any other easements or rights-of-way to state maintained roads are not acceptable as access to properties); (ii) any easements, covenants or restrictions which will adversely affect the marketability of the property, such as high tension power lines, drainage or other utility easements will be considered on a case-by-case basis to determine whether such easements, covenants or restrictions will be acceptable to the authority; (iii) property with available water and sewer hookups must utilize them; and (iv) property without available water and sewer hookups may have their own well and septic system;~~

~~provided that joint ownership of a well and septic system will be considered on a case by case basis to determine whether such ownership is acceptable to the authority, provided further that cisterns will be considered on a case-by-case basis to determine whether the cistern will be adequate to serve the property.~~

~~2. New construction financed by a conventional loan must also meet Virginia Statewide Building Code and local code.~~

~~C. The following rules apply to FHA, VA or Rural Development loans.~~

~~1. Both new construction and existing housing financed by an FHA, VA or Rural Development loan must meet all applicable requirements imposed by FHA, VA or Rural Development.~~

~~2. Manufactured housing being financed by FHA loans must also meet federal manufactured home construction and safety standards, satisfy all FHA insurance requirements, be on a permanent foundation to be enclosed by a perimeter masonry curtain wall conforming to standards of the Virginia Statewide Building Code, be permanently affixed to the site owned by the borrower or borrowers and be insured 100% by FHA under its section 203B program. In addition, the property must be classified and taxed as real estate and no personal property may be financed.~~

13VAC10-40-200. ~~Substantially rehabilitated.~~ (Repealed.)

~~For the purpose of qualifying as substantially rehabilitated housing under the authority's maximum sales price limitations, the housing unit must meet the following definitions:~~

~~1. Substantially rehabilitated means improved to a condition which meets the authority's underwriting/property standard requirements from a condition requiring more than routine or minor repairs or improvements to meet such requirements. The term includes repairs or improvements varying in degree from gutting and extensive reconstruction to cosmetic improvements which are coupled with the cure of a substantial accumulation of deferred maintenance, but does not mean cosmetic improvements alone.~~

~~2. For these purposes a substantially rehabilitated housing unit means a dwelling unit which has been substantially rehabilitated and which is being offered for sale and occupancy for the first time since such rehabilitation. The value of the rehabilitation must equal at least 25% of the total value of the rehabilitated housing unit.~~

~~3. The authority's staff will inspect each house submitted as substantially rehabilitated to ensure compliance with our underwriting property standards. An appraisal is to be submitted after the authority's inspection and is to list the improvements and estimate their value.~~

~~4. The authority will only approve rehabilitation loans to an eligible borrower or borrowers who will be the first resident of the residence after the completion of the rehabilitation. As a result of the tax code, the proceeds of the mortgage loan cannot be used to refinance an existing mortgage, as explained in 13VAC10-40-50 D. The authority will approve loans to cover the purchase of a residence, including the rehabilitation:~~

~~a. Where the eligible borrower or borrowers are acquiring a residence from a builder or other seller who has performed a substantial rehabilitation of the residence; and~~

~~b. Where the eligible borrower or borrowers are acquiring an unrehabilitated residence from the seller and the eligible borrower or borrowers contract with others to perform a substantial rehabilitation or performs the rehabilitation work himself prior to occupancy.~~

13VAC10-40-210. Condominium requirements.

A. For conventional loans, the originating ~~agent~~ lender must provide evidence that the condominium meets the eligibility requirements of either Fannie Mae or Freddie Mac, as determined by the loan program. The originating ~~agent~~ lender must submit evidence ~~at the time the borrower's or borrowers' application is submitted to the authority for approval. The executive director may require additional evidence of marketability of the condominium unit, such as a market study prepared by qualified professional, if the executive director determines that such additional evidence is necessary to protect the financial interests of the authority~~ of eligibility to the authority.

B. For FHA, VA, or Rural Development loans, the authority will accept a loan to finance a condominium if the condominium is approved by FHA, in the case of an FHA loan, by VA, in the case of a VA loan, or ~~be~~ by Rural Development, in the case of a Rural Development loan.

C. The executive director may impose additional condominium requirements if necessary to protect the financial interests of the authority. The executive director may waive any requirements in subsections A and B of this section if he determines that any additional risk as a result of such waiver is adequately compensated or otherwise covered by the terms of the mortgage loan or the financial strength or credit of the applicant ~~or applicants~~.

13VAC10-40-220. ~~FHA plus~~ Subordinate financing program.

A. ~~Notwithstanding anything to the contrary herein, the~~ The authority may make loans secured by second deed of trust liens ~~("second loans")~~ (second mortgage loans) to provide downpayment and closing cost assistance to ~~an~~ eligible

~~borrower or~~ borrowers who are obtaining ~~FHA~~ authority loans secured by first deed of trust liens (first mortgage loans). Such first ~~deed of trust liens~~ mortgage loans must be financed by the authority; provided that the authority may, in its discretion, permit such first deeds of trust to be financed by other lenders, subject to such terms and conditions as the executive director shall determine to be necessary to protect the financial integrity of the ~~FHA plus~~ subordinate financing program. Second mortgage loans shall not be available to a borrower or borrowers if the ~~FHA~~ authority loan is being made under ~~the FHA buydown~~ a buy-down program ~~or is subject to a step adjustment in the interest rate thereon or is subject to a reduced interest rate due to the financial support of the authority~~.

B. The second mortgage loans shall not be insured by mortgage insurance; accordingly, the requirements of 13VAC10-40-120 regarding mortgage insurance shall not be applicable to the second mortgage loan.

C. The requirements of 13VAC10-40-110 regarding calculation of maximum loan amount shall not be applicable to the second mortgage loan. ~~In order to be eligible for a second loan, the borrower or borrowers must obtain an FHA loan for the maximum loan amount permitted by FHA.~~ The principal amount of the second mortgage loan shall not exceed ~~5.0% of the lesser of the~~ sales price ~~or appraised value, or such lesser percentage as may be determined by the executive director to protect the financial integrity of the FHA plus program~~ the amount of the downpayment plus closing costs, or such lesser amount as may be set forth in specific program guidelines.

In no event shall the combined ~~FHA~~ first mortgage loan and the second mortgage loan ~~amount~~ and all other liens exceed (i) the amount allowed by the guidelines of the applicable insurer, guarantor, or investor or (ii) the sum of the lesser of the sales price or appraised value plus closing costs and fees to be paid by a borrower ~~or (ii) the authority's maximum allowable sales price. The sum of all liens may not exceed 100% of the cost to acquire the property. The cost to acquire the property is the sales price plus allowable borrower paid closing costs, discount points and prepaid expenses~~.

Verified liquid funds ~~(funds other than gifts, loans or retirement accounts) in an amount not less than 1.0% of the sales price must be: (i)~~ may be required to be (i) contributed by the borrower toward the downpayment; (ii) contributed by the borrower ~~or borrowers towards~~ toward closing costs or prepaid items; ~~(ii)~~ or (iii) retained by the borrower ~~or borrowers~~ as cash reserves after closing~~; or (iii) contributed and retained by the borrower or borrowers for the purposes of clauses (i) and (ii), respectively~~. The ~~FHA insured~~ first mortgage loan when combined with the ~~FHA plus~~ second mortgage loan and any other liens may not result in cash back to the borrower.

D. If the authority is not making the ~~FHA~~ first mortgage loan ~~secured by the first deed of trust lien~~, the authority may require that, as a condition of financing the ~~FHA plus~~ second mortgage loan, the ~~FHA~~ first mortgage loan ~~secured by the first deed of trust lien~~ meet the authority's requirements applicable to ~~FHA loans~~ that first mortgage loan program. With respect to underwriting, more stringent requirements or criteria than those applicable to the ~~FHA~~ first mortgage loan may be imposed on the second mortgage loan if the executive director determines such more stringent requirements or criteria are necessary to protect the financial integrity of the ~~FHA plus~~ subordinate financing program.

E. The second mortgage loan ~~shall~~ may be assumable on the same terms and conditions as the ~~FHA~~ first mortgage loan.

F. ~~No origination fee or discount point shall be collected on the second loan; provided, however, that the authority may charge an origination fee and/or a discount point in an amount determined by the executive director to be necessary to compensate the authority for originating, processing, and closing the FHA plus loan, if the first deed of trust is to be financed by another lender.~~ The authority may charge a higher interest rate on a first mortgage loan that is accompanied by a subordinate financing program second mortgage loan in order to protect the authority's interests and the financial integrity of the subordinate financing program.

G. ~~Upon approval of the applicant or applicants, the authority will issue a mortgage loan commitment pursuant to~~ The same loan decision procedures described in 13VAC10-40-170 will be used for the subordinate financing. ~~The mortgage loan commitment will include the terms and conditions of the FHA loan and the second loan and will set forth additional terms and conditions applicable to the second loan. Also enclosed in the commitment package will be other documents necessary to close the second loan.~~

13VAC10-40-230. ~~Flexible alternative mortgage~~ Mortgage loan programs funded by taxable bonds.

The executive director may establish ~~flexible alternative~~ mortgage loan programs funded by taxable bonds or other resources. 13VAC10-40-10 through 13VAC10-40-220 shall apply to such ~~flexible alternative~~ mortgage loan programs, with the following modifications:

1. The following requirements shall not apply: (i) ~~the new mortgage requirement; (ii) the requirements as to the use of the property in a trade or business; (iii) the requirements~~ the requirement as to ~~acquisition cost and~~ maximum allowable sales price of the property to be financed; ~~(iv)~~ (ii) the requirement that each applicant shall not have had a present ownership interest in his principal residence within the preceding three years (the first-time homebuyer or three-year requirement); ~~(v)~~ (iii) the net worth requirement; ~~(vi) the requirements for the payment by the seller of an amount equal to 1.0% of the loan in 13VAC10-40-160 D~~

~~2.~~ and ~~(vii)~~ (iv) the lot size restriction in 13VAC10-40-50 C 3.

2. The gross income of the ~~applicant or~~ applicants shall not exceed 120% of the applicable median family income without regard to household size, provided, however, that the authority may increase such percentage of applicable median family income, not to exceed 150%, if the executive director determines that it is necessary to provide financing in underserved areas identified by the executive director to persons with disabilities (i.e., physically or mentally disabled, as determined by the executive director on the basis of medical evidence from a licensed physician or other appropriate evidence satisfactory to the executive director), to applicants with a household size of two or more persons, or other similarly underserved individuals identified by the executive director.

3. At the time of closing, each applicant must occupy or intend to occupy within 60 days ~~(90 days~~ (or such longer amount of time as the executive director determines is reasonable in the case of new construction) the property to be financed as his principal residence.

4. The property to be financed must be one of the following types: (i) a single family residence (attached or detached); (ii) a unit in a condominium or PUD ~~which~~ that is approved for financing by Fannie Mae or Freddie Mac or satisfies the requirements for such financing, except that the executive director may waive any of such requirements if he determines that any additional risk as a result of such waiver is adequately compensated or otherwise covered by the terms of the mortgage loan or the financial strength or credit of the ~~applicant or~~ applicants; or (iii) a doublewide manufactured home permanently affixed to the land.

5. The land, residence, and all other improvements on the property to be financed must be expected to be used by the ~~borrower or~~ borrowers primarily for residential purposes.

~~6. Personal property which is related to the use and occupancy of the property as the principal residence of the borrower or borrowers and is customarily transferred with single family residences may be included in the real estate contract, transferred with the residence and financed by the loan; however, the value of such personal property shall not be considered in the appraised value.~~

~~7. The principal amount of the mortgage loan shall not exceed the limits established by Fannie Mae or Freddie Mac for single family residences.~~

~~8. The maximum loan amount shall be calculated as follows:~~

~~a. If the authority loan will be used to acquire the residence, the loan amount (plus all subordinate debt to be secured by the property after closing of the authority loan) may not exceed 100% of the lesser of appraised value or sales price; provided, however, the executive director may establish a lower percentage if the executive director determines that such lower percentage is necessary to protect the authority's financial interests or to enable the authority to effectively and efficiently allocate its current and anticipated financial resources so as to best meet the current and future housing needs of the citizens throughout the Commonwealth. In the case of loans to finance such acquisition, the executive director may approve additional subordinate financing if he determines that any additional risk as a result of such additional subordinate financing is adequately compensated or otherwise covered by the terms of the mortgage loan or the financial strength or credit of the applicant or applicants.~~

~~b. If the loan proceeds will not be used to finance the acquisition of the residence, the loan amount (plus all subordinate debt to be secured by the property after closing of the authority loan) may not exceed the lesser of the current appraised value of the property or the sum of (i) the payoff (if any) of the applicant's existing first mortgage loan; (ii) the payoff (if any) of applicant's or applicants' subordinate mortgage loans (provided such loans do not permit periodic advancement of loan proceeds) closed for not less than 12 months preceding the date of the closing of the authority loan and the payoff (if any) of applicant's or applicants' home equity line of credit loan (i.e., loan that permits periodic advancement of proceeds) with no more than $2,000 in advances within the 12 months preceding the date of the closing of the authority loan, excluding funds used for the purpose of documented improvements to the residence; (iii) improvements to be performed to the property after the closing of the authority loan and for which loan proceeds will be escrowed at closing; (iv) closing costs, discount points, fees and escrows payable in connection with the origination and closing of the authority loan; and (v) up to $500 to be payable to applicant or applicants at closing.~~

~~c. If the applicant or applicants request to receive loan proceeds at closing in excess of the limit set forth in clause (v) of subdivision 8 b of this section, the loan amount (plus all subordinate debt to be secured by the property after closing of the authority loan) may be increased to finance such excess cash up to a loan amount not in excess of 95% of the current appraised value. To be eligible for such increased financing, the applicant's or applicants' credit score may be no less than 660, and the financial integrity of the flexible alternative program must be protected by an upward adjustment to the rate of interest charged to the applicant or applicants or otherwise.~~

~~d. If the applicant's or applicants' existing mortgage loan to be refinanced is an authority mortgage loan, the~~

~~applicant or applicants may request a streamlined refinance of the authority mortgage loan in which the authority may require less underwriting documentation (e.g., verification of employment) and may charge reduced points and fees. For such streamlined refinances, the loan amount (plus all subordinate debt to be secured by the property after closing of the authority loan) is limited to (i) the payoff of the existing authority mortgage loan and (ii) required closing costs, discount points, fees and escrows payable in connection with the origination and closing of the new authority loan, provided, however, that the loan amount (plus all subordinate debt to be secured by the property after closing of the authority loan) may not exceed 100% of the greatest of original appraised value, current real estate tax assessment, current appraised value or other alternative valuation method approved by the authority. To be eligible for such streamlined refinance, the applicant's or applicants' payment history on the current authority loan may not include any 30-day late payments within the previous 24-month period (12 months for applicants whose current authority loans do not carry mortgage insurance) and no bankruptcy since the closing of the original mortgage loan. In approving such streamlined refinance, the executive director must determine that any additional risk is outweighed by the demonstrated satisfactory payment history of applicant to the authority.~~

~~e. In addition to the foregoing maximum loan amounts under this section, the executive director may approve the disbursement of additional amounts to finance closing costs and fees and costs of rehabilitation and improvements to be completed subsequent to the closing. Except for loans financed under the program described in subdivision 24 of this subsection, these additional amounts may not exceed 5.0% of the lesser of sales price (if any) or appraised value, provided, however, that in addition to such 5.0%, amounts not to exceed 5.0% of the lesser of sales price (if any) or appraised value may be funded for the costs of rehabilitation and improvements to retrofit the residence or add accessibility features to accommodate the needs of a disabled occupant or to provide for visitability by disabled individuals.~~

~~9.~~ 6. Mortgage insurance shall not be required, ~~except that in the case of manufactured homes mortgage insurance shall be required in accordance with 13VAC10-40-120~~ unless the executive director determines that it is reasonable or necessary to protect the financial interests of the authority.

~~10. (Reserved.)~~

~~11. The applicant or applicants must have a history of receiving stable income from employment or other sources with a reasonable expectation that the income will continue in the foreseeable future; typically, verification of two years' stable income will be required; and education or training in a field related to the employment of the applicant or applicants may be considered to meet no more than one year of this requirement.~~

~~12. The applicant or applicants must possess a credit history as of the date of loan application satisfactory to the authority and, in particular, must satisfy the following: (i) for each applicant, no bankruptcy or foreclosure within the preceding three years; for each applicant, no housing payment past due for 30 days in the preceding 24 months; for a single applicant individually and all multiple applicants collectively, no more than one payment past due for 30 days or more on any other debt or obligation within the preceding 12 months; for each applicant, no outstanding collection, judgment, charge-off, repossession or 30-day past due account; and a minimum credit score of 620 if the loan to value ratio is 95% or less or 660 if the loan to value ratio exceeds 95% (credit scores as referenced in these regulations shall be determined by obtaining credit scores for each applicant from a minimum of three repositories and using the middle score in the case of a single applicant and the lowest middle score in the case of multiple applicants); or (ii) for each applicant, no previous bankruptcy or foreclosure; for a single applicant individually and all multiple applicants collectively, no outstanding collection, judgment, charge-off or repossession within the past 12 months or more than one 30-day past due account within the past 12 months and no more than four 30-day past due accounts within the past 24 months; for each applicant, no previous housing payment past due for 30 days; for a single applicant individually and all multiple applicants collectively, minimum of three sources of credit with satisfactory payment histories for the most recent 24-month period; for a single applicant individually and all multiple applicants collectively, no more than nine accounts currently open; and for a single applicant individually and all multiple applicants collectively, no more than three new accounts opened in the past 12 months (in establishing guidelines to implement the flexible alternative mortgage loan programs, the authority may refer to the credit requirements in clause (i) of this subdivision as the "alternative" credit requirements and the requirements in clause (ii) of this subdivision as the "standard" credit requirements).~~

~~If the executive director determines it is necessary to protect the financial integrity of the flexible alternative program, the executive director may require that applicant or applicants for loans having loan-to-value ratios in excess of 97% meet the alternative credit requirements in clause (i) of this subdivision.~~

~~13. Homeownership education approved by the authority shall be required for any borrower who is a first-time homeowner if the loan-to-value ratio exceeds 95%. This~~

~~requirement shall be waived if the applicant or applicants have a credit score of 660 or greater (see subdivision 12 of this section for the manner of determining credit scores); unless the executive director determines that such homeownership education is necessary to protect its financial interests;~~

~~14. Seller contributions for closing costs and other amounts payable by the borrower or borrowers in connection with the purchase or financing of the property shall not exceed 4.0% of the contract price.~~

~~15. Sources of funds for the down payment and closing costs payable by the borrower shall be limited to the borrower's or borrowers' funds, gifts or unsecured loans from relatives, grants from employers or nonprofit entities not involved in the transfer or financing of the property, and unsecured loans on terms acceptable to the authority (payments on any unsecured loans permitted under this subdivision shall be included in the calculation of the debt/income ratios described below), and documentation of such sources of funds shall be in form and substance acceptable to the authority.~~

~~16. The maximum debt ratios shall be 35% and 43% in lieu of the ratios of 32% and 40%, respectively, set forth in 13VAC10-40-130 B 4.~~

~~17. Cash reserves at least equal to two months' loan payments must be held by the applicant or applicants if the loan to value ratio exceeds 95%; cash reserves at least equal to one month's loan payment must be held by the applicant or applicants if the loan to value ratio is greater than 90% and is less than or equal to 95%; and no cash reserves shall be required if the loan to value ratio is 90% or less.~~

~~18. The payment of points (a point being equal to 1.0% of the loan amount) in addition to the origination fee shall be charged as follows: if the loan to value ratio is 90% or less, one-half of one point shall be charged; if the loan-to-value ratio is greater than 90% and is less than or equal to 95%, one point shall be charged; and if the loan to value ratio exceeds 95%, one and one half point shall be charged. If the executive director determines that the financial integrity of the flexible alternative program is protected, by an adjustment to the rate of interest charged to the applicant or applicants or otherwise, the authority may provide the applicant or applicants with the option of an alternative point requirement.~~

~~In addition to the above, a reduction of one half of one point will be made to the applicant or applicants meeting the credit requirements in clause 12 (i) above with a credit score of 700 or greater (see subdivision 12 of this section for the manner of determining credit scores).~~

~~19. The interest rate which would otherwise be applicable to the loan shall be reduced by.25% if the loan to value ratio is 80% or less.~~

~~20.~~ 7. The documents relating to requirements of the federal tax code governing tax-exempt bonds shall not be required.

~~21.~~ 8. For assumptions of loans, the ~~above~~ requirements for (i) occupancy of the property as the borrower's ~~or borrowers'~~ principal residence~~,~~ and (ii) the ~~above~~ income limit~~, and the underwriting criteria in the regulations as modified by~~ in this section must be satisfied.

~~22. The authority may require that any or all loans financed under such alternative mortgage programs be serviced by the authority.~~

~~23.~~ 9. The authority may accept an approval of an automated underwriting system ~~in lieu of satisfaction of the foregoing requirements for the flexible alternative program~~ if the executive director determines that such delegated underwriting system is designed so as to adequately protect the financial integrity of the ~~flexible alternative program~~ loan programs funded by taxable bonds.

~~24. The executive director may establish a flexible alternative rehabilitation mortgage loan program. The regulations set forth in subdivisions 1 through 23 of this section shall apply to such flexible alternative rehabilitation mortgage loan program, with the following modifications:~~

~~a. At the time of closing, each applicant must occupy or intend to occupy within 180 days the property to be financed as his principal residence;~~

~~b. The provision of clause (iii) of subdivision 4 of this section permitting the financing of a doublewide manufactured home permanently affixed to the land shall not apply.~~

~~c. The maximum loan amount for a purchase shall be 100% of the lesser of (i) the sum of purchase price plus rehabilitation costs; or (ii) the as completed appraised value. The maximum loan amount for a refinance shall be 100% of the lesser of (i) the outstanding principal balance plus rehabilitation costs; or (ii) the as completed appraised value.~~

~~d. The rehabilitation costs to be financed may not exceed an amount equal to 50% of the as completed appraised value.~~

~~e. Loan proceeds may be used to finance the purchase and installation of eligible improvements. Improvements that are eligible for financing are structural alterations, repairs, additions to the residence itself, or other improvements (including appliances) upon or in connection with the residence. In order to be eligible,~~

~~such improvements must substantially protect or improve the basic livability or utility of the residence. Improvements that are physically removed from the residence but that are located on the property occupied by the residence may be eligible for financing if these improvements substantially protect or improve the basic livability or utility of the residence (i.e., installation of a septic tank or the drilling of a well). Luxury items (such as swimming pools and spas) shall not be eligible for financing hereunder.~~

~~f. Loan proceeds may not be used to finance any improvements that have been completed at the time the application is submitted to the authority.~~

~~g. All work financed with the loan proceeds shall be performed by a contractor duly licensed in Virginia to perform such work and be performed pursuant to a validly issued building permit, if required, and shall comply with all applicable state and local health, housing, building, fire prevention and housing maintenance codes and other applicable standards and requirements. Compliance with the foregoing shall be evidenced by such documents and certifications as shall be prescribed by the executive director.~~

~~h. The executive director may require the applicant or applicants to establish a contingency fund for the mortgage loan in an amount adequate to ensure sufficient reserve funds for the proper completion of the proposed improvements in the event of cost over runs. The executive director may also require a holdback from each disbursement of loan proceeds until completion of the residence.~~

~~i. The executive director may approve originating agents to originate the acquisition/rehabilitation loans. To be so approved, the originating agent must have a staff with demonstrated ability and experience in acquisition/rehabilitation mortgage loan origination, processing and administration.~~

~~j. In addition to the payment of points set forth in subdivision 18 of this section, the originating agent may collect an escrow administration fee and an inspection fee in an amount determined by the executive director to compensate the originating agent for administering the disbursement of the mortgage loan during the rehabilitation of the residence.~~

Except as modified ~~hereby~~ in this section, all ~~of the~~ requirements, terms and conditions set forth in 13VAC10-40-10 through 13VAC10-40-220 shall apply to the ~~flexible alternative~~ mortgage loan programs established pursuant to this section.

13VAC10-40-240. Down payment and closing cost assistance grants.

The authority may make or finance down payment or closing cost assistance grants in connection with authority first mortgage loans. Such grants must meet the applicable insurer, guarantor, or investor requirements applicable to the first mortgage loan in addition to any additional requirements imposed by the executive director. Any such grants made or financed by the authority are not loans and no repayment shall be required. The executive director may establish lower maximum income limits in connection with such grants that enable the authority to effectively and efficiently allocate its current and anticipated financial resources so as to best meet the current and future housing needs of low and moderate income Virginians.

13VAC10-40-250. Government-sponsored enterprises programs.

A. The authority may make or finance mortgage loans pursuant to the requirements of Fannie Mae or Freddie Mac and may securitize and sell such mortgage loans to Fannie Mae or Freddie Mac, as applicable.

B. The following requirements shall not apply to government-sponsored enterprises programs: (i) the requirement that each applicant must not have had a present ownership interest in his principal residence within the preceding three years (the first-time homebuyer or three-year requirement); (ii) the maximum allowable sales prices in 13VAC10-40-80; and (iii) the net worth requirements in 13VAC10-40-90.

C. For the purposes of 13VAC10-40-100, gross income of applicants for Fannie Mae or Freddie Mac loans shall be determined in accordance with the requirements of Fannie Mae or Freddie Mac, as applicable.

13VAC10-40-260. FHA, VA, or Rural Development streamline refinance program.

A. The authority may make or finance streamline refinance loans that refinance existing authority FHA, VA, and Rural Development loans pursuant to the requirements of FHA for streamline refinances, the requirements of the VA for interest rate reduction refinance loans, and the requirements of Rural Development for streamlined refinances, as applicable.

B. The following requirements shall not apply to streamline refinance programs: (i) the requirement that each applicant must not have had a present ownership interest in his principal residence within the preceding three years (the first-time homebuyer or three-year requirement); (ii) the maximum allowable sales prices in 13VAC10-40-80; (iii) the net worth requirements in 13VAC10-40-90; and (iv) the underwriting requirement regarding income verification set forth in 13VAC10-40-130 A 1.

C. The income limits for applicants for FHA, VA, or Rural Development streamline refinances shall in no event exceed 150% of the greater of the applicable area or statewide median family income.

D. The condominium approval requirement in 13VAC10-40-210 A is modified so that withdrawn FHA, VA, Fannie Mae, or Freddie Mac condominium approvals are acceptable.

13VAC10-40-270. Real estate owned condo program.

A. The authority may make or finance mortgage loans on authority real estate owned (REO) condominiums pursuant to the loan program provisions set forth in 13VAC10-40-230 (mortgage loan programs funded by taxable bonds), except as altered by the provisions of this section.

B. The new mortgage requirement shall apply to REO condo loans (refinances are not permitted under this program).

C. For purposes of subdivision 2 of 13VAC10-40-230, the income limits for applicants for REO condo loans shall be (i) for applicants with a household size of one person, 120% of the greater of the applicable area or statewide median family income and (ii) for applicants with a household size of two or more persons, 150% of the greater of the applicable area or statewide median family income.

D. The requirement in subdivision 4 of 13VAC10-40-230 that a condominium unit must be approved by Fannie Mae or Freddie Mac or satisfy the requirements for their financing shall not apply.

E. The maximum loan amount for REO condo loans shall be 97% of the lesser of the sales price or appraised value.

F. The minimum credit score shall be 660 for all applicants, regardless of loan-to-value ratios.

G. The maximum debt ratios for REO condo loans shall be 35% and 45%.

13VAC10-40-280. Reduced rate financing.

The authority may make or finance mortgage loans with an allocation of reduced rate funding to local governments, nonprofits, and housing industry partners to support special housing needs. Such reduced rate funding must meet the applicable insurer, guarantor, or investor requirements applicable to the first mortgage loan in addition to any additional requirements imposed by the executive director.

NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (13VAC10-40)

Uniform Residential Loan Application, Freddie Mac Form 65 (rev. 6/2009)

VA.R. Doc. No. R19-5800; Filed January 15, 2019, 3:34 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is claiming an exemption from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4 of the Code of Virginia.

Title of Regulation: **13VAC10-190. Rules and Regulations for Qualified Mortgage Credit Certificate Programs (amending 13VAC10-190-10, 13VAC10-190-30, 13VAC10-190-40, 13VAC10-190-50, 13VAC10-190-60, 13VAC10-190-70, 13VAC10-190-200).**

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

Public Hearing Information:

February 5, 2019 - 10 a.m. - Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA

Public Comment Deadline: February 5, 2019.

Agency Contact: Jeff Quann, Senior Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5603, or email jeffrey.quann@vhda.com.

Summary:

The proposed amendments update the mortgage credit certificate (MCC) regulations for consistency with other regulations, including (i) adding definitions and (ii) clarifying language used in the regulation and conditions under which the authority may issue an MCC to an applicant.

13VAC10-190-10. Definitions.

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

"Applicant" means the individual applying for a mortgage credit certificate.

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

"Certificate credit rate" has the meaning set forth in IRC § 25.

"Certified indebtedness" has the meaning set forth in IRC § 25. It is the ~~indebtedness~~ loan or portion thereof that the applicant ~~will incur~~ uses to acquire his principal residence and that, in the determination of the authority, meets the

requirements of IRC § 25 and will be used in calculating the amount of the potential tax credit under the ~~mortgage credit certificate~~ MCC.

"Commitment" means the obligation of the authority to provide a mortgage credit certificate to an eligible applicant pursuant to an approved application.

"Commitment term" means the period of time during which the applicant must close on his loan to be entitled to a mortgage credit certificate pursuant to his commitment.

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

"Internal Revenue Code" or "IRC" means Title 26 of the United States Code, as the same may be amended from time to time.

"Loan" means any extension of credit that finances the purchase of and will be secured by a principal residence.

"Mortgage credit certificate" or "MCC" means a certificate issued by the authority pursuant to IRC § 25.

"Participating lender" means any person or organization that is legally authorized to engage in the business of making loans for the purchase of principal residences and meets the qualifications in this chapter to participate in the programs.

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

"Program" means a qualified mortgage credit certificate program as defined in IRC § 25, in particular IRC § 25(c)(2)(A).

"Private activity bonds" has the meaning set forth in IRC § 141.

"Qualified home improvement loan" has the meaning set forth in IRC § 143(k)(4).

"Qualified mortgage bond" has the meaning set forth in IRC § 143.

"Qualified rehabilitation loan" has the meaning set forth in IRC § 143(k)(5).

"Qualified veteran's mortgage bond" has the meaning set forth in IRC § 143.

13VAC10-190-30. Purpose, applicability, and scope of regulations.

A. All programs described in 13VAC10-190-20 and all of the MCCs issued by the authority pursuant to such programs are subject to this chapter.

B. This chapter is intended to provide a general description of the authority's requirements and processing and is not intended to include all actions involved or required in the processing and administration of MCCs. This chapter is subject to amendment by the authority at any time and may be supplemented by policies, rules, and regulations adopted by the authority from time to time with respect to all of the programs.

C. Notwithstanding anything to the contrary in this chapter, the executive director is authorized with respect to any MCC program to waive or modify any provision of this chapter where deemed appropriate by him for good cause, to the extent not inconsistent with the IRC.

D. Notwithstanding anything to the contrary in this chapter, MCCs can only be issued when and to the extent permitted by the IRC and the applicable federal laws, rules, and regulations governing the issuance of MCCs.

E. Notwithstanding anything to the contrary in this chapter, the federal laws, rules, and regulations governing the MCCs shall control over any inconsistent provision in this chapter, and ~~individuals~~ applicants to whom MCCs have been issued shall be entitled to the privileges and benefits thereof only to the extent permitted by the IRC.

F. Wherever appropriate in this chapter, the singular shall include the plural; the plural shall include the singular; and the masculine shall include the feminine.

13VAC10-190-40. Eligible persons.

The authority may only issue an MCC to an ~~individual only if he would be eligible to be a borrower of a tax exempt bond financed loan pursuant to 13VAC10-40-30, 13VAC10-40-40, 13VAC10-40-50, 13VAC10-40-70, 13VAC10-40-90, and 13VAC10-40-100~~ applicant if the applicant meets the requirements the authority establishes for the program, which include requirements that ensure the applicant qualifies under 26 CFR 1.25-3T so that the MCC would be a qualified mortgage credit certificate pursuant to 26 CFR 1.25-3T.

13VAC10-190-50. Eligible properties.

The authority may issue an MCC to an ~~individual~~ applicant only if his application for the MCC is based upon his purchasing a principal residence that qualifies under 26 CFR 1.25-3T so that the MCC would be ~~eligible for a tax exempt bond financed loan~~ a qualified mortgage credit certificate pursuant to ~~13VAC10-40-40 through 13VAC10-40-80~~ 26 CFR 1.25-3T.

13VAC10-190-60. Eligible lenders.

The authority may issue an MCC to an ~~individual~~ applicant only if his application for the MCC is based upon his obtaining a loan from a participating lender.

13VAC10-190-70. Eligible loans.

The authority may issue an MCC to an ~~individual~~ applicant only if his application for the MCC is based upon a loan that:

1. Is not funded in whole or in part from the proceeds of a qualified mortgage bond or a qualified veteran's mortgage bond ~~as defined in IRC § 143~~,

2. Is incurred by the applicant to acquire his principal residence,

3. Is not being assumed from another borrower, ~~and~~

4. Is not a refinancing of other indebtedness of the applicant, except in the case of construction period loans, bridge loans, or similar temporary financing that has a term of 24 months or less,

5. Is not a qualified home improvement loan or a qualified rehabilitation loan, and

6. Otherwise satisfies the requirements of 26 CFR 1.25-2T(c)(1).

13VAC10-190-200. Compliance investigations.

After each MCC is issued, the authority shall have the right, but not the obligation, to investigate the facts and circumstances relating to any application and the issuance ~~and use~~ of the related MCC and, if there are proper grounds, to revoke the MCC and take other appropriate legal action.

VA.R. Doc. No. R19-5801; Filed January 15, 2019, 3:31 p.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Fast-Track Regulation

Title of Regulation: **18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-10 through 18VAC41-20-50, 18VAC41-20-80 through 18VAC41-20-110, 18VAC41-20-140, 18VAC41-20-200, 18VAC41-20-210, 18VAC41-20-220, 18VAC41-20-260, 18VAC41-20-270, 18VAC41-20-280).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 6, 2019.

Effective Date: April 1, 2019.

Agency Contact: Stephen Kirschner, Regulatory Operations Administrator, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.virginia.gov.

Basis: Section 54.1-201.5 of the Code of Virginia gives authority to the board to promulgate regulations. Section 54.1-706 of the Code of Virginia grants the board discretionary authority to impose different requirements for the various license types it issues. Chapters 231 and 237 of the 2018 Acts of Assembly mandate that the board issue a master barber license to applicants who complete education and experience standards established by the board through regulation and who pass the board-approved examination.

Purpose: The proposed amendments to the regulations are necessary to incorporate changes made to Chapter 7 (54.1-700 et seq.) of Title 54.1 of the Code of Virginia by Chapters 231 and 237 of the 2018 Acts of Assembly. Effective on March 9, 2018, due to an emergency enactment clause, the law mandates the issuing of a master barber license to an individual whose training, experience, and examination is approved by the board.

The board's current regulations do not provide training or experience requirements that distinguish the master barber license from a "standard" barber license nor do they provide a method for master barber applicants to obtain a license, either by examination or endorsement. The proposed changes to the regulations create a method for licensed barbers to obtain a master barber license, including application and training requirements. The proposed amendments also incorporate master barbers into the various applicable standard regulations and provide revised curricula for barber schools that reflect the scope of practice enumerated in § 54.1-700 of the Code of Virginia.

The board's proposed regulatory amendments seek to incorporate the master barber requirements in such a way that they are as least intrusive and burdensome as possible to assist in promoting an environment without unnecessary regulatory obstacles while still protecting the health, safety, and welfare of the public.

Rationale for Using Fast-Track Rulemaking Process: Prior to August 2017, the board's barber curriculum included several topics that were outside the statutory scope of practice of barbering and technically would have fallen under a cosmetology license. Over decades, the statutory definition of barbering did not keep up with industry trends reflected in board-approved training and testing for a barber license. Topics such as chemical texture services and hair lightening have been part of barber curricula and exam going back to the 1960s, despite the fact that such performances are reserved to

cosmetology licensure under § 54.1-700 of the Code of Virginia.

Upon discovering this discrepancy, the board issued guidance to all barber practitioners informing them of the proper scope of practice and eliminated the out-of-scope practices from the training program. As a result, legislative action was necessary in order to restore the previous scope of their licenses.

When the General Assembly enacted the referenced changes to the Code of Virginia, it included an emergency enactment clause making the act take force immediately upon its passage. The new law provides two avenues for barbers to obtain the master barber license: (i) individuals with barber licenses issued prior to December 8, 2017, are automatically issued master barber licenses and (ii) everyone else must meet training, experience, and examination requirements established by the board.

Currently, there is no way for individuals to obtain a master barber license if they were not already licensed as a barber prior to December 8, 2017, because the existing regulations do not include standards for approval of master barber training programs. An applicant cannot satisfy the requirement for board-approved training until the regulations are amended to allow for master-barber level programs.

The board expects this rulemaking to be noncontroversial for several reasons. The first is that these regulatory amendments are necessary to implement the changes to the Code of Virginia, particularly with respect to an expedited timeframe as expressed by the legislature. The second reason is that the regulated community has sought a method to provide for a two-tier barber licensing scheme, and these proposed amendments create that process. The master barber license will be an option for individuals who intend to perform the broader array of services, while applicants who only want to offer "standard" barbering (e.g., shaving, haircuts) will be able to obtain licensure with fewer training hours. For the barbering community, the changes in this proposed regulatory action are welcomed as a way to allow applicants and licensees to pursue the profession through either a standard barber license or a master barber license.

Substance: Amendments include:

In 18VAC41-20-10, a new definition of barber school is added to further clarify terms used in subsequent regulations.

In 18VAC41-20-20, the proposed amendments incorporate the master barber license into the general entry requirements. Additionally, the training requirements for exam applicants with out-of-state training are updated to reflect the amended barber and master barber hours (1,100 and 1,500, respectively).

In 18VAC41-20-30, the proposed amendments incorporate the master barber license into the endorsement requirements.

In 18VAC41-20-40, the proposed amendments incorporate the master barber license into the apprenticeship requirements.

In 18VAC41-20-50, the proposed amendments incorporate the master barber license into the exceptions to training requirements. Additionally, this section is amended to reflect that the master barber license, rather than the barber license, is required if applying for the cosmetology exam based on two years' experience in barbering and to provide licensed barbers and barber students enrolling in a master barber program credit for the training and performances completed in a licensed barber school, ensuring barbers will not have to repeat hours and performances already completed when obtaining the master barber training.

In 18VAC41-20-80, the proposed amendments incorporate the master barber license into the exam administration requirements.

In 18VAC41-20-90, the proposed amendments incorporate the master barber profession into the temporary permit requirements.

In 18VAC41-20-100, the proposed amendments incorporate the master barber license into the instructor certificate requirements. This amendment does not create a master barber instructor certificate, but rather allows barbers and master barbers with instructor certificates to instruct at their level of licensure.

In 18VAC41-20-110, the proposed amendments incorporate the master barber license into the student instructor temporary permit requirements.

In 18VAC41-20-140, the proposed amendment incorporates the master barber license into the fee requirements.

In 18VAC41-20-200, the proposed amendments incorporate the master barber license into the general school requirements. The amendments also revise the hours of instruction to reflect 1,100 hours for the barber program, 400 hours for the master barber program, and 1,500 hours for the dual barber/master barber program.

In 18VAC41-20-210, the proposed amendments add the curriculum requirements for the master barber program and dual barber/master barber program and remove topics from the barber curriculum that are outside the scope of practice for the barber license.

In 18VAC41-20-220, the proposed amendments revise the barber performance requirements by eliminating services that are outside the scope of licensure, reducing performances from 490 to 370, and creating 120 performance requirements for the master barber program and 490 for the dual barber/master barber program.

In 18VAC41-20-260, the proposed amendments incorporate the master barber profession into the display of license requirements.

In 18VAC41-20-270, the proposed amendments incorporate the master barber program into the sanitation and safety requirements.

In 18VAC41-20-280, the proposed amendments incorporate the master barber program into the grounds for discipline requirements.

Issues: The primary advantage to the public, businesses, and the Commonwealth for implementing these regulatory changes is to ensure consistency between the law and regulation. The revisions will restore clarity in the regulations and reduce confusion regarding the barber scope of practice. Eliminating the curriculum requirements that are outside the scope of practice of standard barbering, such as styling hair with a hand dryer, thermal waving, permanent waving with chemicals, wig care, and lightning or toning the hair, may lead to greater economic opportunities for some practitioners.

The board is frequently informed by unlicensed individuals that they completed barber training but never tested or obtained the license because they did not wish to be tested on the chemical services portion of the training and did not practice these services as a barber. Because the barber scope of practice actually excludes chemical texture services and the length of training is decreased, enrollment in barber schools may increase, and barber school dropout rates may decrease. The shorter program allows individuals to get to work sooner and may lead to reduced barber school tuition prices, further reducing the barriers of entry into the profession. This will be particularly helpful to those with fewer economic resources. The lower number of hours required for training will also reduce the barrier of entry for applicants with out-of-state training.

The Commonwealth of Virginia could see a growth of licensed professionals in the barber profession. Another advantage to the public is that these regulations create a way for individuals to obtain the master barber license. Currently, only individuals with barber licenses issued prior to December 8, 2017, have master barber licenses; everyone else must meet training, experience, and examination requirements established by the board. Without these regulatory amendments that add standards for approving master barber programs, there is no way for individuals to obtain a master barber license if they were not licensed prior to December 8, 2017. Individuals who are interested in performing the expanded services allowed by the master barber license will now have a way to reach those additional economic opportunities.

There are no disadvantages of these amendments. Licensure is required by the Code of Virginia, and the regulatory changes only set forth the qualifications for obtaining the license.

The primary advantage to the agency and Commonwealth is positive economic impact from the reduction of entry requirements for barbers and the appropriate expanded scope of practice for master barbers. Additionally, these changes resolve a conflict between the barber curriculum and the statutory scope of practice of barbering. There are no identified disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Chapter 231 of the 2018 Acts of Assembly[1] amended § 54.1-700 et seq. of the Code of Virginia (Code) to establish a new licensed designation, master barber. The Board for Barbers and Cosmetology (Board) proposes to amend the regulation to reflect the new licensure category.

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

Estimated Economic Impact. The current regulation curriculum requirements for barbering programs include cold permanent waving or chemical relaxing; bleaching and frosting; wig care, styling, placing on model; finger waving and thermal waving; and waxing. None of these activities are included in the Code definition of barbering. Thus technically, barbers have not been permitted to offer services for which they were required to be trained.

The above-mentioned services are included in the new master barber definition established in the Code by Chapter 231. The Board proposes to remove these activities from the curriculum requirements for barbering and to reduce the required training hours for the barber license from 1,500 to 1,100. Additionally, the Board proposes to include these activities in the curriculum requirements for master barber and set the required training hours for the master barber license at 1,500.

The Board's proposals would produce net benefits. Individuals who only wish to offer the services included in the barbering definition would save 400 hours of their time (and perhaps fees) from the proposal to reduce the training hours from 1,500 to 1,100 and eliminate training on subjects that are for them irrelevant. Individuals who wish to offer the additional services contained in the new master barber definition would be able to do so with the master barber designation and the same number of required training hours that has already existed. Pursuant to Chapter 231, existing barbers who have had the training for the additional services are grandfathered as master barbers.[2]

Businesses and Entities Affected. The proposed amendments affect barbers, barbershops, barber schools, and individuals seeking to enter the barbering profession. As of June 1, 2018,

the Board regulated 2,855 barbers, 333 barber teachers, 868 barbershops and 78 barber schools. Most of the 868 barbershops would be considered small businesses.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposal to reduce required training by 400 hours for those who wish to offer only traditional barbering services may moderately increase the number of individuals who seek to work in the profession.

Effects on the Use and Value of Private Property. The proposal to reduce required training by 400 hours for those who wish to offer only traditional barbering services would moderately reduce costs and may encourage some individuals to open a barbershop offering only traditional barbering services.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed regulation would moderately reduce costs for individuals who wish to open a barbershop offering only traditional barbering services.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

[1]See http://leg1.state.va.us/cgi-bin/legp504.exe?181+ful+CHAP0231

[2]Chapter 231 states that "The Board shall issue a license to practice as a master barber in the Commonwealth to: "1. An individual who holds a valid, unexpired license as a barber issued by the Board prior to December 8, 2017; …"

Agency's Response to Economic Impact Analysis: The board concurs with the economic impact analysis.

Summary:

Pursuant to Chapters 231 and 237 of the 2018 Acts of Assembly, the amendments incorporate a two-tier barbering program into board regulations by creating the master barber license and adjusting training requirements. The regulations are amended to include a definition of "barber school" and revise the curricula for barber, master barber, and dual programs to reflect the definitions in § 54.1-700 of the Code of Virginia so that training requirements are set at 1,100 hours for the barber license, 400 additional hours for the master barber license, or 1,500 hours for a dual barber/master barber program that would make the applicant eligible for both licenses. The amendments allow for a master barber apprenticeship under the Virginia Department of Labor and Industry as an alternative training method. Additionally, master barber licensure is incorporated into regulations covering exam eligibility, general license requirements, endorsement, apprenticeship training, exam administration, temporary permits, instructor certificates, fees, display of license, sanitation and safety requirements, and grounds for discipline.

Part I
General

18VAC41-20-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. All terms defined in Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia are incorporated in this chapter.

"Barber school" means a place or establishment licensed by the board to accept and train students and that offers a barber, master barber, or dual barber/master barber curriculum approved by the board.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Direct supervision" means that a Virginia licensed barber, cosmetologist, nail technician, or wax technician shall be present in the barbershop, cosmetology salon, nail salon, or waxing salon at all times when services are being performed by a temporary permit holder or registered apprentice.

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Licensee" means any person, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law holding a license issued by the Board for Barbers and Cosmetology, as defined in § 54.1-700 of the Code of Virginia.

"Post-secondary educational level" means an accredited college or university that is approved or accredited by the Southern Association of Colleges and Schools Commission on Colleges or by an accrediting agency that is recognized by the U.S. Secretary of Education.

"Reciprocity" means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

"Reinstatement" means having a license or certificate restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or certificate for another period of time.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;

2. The partners of a general partnership;

3. The managing partners of a limited partnership;

4. The officers of a corporation;

5. The managers of a limited liability company;

6. The officers or directors of an association or both; and

7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Virginia state institution" for the purposes of ~~these regulations~~ this chapter means any institution approved by the Virginia Department of Education or the Virginia Department of Corrections.

Part II
Entry

18VAC41-20-20. General requirements for a barber, master barber, cosmetologist, nail technician, or wax technician license.

A. Any individual wishing to engage in barbering, cosmetology, nail care, or waxing shall obtain a license in compliance with § 54.1-703 of the Code of Virginia and shall meet the following qualifications:

1. The applicant shall be in good standing as a licensed barber, master barber, cosmetologist, nail technician, or wax technician in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure, any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as a barber, master barber, cosmetologist, nail technician, or wax technician. This includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if he has been previously licensed in Virginia as a barber, master barber, cosmetologist, nail technician, or wax technician.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein the board deems the applicant is unfit or unsuited to engage in barbering, cosmetology, nail care, or waxing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia barber and cosmetology license laws and this chapter.

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within two years of the date of the application; and

b. All felony convictions within 20 years of the date of application.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant shall provide evidence satisfactory to the board that the applicant has passed the board-approved examination, administered either by the board or by independent examiners.

B. Eligibility to sit for board-approved examination.

1. Training in the Commonwealth of Virginia. Any person completing an approved barber, master barber,

cosmetology, nail technician, or wax technician training program in a Virginia licensed barber, cosmetology, nail technician, or wax technician school, respectively, or a Virginia public school's barber, master barber, cosmetology, nail technician, or wax technician program approved by the Virginia Department of Education shall be eligible for examination.

2. Training outside of the Commonwealth of Virginia, but within the United States and its territories.

a. Any person completing a barber training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 1,100 hours of training to be eligible for examination. If less than 1,100 hours of barber training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent barber course and documentation of six months of barber work experience in order to be eligible for examination.

b. Any person completing a master barber or cosmetology training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 1,500 hours of training to be eligible for examination. If less than 1,500 hours of master barber or cosmetology training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent master barber or cosmetology course and documentation of six months of master barber or cosmetology work experience in order to be eligible for examination.

~~b.~~ c. Any person completing a nail technician training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 150 hours of training to be eligible for examination. If less than 150 hours of nail technician training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent nail technician course and documentation of six months of nail technician work experience in order to be eligible for the nail technician examination.

~~c.~~ d. Any person completing a wax technician training program that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of 115 hours of training to be eligible for examination. If less than 115 hours of wax technician training was completed, an applicant must submit a certificate, diploma, or other documentation acceptable to the board verifying the completion of a substantially equivalent wax technician course and documentation of six months of wax technician work experience in order to be eligible for the wax technician examination.

18VAC41-20-30. License by endorsement.

Upon proper application to the board, any person currently licensed to practice as a barber, master barber, cosmetologist, nail technician, or wax technician who is a barber, master barber, cosmetologist, nail technician, or wax technician instructor, or who is a licensed instructor in the respective profession in any other state or jurisdiction of the United States and who has completed both a training program and a written and practical examination that is substantially equivalent to that required by this chapter, may be issued a barber, master barber, cosmetologist, nail technician, or wax technician license or a barber, master barber, cosmetology, nail technician, or wax technician instructor certificate, respectively, without an examination. The applicant must also meet the requirements set forth in 18VAC41-20-20 A and 18VAC41-20-100.

18VAC41-20-40. Apprenticeship training.

A. Licensed barbers, master barbers, cosmetologists, and nail technicians who train apprentices shall comply with the standards for apprenticeship training established by the Division of Apprenticeship Training of the Virginia Department of Labor and Industry and the Virginia Board for Barbers and Cosmetology. Owners of barbershops, cosmetology salons, and nail salons who train apprentices shall comply with the standards for apprenticeship training established by the Division of Apprenticeship Training of the Virginia Department of Labor and Industry.

B. Any person completing the Virginia apprenticeship program in barbering, master barbering, cosmetology, or nail care shall be eligible for examination.

18VAC41-20-50. Exceptions to training requirements.

A. Virginia licensed cosmetologists with a minimum of two years of work experience shall be eligible for the master barber examination; likewise, a Virginia licensed master barber with a minimum of two years of work experience shall be eligible for the cosmetology examination.

B. Virginia licensed master barbers with less than two years of work experience and Virginia master barber students enrolling in a Virginia cosmetology training school shall be given educational credit for the training received for the performances completed at a barber school; likewise, licensed Virginia cosmetologists with less than two years of work experience and Virginia cosmetology students enrolling in a Virginia barber or master barber training school shall be given educational credit for the training received for the performances completed at a cosmetology school.

C. Any barber, master barber, cosmetologist, nail technician, or wax technician applicant having been trained as a barber, master barber, cosmetologist, nail technician, or wax technician in any Virginia state institution shall be eligible for the respective examination.

D. Any barber, master barber, cosmetologist, nail technician, or wax technician applicant having a minimum of two years experience in barbering, master barbering, cosmetology, nail care, or waxing in the United States armed forces and having provided documentation satisfactory to the board of that experience shall be eligible for the respective examination.

E. Any licensed barber or barber student enrolling in a master barber training program in a licensed barber school shall be given educational credit for the training and performances completed in a barbering program at a licensed barber school.

18VAC41-20-80. Examination administration.

A. The examinations shall be administered by the board or the designated testing service. The practical examination shall be supervised by a chief examiner.

B. Every barber, master barber, cosmetology, nail technician, or wax technician examiner shall hold a current Virginia license in his respective profession, have three or more years of active experience as a licensed professional, and be currently practicing in that profession. Examiners shall attend training workshops sponsored by the board or by a testing service acting on behalf of the board.

C. No certified barber, master barber, cosmetology, nail technician, or wax technician instructor who is currently teaching or is a school owner or is an apprentice sponsor shall be an examiner.

D. Each barber, master barber, cosmetology, nail technician, and wax technician chief examiner shall hold a current Virginia license in his respective profession, have five or more years of active experience in that profession, have three years of active experience as an examiner, and be currently practicing in his respective profession. Chief examiners shall attend training workshops sponsored by the board or by a testing service acting on behalf of the board.

E. The applicant shall follow all procedures established by the board with regard to conduct at the examination. Such procedures shall include written instructions communicated prior to the examination date and instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board and the testing service with regard to conduct at the examination may be grounds for denial of application.

18VAC41-20-90. Barber, master barber, cosmetology, nail technician, and wax technician temporary permits.

A. A temporary permit to work under the supervision of a currently licensed barber, master barber, cosmetologist, nail technician, or wax technician may be issued only to applicants for initial licensure who the board finds eligible for examination. There shall be no fee for a temporary permit.

B. The temporary permit shall remain in force for 45 days following the examination date. The examination date shall be the first test date after the applicant has successfully submitted an application to the board that an examination is offered to the applicant by the board.

C. Any person continuing to practice barbering, master barbering, cosmetology, nail care, or waxing services after a temporary permit has expired may be prosecuted and fined by the Commonwealth under §§ 54.1-111 A 1 and 54.1-202 of the Code of Virginia.

D. No applicant for examination shall be issued more than one temporary permit.

E. Temporary permits shall not be issued where grounds may exist to deny a license pursuant to § 54.1-204 of the Code of Virginia or 18VAC41-20-20.

18VAC41-20-100. General requirements for a barber instructor certificate, cosmetology instructor certificate, nail technician instructor certificate, or wax technician instructor certificate.

A. Any individual wishing to engage in barbering instruction, master barbering instruction, cosmetology instruction, nail care instruction, or waxing instruction shall meet the following qualifications:

1. The applicant shall be in good standing as a licensed barber, master barber, cosmetologist, nail technician, or wax technician, and instructor, respectively, in Virginia and all other jurisdictions where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in Virginia and all other jurisdictions in connection with the applicant's practice as a barber, master barber, cosmetologist, nail technician, or wax technician, or in the practice of teaching any of those professions. This includes monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license. The applicant shall disclose to the board at the time of application for licensure if the applicant has been previously licensed in Virginia as a barber instructor, master barber instructor, cosmetology instructor, nail technician instructor, or wax technician instructor.

Upon review of the applicant's prior disciplinary action, the board, in its discretion, may deny licensure to any applicant wherein the board deems the applicant is unfit or

unsuited to engage in the instruction of barbering, cosmetology, nail care, or waxing. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere or comparable plea shall be considered a disciplinary action for the purposes of this section. The applicant shall provide a certified copy of a final order, decree, or case decision by a court, regulatory agency, or board with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such disciplinary action;

2. The applicant shall hold a current Virginia barber, master barber, cosmetology, nail technician, or wax technician license, respectively;

3. The applicant shall:

a. Pass a course in teaching techniques at the post-secondary educational level;

b. Complete an instructor training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified barber, master barber, cosmetologist, nail technician, or wax technician instructor in a barber, cosmetology, nail technician, or wax technician school, respectively; or

c. Pass an examination in barber, master barber, cosmetology, nail technician, or wax technician instruction respectively, administered by the board or by a testing service acting on behalf of the board; and

4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution, or physical injury within two years of the date of the application; and

b. All felony convictions within 20 years of the date of application.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

B. Instructors shall be required to maintain a barber, master barber, cosmetology, nail technician, or wax technician license, respectively.

18VAC41-20-110. Student instructor temporary permit.

A. A licensed barber, master barber, cosmetologist, nail technician, or wax technician may be granted a student instructor temporary permit to function under the direct supervision of a barber instructor, master barber instructor, cosmetology instructor, nail technician instructor, or wax technician instructor respectively. A licensed nail technician or wax technician may also be granted a student instructor permit to function under the direct supervision of a cosmetology instructor.

B. The student instructor temporary permit shall remain in force for not more than 12 months after the date of issuance and shall be nontransferable and nonrenewable.

C. No applicant for examination shall be issued more than one student instructor temporary permit.

D. Failure to maintain a barber, master barber, cosmetology, nail technician, or wax technician license shall disqualify an individual from holding a student instructor temporary permit.

E. Temporary permits shall not be issued where grounds may exist to deny a license pursuant to § 54.1-204 of the Code of Virginia or 18VAC41-20-100.

Part III
Fees

18VAC41-20-140. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE September 1, 2016, through August 31, 2020	AMOUNT DUE September 1, 2020, and after	WHEN DUE
Individuals:			
Application	$75	$105	With application
License by Endorsement	$75	$105	With application
Renewal:			
Barber	$75	$105	With renewal card prior to expiration date
Master Barber	$75	$105	With renewal card prior to expiration date
Cosmetologist	$75	$105	With renewal card prior to expiration date

Nail Technician	$75	$105	With renewal card prior to expiration date
Wax Technician	$75	$105	With renewal card prior to expiration date
Reinstatement	$150* *includes $75 renewal fee and $75 reinstatement fee	$210* *includes $105 renewal fee and $105 reinstatement fee	With reinstatement application
Instructors:			
Application	$100	$125	With application
License by Endorsement	$100	$125	With application
Renewal	$100	$150	With renewal card prior to expiration date
Reinstatement	$200* *includes $100 renewal fee and $100 reinstatement fee	$300* *includes $150 renewal fee and $150 reinstatement fee	With reinstatement application
Facilities:			
Application	$130	$190	With application
Renewal	$130	$190	With renewal card prior to expiration date
Reinstatement	$260* *includes $130 renewal fee and $130 reinstatement fee	$380* *includes $190 renewal fee and $190 reinstatement fee	With reinstatement application
Schools:			
Application	$140	$220	With application
Add Program	$100	$100	With application
Renewal	$140	$220	With renewal card prior to expiration date
Reinstatement	$280* *includes $140 renewal fee and $140 reinstatement fee	$440* *includes $220 renewal fee and $220 reinstatement fee	With reinstatement application

18VAC41-20-200. General requirements.

A barber, cosmetology, nail, or waxing school shall:

1. Hold a school license for each and every location.

2. Hold a salon license if the school receives compensation for services provided in its clinic.

3. Employ a staff of and ensure all training is conducted by licensed and certified barber, master barber, cosmetology, nail technician, or wax technician instructors, respectively.

a. Licensed and certified cosmetology instructors may also instruct in nail and waxing programs.

b. Licensed and certified esthetics instructors and master esthetics instructors may also instruct in waxing programs.

4. Develop individuals for entry level competency in barbering, master barbering, cosmetology, nail care, or waxing.

5. Submit its curricula for board approval. All changes to curricula must be resubmitted and approved by the board.

a. Barber curricula shall be based on a minimum of ~~1,500~~ 1,100 clock hours and shall include performances in accordance with 18VAC41-20-220.

b. Master barber curricula shall be based on a minimum of 400 clock hours and shall include performances in accordance with 18VAC41-20-220.

c. Dual barber/master barber program curricula shall be based on a minimum of 1,500 clock hours and shall include performances in accordance with 18VAC41-20-220.

d. Cosmetology curricula shall be based on a minimum of 1,500 clock hours and shall include performances in accordance with 18VAC41-20-220.

~~c.~~ e. Nail technician curricula shall be based on a minimum of 150 clock hours and shall include performances in accordance with 18VAC41-20-220.

~~d.~~ f. Wax technician curricula shall be based on a minimum of 115 clock hours and shall include performances in accordance with 18VAC41-20-220.

6. Inform the public that all services are performed by students if the school receives compensation for services provided in its clinic by posting a notice in the reception area of the shop or salon in plain view of the public.

7. Conduct classroom instruction in an area separate from the clinic area where practical instruction is conducted and services are provided.

8. Possess the necessary equipment and implements to teach the respective curriculum. If any such equipment or implement is not owned by the school, then a copy of all agreements associated with the use of such property by the school shall be provided to the board.

18VAC41-20-210. Curriculum requirements.

A. Each barber school shall submit with its application a curriculum including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for barbering shall include the following:

1. School policies;

2. State law, regulations, and professional ethics;

3. Business and shop management;

4. Client consultation;

5. Personal hygiene;

6. Cutting the hair with a razor, clippers, and shears;

7. Tapering the hair;

8. Thinning the hair;

9. Shampooing the hair;

~~10. Styling the hair with a hand hair dryer;~~

~~11. Thermal waving;~~

~~12. Permanent waving with chemicals;~~

~~13.~~ 10. Shaving;

~~14.~~ 11. Trimming a moustache or beard;

~~15.~~ 12. Applying hair color;

~~16. Lightening or toning the hair;~~

~~17.~~ 13. Analyzing skin or scalp conditions;

~~18.~~ 14. Giving scalp treatments;

~~19.~~ 15. Giving basic facial massage or treatment;

~~20.~~ 16. Sanitizing and maintaining implements and equipment; and

~~21.~~ 17. Honing and stropping a razor.

B. Each barber school seeking to add a master barber program shall submit with its application a curriculum including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for master barbering shall include the following:

1. Styling the hair with a hand hair dryer;

2. Thermal waving;

3. Permanent waving with chemicals;

4. Relaxing the hair;

5. Lightening or toning the hair;

6. Hairpieces and wigs; and

7. Waxing limited to the scalp.

C. Each school seeking to add a dual barber/master barber program shall submit with its application a curriculum including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for dual barber/master barber program shall include the following:

1. School policies;

2. State law, regulations, and professional ethics;

3. Business and shop management;

4. Client consultation;

5. Personal hygiene;

6. Cutting the hair with a razor, clippers, and shears;

7. Tapering the hair;

8. Thinning the hair;

9. Shampooing the hair;

10. Styling the hair with a hand hair dryer;

11. Thermal waving;

12. Permanent waving with chemicals;

13. Relaxing the hair;

14. Shaving;

15. Trimming a moustache or beard;

16. Applying hair color;

17. Lightening or toning the hair;

18. Analyzing skin or scalp conditions;

19. Giving scalp treatments;

20. Waxing limited to the scalp;

21. Giving basic facial massage or treatment;

22. Hair pieces;

23. Sanitizing and maintaining implements and equipment; and

24. Honing and stropping a razor.

D. Each cosmetology school shall submit with its application a curriculum including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for cosmetology shall include the following:

1. Orientation:

a. School policies;

b. State law, regulations, and professional ethics;

c. Personal hygiene; and

d. Bacteriology, sterilization, and sanitation.

2. Manicuring and pedicuring:

a. Anatomy and physiology;

b. Diseases and disorders;

c. Procedures to include both natural and artificial application; and

d. Sterilization.

3. Shampooing and rinsing:

a. Fundamentals;

b. Safety rules;

c. Procedures; and

d. Chemistry, anatomy, and physiology.

4. Scalp treatments:

a. Analysis;

b. Disorders and diseases;

c. Manipulations; and

d. Treatments.

5. Hair styling:

a. Anatomy and facial shapes;

b. Finger waving, molding, and pin curling;

c. Roller curling, combing, and brushing; and

d. Heat curling, waving, and pressing.

6. Hair cutting:

a. Anatomy and physiology;

b. Fundamentals, materials, and equipment;

c. Procedures; and

d. Safety practices.

7. Permanent waving-chemical relaxing:

a. Analysis;

b. Supplies and equipment;

c. Procedures and practical application;

d. Chemistry;

e. Recordkeeping; and

f. Safety.

8. Hair coloring and bleaching:

a. Analysis and basic color theory;

b. Supplies and equipment;

c. Procedures and practical application;

d. Chemistry and classifications;

e. Recordkeeping; and

f. Safety.

9. Skin care and make-up:

a. Analysis;

b. Anatomy;

c. Health, safety, and sanitary rules;

d. Procedures;

e. Chemistry and light therapy;

f. Temporary removal of hair; and

g. Lash and brow tinting.

10. Wigs, hair pieces, and related theory:

a. Sanitation and sterilization;

b. Types; and

c. Procedures.

11. Salon management:

a. Business ethics; and

b. Care of equipment.

~~C.~~ E. Each nail school shall submit with its application a curriculum including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for nail care shall include the following:

1. Orientation:

a. School policies; and

b. State law, regulations, and professional ethics;

2. Sterilization, sanitation, bacteriology, and safety;

3. Anatomy and physiology;

4. Diseases and disorders of the nail;

5. Nail procedures (i.e., manicuring, pedicuring, and nail extensions); and

6. Nail theory and nail structure and composition.

~~D.~~ F. Each waxing school shall submit with its application a curriculum including a course syllabus, a detailed course content outline, a sample of five lesson plans, a sample of evaluation methods to be used, and a breakdown of hours and performances for all courses to be taught that will lead to licensure. The outline for waxing shall include the following:

1. Orientation:

a. School policies;

b. State law, regulations, and professional ethics; and

c. Personal hygiene.

2. Skin care and treatment:

a. Analysis;

b. Anatomy and physiology;

c. Diseases and disorders of the skin;

d. Health sterilization, sanitation, bacteriology, and safety including infectious disease control measures; and

e. Temporary removal of hair.

3. Skin theory, skin structure, and composition.

4. Client consultation:

a. Health conditions;

b. Skin analysis;

c. Treatments;

d. Client expectations; and

e. Health forms and questionnaires.

5. Waxing procedures for brow, lip, facial, legs, arms, underarm, chest, back, and bikini areas:

a. Fundamentals;

b. Safety rules; and

c. Procedures.

6. Wax treatments:

a. Analysis;

b. Disorders and diseases;

c. Manipulations; and

d. Treatments.

7. Salon management:

a. Business ethics; and

b. Care of equipment.

18VAC41-20-220. Hours of instruction and performances.

A. Curriculum and performance requirements shall be offered over a minimum of 1,100 clock hours for barbering, 400 clock hours for master barbering, 1,500 clock hours for ~~barbering~~ dual barber/master barber program and cosmetology, 150 clock hours for nail care, and 115 clock hours for waxing.

B. The curriculum requirements for barbering must include the following minimum performances:

Hair and scalp treatments	10
Hair ~~styling~~ services	320
~~Tinting~~	~~15~~
~~Bleaching and frosting~~	~~10~~
~~Temporary rinses~~	~~10~~
~~Semi-permanent color~~	~~10~~
Hair coloring (including tinting, temporary rinses, and semi-permanent color)	35
~~Cold permanent waving or chemical relaxing~~	~~25~~
~~Hair shaping~~	~~50~~
~~Wig care, styling, placing on model~~	~~5~~
~~Finger waving and thermal waving~~	~~30~~
Basic facials ~~and waxings~~	5
TOTAL	~~490~~ 370

C. The curriculum requirements for master barbering must include the following minimum performances:

Bleaching and frosting	10
Cold permanent waving or chemical relaxing	25
Hair shaping	50
Wig care, styling, placing on model	5
Finger waving and thermal waving	30
TOTAL	120

D. The curriculum requirements for dual barber/master barber program must include the following minimum performances:

Hair and scalp treatments	10
Hair styling services	320
Bleaching and frosting	10
Hair coloring (including tinting, temporary rinses, and semi-permanent color)	35
Cold permanent waving or chemical relaxing	25
Hair shaping	50
Wig care, styling, placing on model	5
Finger waving and thermal waving	30
Basic facials and waxings	5
TOTAL	490

~~C.~~ E. The curriculum requirements for cosmetology must include the following minimum performances:

Hair and scalp treatments	10
Hair styling	320
Tinting	15
Bleaching and frosting	10
Temporary rinses	10
Semi-permanent color	10
Cold permanent waving or chemical relaxing	25
Hair shaping	50
Wig care, styling, placing on model	5
Finger waving and thermal waving	30
Manicures and pedicures	15
Basic facials and waxings	5
Sculptured nails, nail tips, and wraps	20
TOTAL	525

~~D.~~ F. The curriculum requirements for nail care must include the following minimum performances:

Manicures	30
Pedicures	15
Individual sculptured nails and nail tips	200
Individual removals	10
Individual nail wraps	20
TOTAL	275

~~E.~~ G. The curriculum requirements for waxing must include the following minimum performances:

Arms	4
Back	2
Bikini area	6
Brows	12
Chest	1
Facial (i.e., face, chin, and cheek and lip)	6
Leg	3
Underarm	2
TOTAL	36

Part VI
Standards of Practice

18VAC41-20-260. Display of license.

A. Each shop, salon, or school shall ensure that all current licenses, certificates, or permits issued by the board shall be displayed in plain view of the public either in the reception area or at individual work stations of the shop, salon, or school. Duplicate licenses, certificates, or permits shall be posted in a like manner in every shop, salon, or school location where the regulant provides services.

B. Each shop, salon, or school shall ensure that no employee, licensee, student, or apprentice performs any service beyond the scope of practice for the applicable license.

C. All licensees, certificate holders, and permit holders shall operate under the name in which the license, certificate, or permit is issued.

D. Unless also licensed as a cosmetologist, a barber or master barber is required to hold a separate nail technician or wax technician license if performing nail care or waxing.

E. All apprenticeship cards issued by the Department of Labor and Industry (DOLI) shall be displayed in plain view of the public either in the reception area or at individual work stations of the shop or salon. The apprentice sponsor shall require each apprentice to wear a badge clearly indicating his status as a DOLI registered apprentice.

18VAC41-20-270. Sanitation and safety standards for shops, salons, and schools.

A. Sanitation and safety standards. Any shop, salon, school, or facility where barber, master barber, cosmetology, or nail or waxing services are delivered to the public must be clean and sanitary at all times. Compliance with these rules does

not confer compliance with other requirements set forth by federal, state, and local laws, codes, ordinances, and regulations as they apply to business operation, physical construction and maintenance, safety, and public health. Licensees shall take sufficient measures to prevent the transmission of communicable and infectious diseases and comply with the sanitation standards identified in this section and shall ensure that all employees likewise comply.

B. Disinfection and storage of implements.

1. A wet disinfection unit is a container large enough to hold a disinfectant solution in which the objects to be disinfected are completely immersed. A wet disinfection unit must have a cover to prevent contamination of the solution. The solution must be a hospital grade and tuberculocidal disinfectant solution registered with the Environmental Protection Agency (EPA). Disinfectant solutions shall be used according to manufacturer's directions.

2. Disinfection of multiuse items constructed of hard, nonporous materials such as metal, glass, or plastic that the manufacturer designed for use on more than one client, including clippers, scissors, combs, and nippers is to be carried out in the following manner prior to servicing a client:

a. Remove all foreign matter from the object, utilizing a brush if needed. Drill bits are to be soaked in acetone and scrubbed with a wire brush to remove all foreign matter;

b. Wash thoroughly with hot water and soap;

c. Rinse thoroughly with clean water and dry thoroughly with a clean paper towel;

d. Fully immerse implements into solution for a minimum of 10 minutes; and

e. After immersion, rinse articles, thoroughly dry with a clean paper towel, and store in a clean predisinfected and dry cabinet, drawer, or nonairtight covered container, or leave instruments in an EPA-registered disinfection/storage solution used according to manufacturer's directions.

3. Single-use items designed by the manufacturer for use on no more than one client should be discarded immediately after use on each individual client, including powder puffs, lip color, cheek color, sponges, styptic pencils, or nail care implements. The disinfection and reuse of these items is not permitted and the use of single-use items on more than one client is prohibited.

4. For the purpose of recharging, rechargeable clippers may be stored in an area other than in a closed cabinet or container. This area shall be clean and the cutting edges of any clippers are to be disinfected.

5. Electrical clipper blades shall be disinfected before and after each use.

If the clipper blade cannot be removed, the use of a spray or foam used according to the manufacturer's instructions will be acceptable provided that the disinfectant is an EPA-registered hospital grade and tuberculocidal disinfectant solution, and that the entire handle is also disinfected by wiping with the disinfectant solution.

6. All wax pots shall be cleaned and disinfected with an EPA-registered hospital grade and tuberculocidal disinfectant solution with no sticks left standing in the wax at any time. The area immediately surrounding the wax pot shall be clean and free of clutter, waste materials, spills, and any other items which may pose a hazard.

7. Each barber, master barber, cosmetologist, nail technician, and wax technician must have a wet disinfection unit at his station.

8. Sinks, bowls, tubs, whirlpool units, air-jetted basins, pipe-less units, and non-whirlpool basins used in the performance of nail care shall be maintained in accordance with manufacturer's recommendations. They shall be cleaned and disinfected immediately after each client in the following manner:

a. Drain all water and remove all debris;

b. Clean the surfaces and walls with soap or detergent to remove all visible debris, oils, and product residue and then rinse with water;

c. Disinfect by spraying or wiping the surface with an EPA-registered hospital grade and tuberculocidal disinfectant; and

d. Wipe dry with a clean towel.

C. General sanitation and safety requirements.

1. Service chairs, wash basins, shampoo sinks, workstations and workstands, and back bars shall be clean;

2. The floor surface in all work areas must be of a washable surface other than carpet. The floor must be kept clean and free of hair, nail clippings, dropped articles, spills, clutter, trash, electrical cords, other waste materials, and any other items which may pose a hazard;

3. All furniture, fixtures, walls, floors, windows, and ceilings shall be clean and in good repair and free of water seepage and dirt. Any mats shall be secured or shall lie flat;

4. A fully functional bathroom in the same building with a working toilet and sink must be available for clients. There must be hot and cold running water. Fixtures must be in good condition. The bathroom must be lighted and sufficiently ventilated. If there is a window, it must have a screen. There must be antibacterial soap and clean single-use towels or hand air-drying device for the client's use.

Laundering of towels is allowed, space permitting. The bathroom must not be used as a work area or for the open storage of chemicals. For facilities newly occupied after January 1, 2017, the bathroom shall be maintained exclusively for client use;

5. General areas for client use must be neat and clean with a waste receptacle for common trash;

6. Electrical cords shall be placed to prevent entanglement by the client or licensee; and electrical outlets shall be covered by plates;

7. All sharp tools, implements, and heat-producing appliances shall be in safe working order at all times, safely stored, and placed so as to prevent any accidental injury to the client or licensee;

8. The salon area shall be sufficiently ventilated to exhaust hazardous or objectionable airborne chemicals, and to allow the free flow of air; and

9. Adequate lighting shall be provided.

D. Articles, tools, and products.

1. Clean towels, robes, or other linens shall be used for each patron. Clean towels, robes, or other linens shall be stored in a clean predisinfected and dry cabinet, drawer, or nonairtight covered container. Soiled towels, robes, or other linens shall be stored in a container enclosed on all sides including the top, except if stored in a separate laundry room;

2. Whenever a haircloth is used, a clean towel or neck strip shall be placed around the neck of the patron to prevent the haircloth from touching the skin;

3. Soiled implements must be removed from the tops of work stations immediately after use;

4. Lotions, ointments, creams, and powders shall be labeled and kept in closed containers. A clean spatula, other clean tools, or clean disposable gloves shall be used to remove bulk substances such as creams or ointments from jars. Sterile cotton or sponges shall be used to apply creams, lotions, and powders. Cosmetic containers shall be covered after each use;

5. For nail care, if a sanitary container is provided for a client, the sanitary container shall be labeled and implements shall be used solely for that specific client. Disinfection shall be carried out in accordance with subdivisions B 1 and B 2 of this section;

6. No substance other than a sterile styptic powder or sterile liquid astringent approved for homeostasis and applied with a sterile single-use applicator shall be used to check bleeding; and

7. Any disposable material making contact with blood or other body fluid shall be disposed of in a sealed plastic bag and removed from the shop, salon, school, or facility in accordance with the guidelines of the Department of Health.

E. Chemical storage and emergency information.

1. Shops, salons, schools, and facilities shall have in the immediate working area a binder with all Safety Data Sheets (SDS) provided by manufacturers for any chemical products used;

2. Shop, salons, schools, and facilities shall have a blood spill clean-up kit in the work area that contains at minimum latex gloves, two 12-inch by 12-inch towels, one disposable trash bag, bleach, one empty spray bottle, and one mask with face shield or any Occupational Safety and Health Administration (OSHA) approved blood spill clean-up kit;

3. Flammable chemicals shall be labeled and stored in a nonflammable storage cabinet or a properly ventilated room; and

4. Chemicals that could interact in a hazardous manner (oxidizers, catalysts and solvents) shall be labeled and separated in storage.

F. Client health guidelines.

1. All employees providing client services shall cleanse their hands with an antibacterial product prior to providing services to each client. Licensees shall require that clients for nail care services shall cleanse their hands immediately prior to the requested nail care service;

2. An artificial nail shall only be applied to a healthy natural nail;

3. A nail drill or motorized instrument shall be used only on the free edge of the nail;

4. No shop, salon, school, or facility providing cosmetology or nail care services shall have on the premises cosmetic products containing hazardous substances that have been banned by the U.S. Food and Drug Administration (FDA) for use in cosmetic products;

5. No product shall be used in a manner that is disapproved by the FDA; and

6. All regulated services must be performed in a facility that is in compliance with current local building and zoning codes.

G. In addition to any requirements set forth in this section, all licensees and temporary permit holders shall adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational Safety and Health Compliance Division of the Virginia Department of Labor and Industry.

H. All shops, salons, schools, and facilities shall immediately report the results of any inspection of the shop, salon, or school by the Virginia Department of Health as required by § 54.1-705 of the Code of Virginia.

I. All shops, salons, schools, and facilities shall maintain a self-inspection form on file to be updated on an annual basis, and kept for five years, so that it may be requested and reviewed by the board at its discretion.

18VAC41-20-280. Grounds for license revocation or suspension; denial of application, renewal, or reinstatement; or imposition of a monetary penalty.

The board may, in considering the totality of the circumstances, fine any licensee, certificate holder, or permit holder; suspend or revoke or refuse to renew or reinstate any license, certificate, or permit; or deny any application issued under the provisions of Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia and this chapter if it finds that the licensee, certificate holder, permit holder, or applicant:

1. Is incompetent, or negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as a barber, master barber, cosmetologist, nail technician, or wax technician, or to operate a shop, salon, or school;

2. Is convicted of fraud or deceit in the practice or teaching of barbering, master barbering, cosmetology, nail care, or waxing or fails to teach the curriculum as provided for in this chapter;

3. Attempts to obtain, obtained, renewed or reinstated a license, certificate, or temporary license by false or fraudulent representation;

4. Violates or induces others to violate, or cooperates with others in violating, any of the provisions of this chapter or Chapter 7 (§ 54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which any barber, master barber, cosmetologist, nail technician, or wax technician may practice or offer to practice;

5. Offers, gives, or promises anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing barbering, master barbering, cosmetology, nail care, or waxing as defined in § 54.1-700 of the Code of Virginia;

6. Fails to respond to the board or any of its agents or provides false, misleading, or incomplete information to an inquiry by the board or any of its agents;

7. Fails or refuses to allow the board or any of its agents to inspect during reasonable hours any licensed shop, salon, or school for compliance with provisions of Chapter 7 (§ 54.1-700 et seq.) or this chapter;

8. Fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's or owner's possession or maintained in accordance with these regulations;

9. Fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license, certificate, or permit;

10. Makes any misrepresentation or publishes or causes to be published any advertisement that is false, deceptive, or misleading;

11. Fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license, certificate, or permit in connection with a disciplinary action in any jurisdiction or of any license, certificate, or permit that has been the subject of disciplinary action in any jurisdiction;

12. Has been convicted or found guilty, regardless of the manner of adjudication in Virginia or any other jurisdiction of the United States, of a misdemeanor involving moral turpitude, sexual offense, drug distribution, or physical injury or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt;

13. Fails to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any convictions as stated in subdivision 12 of this section;

14. Allows, as responsible management of a shop, salon, or school, a person who has not obtained a license or a temporary permit to practice as a barber, master barber, cosmetologist, nail technician, or wax technician unless the person is duly enrolled as a registered apprentice;

15. Allows, as responsible management of a school, a person who has not obtained an instructor certificate or a temporary permit to practice as a barber, master barber, cosmetologist, nail technician, or wax technician instructor;

16. Fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with sanitary requirements provided for in this chapter or any local, state, or federal law or regulation governing the standards of health and sanitation for the

practices of barbering, master barbering, cosmetology, nail care, or waxing, or the operation of barbershops, cosmetology salons, nail salons, or waxing salons; or

17. Fails to comply with all procedures established by the board and the testing service with regard to conduct at any board examination.

NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (18VAC41-20)

~~Barber – Barber Instructor Examination & License Application, A450-1301_02EXLIC-v13 (rev. 2/2017)~~

Barber – Barber Instructor Examination & License Application, A450-1301_02EXLIC-v14 (rev. 4/2019)

Master Barber Examination & License Application, A450-1301EXLIC-v1 (eff. 4/2019)

Cosmetology – Cosmetology Instructor Examination & License Application, A450-1201_04EXLIC-v16 (rev. 2/2017)

Nail Technician – Nail Technician Instructor Examination & License Application, A450-1206_07EXLIC-v14 (rev. 2/2017)

Wax Technician – Wax Technician Instructor Examination & License Application, A450-1214_15EXLIC-v13 (rev. 2/2017)

Temporary Permit Application, A450-1213TEMP-v2 (rev. 2/2017)

~~License by Endorsement Application, A450-1213END-v10 (rev. 2/2017)~~

License by Endorsement Application, A450-1213END-v11 (rev. 4/2019)

Training & Experience Verification Form, A450-1213TREXP-v6 (eff. 2/2017)

Individuals – Reinstatement Application, A450-1213REI-v9 (rev. 2/2017)

Salon, Shop, Spa & Parlor License/Reinstatement Application A450-1213BUS-v9 (rev. 2/2017)

Salon, Shop & Spa Self Inspection Form, A450-1213_SSS_INSP-v2 (eff. 5/2016)

Instructor Certification Application, A450-1213INST-v9 (rev. 1/2018)

Student Instructor – Temporary Permit Application A450-1213ST_TEMP-v2 (rev. 2/2017)

School License Application, A450-1213SCHL-v10 (rev. 2/2017)

School Reinstatement Application A450-1213SCHL-REIN-v3 (eff. 2/2017)

School Self-Inspection Form, A450-1213_SCH_INSP-v4 (eff. 5/2016)

Licensure Fee Notice, A450-1213FEE-v7 (rev. 1/2017)

Change of Responsible Management Application, A450-1213CRM-v1 (rev. 2/2017)

VA.R. Doc. No. R19-5428; Filed January 15, 2019, 2:49 p.m.

BOARD OF DENTISTRY

Final Regulation

Title of Regulation: **18VAC60-21. Regulations Governing the Practice of Dentistry (adding 18VAC60-21-101 through 18VAC60-21-106).**

Statutory Authority: §§ 54.1-2400 and 54.1-2708.4 of the Code of Virginia.

Effective Date: March 6, 2019.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Summary:

This regulatory action adopts requirements for the prescribing of opioids and products containing buprenorphine pursuant to Chapters 291 and 682 of the 2017 Acts of Assembly. Provisions for the management of acute pain include requirements for the evaluation of the patient, limitations on quantity and dosage, and recordkeeping. A dentist who manages a patient with chronic pain must either refer the patient to a pain management specialist or adhere to the regulations of the Board of Medicine. All dentists who prescribe Schedules II through IV controlled substances are required to complete two hours of continuing education in pain management. The regulations replace emergency regulations currently in effect.

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

Part III
Prescribing for Pain Management

18VAC60-21-101. Definitions.

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

"Acute pain" means pain that occurs within the normal course of a disease or condition or as the result of surgery for which controlled substances may be prescribed for no more than three months.

"Chronic pain" means nonmalignant pain that goes beyond the normal course of a disease or condition for which controlled substances may be prescribed for a period greater than three months.

"Controlled substance" means drugs listed in The Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) in Schedules II through IV.

"MME" means morphine milligram equivalent.

"Prescription Monitoring Program" means the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances.

18VAC60-21-102. Evaluation of the patient in prescribing for acute pain.

A. Nonpharmacologic and non-opioid treatment for pain shall be given consideration prior to treatment with opioids. If an opioid is considered necessary for the treatment of acute pain, the dentist shall follow the regulations for prescribing and treating with opioids in 18VAC60-21-103 and 18VAC60-21-104.

B. Prior to initiating treatment with a controlled substance containing an opioid for a complaint of acute pain, the dentist shall perform a health history and physical examination appropriate to the complaint, query the Prescription Monitoring Program as set forth in § 54.1-2522.1 of the Code of Virginia, and conduct an assessment of the patient's history and risk of substance abuse.

18VAC60-21-103. Treatment of acute pain with opioids.

A. Initiation of opioid treatment for all patients with acute pain shall include the following:

1. A prescription for an opioid shall be a short-acting opioid in the lowest effective dose for the fewest number of days, not to exceed seven days as determined by the manufacturer's directions for use, unless extenuating circumstances are clearly documented in the patient record.

2. The dentist shall carefully consider and document in the patient record the reasons to exceed 50 MME per day.

3. Prior to exceeding 120 MME per day, the dentist shall refer the patient to or consult with a pain management specialist and document in the patient record the reasonable justification for such dosage.

4. Naloxone shall be prescribed for any patient when there is any risk factor of prior overdose, substance abuse, or doses in excess of 120 MME per day [,] and shall be considered when concomitant use of benzodiazepine is present.

B. If another prescription for an opioid is to be written beyond seven days, the dentist shall:

1. Reevaluate the patient and document in the patient record the continued need for an opioid prescription; and

2. Check the patient's prescription history in the Prescription Monitoring Program.

C. Due to a higher risk of fatal overdose when opioids are prescribed with benzodiazepines, sedative hypnotics, carisoprodol, and tramadol, the dentist shall only co-prescribe these substances when there are extenuating circumstances and shall document in the patient record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

18VAC60-21-104. Patient recordkeeping requirement in prescribing for acute pain.

The patient record shall include a description of the pain, a presumptive diagnosis for the origin of the pain, an examination appropriate to the complaint, a treatment plan, and the medication prescribed, including date, type, dosage, strength, and quantity prescribed.

18VAC60-21-105. Prescribing of opioids for chronic pain.

If a dentist treats a patient for whom an opioid prescription is necessary for chronic pain, the dentist shall either:

1. Refer the patient to a medical doctor who is a pain management specialist; or

2. Comply with regulations of the Board of Medicine, 18VAC85-21-60 through 18VAC85-21-120, if the dentist chooses to manage the chronic pain with an opioid prescription.

18VAC60-21-106. Continuing education required for prescribers.

Any dentist who prescribes Schedules II [~~through~~, III, and] IV controlled substances after April 24, 2017, shall obtain two hours of continuing education on pain management, which must be taken by March 31, 2019. Thereafter, any dentist who prescribes Schedules II [~~through~~, III, and] IV controlled substances shall obtain two hours of continuing education on pain management every two years. Continuing education hours required for prescribing of controlled substances may be included in the 15 hours required for renewal of licensure.

VA.R. Doc. No. R17-5064; Filed January 14, 2019, 4:55 p.m.

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Fast-Track Regulation

Title of Regulation: **18VAC80-30. Opticians Regulations (amending 18VAC80-30-20).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 6, 2019.

Effective Date: April 1, 2019.

Agency Contact: Stephen Kirschner, Regulatory Operations Administrator, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email hearingaidspec@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia enumerates board authority to promulgate regulations and to establish entry qualifications for licensure.

Purpose: The proposed amendment to the regulations is necessary to reduce the length of optician apprenticeship, which will decrease entry barriers to the profession while maintaining public protection. Attendant revisions to the apprenticeship work processes and standards through Department of Labor and Industry (DOLI) training materials and sponsorship requirements will better reflect current industry practices while maintaining a focus on developing minimum competency. However, because the board's regulations currently require the apprenticeship length be three years, this action is necessary in order to implement the two-year, 4000-hour program recommendation.

Rationale for Using Fast-Track Rulemaking Process: The proposed regulatory change is best suited for the fast-track rulemaking process for several reasons. First, the amendment is simple, easy to understand, and affects just one specific regulatory requirement: the length of the optician registered apprenticeship.

Second, the proposed change has been under discussion for more than four years in order to build consensus. The board's ad hoc committee has held over a dozen public meetings and incorporated industry stakeholders in the proposal's development, including participants from the education sector and trade associations.

Finally, the board worked with DOLI in developing the revisions, and DOLI has confirmed it is prepared to initiate the revised apprenticeship once the regulation change becomes effective. Reducing the optician apprenticeship from three years to two years has been supported by all stakeholders who participated in the process and imposes a less burdensome option for entry into the profession. For these reasons, the board expects this rulemaking to be noncontroversial.

Substance: In 18VAC80-30-20, the apprenticeship option (as an alternative to completing opticianry school) is reduced from a three-year program to a two-year program. This action also makes two technical corrections: one to update the name of the DOLI apprenticeship division, and the other in a reference to the board.

Issues: The primary advantage to the public (applicants, licensees, and citizens) for implementing this proposed change is that updating the apprenticeship content will more accurately reflect industry practices while still maintaining a focus on developing minimum competency, thus better ensuring the protection of the public's health, safety, and welfare. The regulatory revision will reduce the length of the apprenticeship by one year and 2,000 hours, allowing individuals to gain entry into the profession substantially faster. In some cases, it will make the apprenticeship a more appealing option for those seeking to enter the profession. Businesses will benefit from shorter training periods for prospective employees and a potentially larger pool of employees. There are no disadvantages to the public. Licensure is required by the Code of Virginia, and the proposed changes only set forth the qualifications for obtaining the license.

The primary advantage to the agency and Commonwealth is positive economic impact from the reduction of entry requirements for opticians, promoting Virginia's low regulatory burden, and a more positive business climate. Additionally, these proposed changes will update the content of the apprenticeship so that it better reflects current industry practices and needs. There are no identified disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Hearing Aid Specialists and Opticians (Board) proposes to amend the optician apprenticeship from a three-year (6000-hour) program to a two-year (4000-hour) program.

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

Estimated Economic Impact. The recommended reduction is based on a review by the Board's Ad Hoc Committee on Optician Apprenticeship, formed in 2014 to review the apprenticeship program and suggest revisions to reflect current training and job requirements, industry practices, and minimum competencies to protect the public's health, safety, and welfare. The length of the optician apprenticeship, administered under the Virginia Department of Labor and Industry, is specified in the Board's regulations.

The proposed amendment would enable individuals who seek to become licensed via the apprenticeship route to start working independently one year earlier and earn greater income sooner. Optician apprentices are paid but likely considerably less than independent licensed opticians. Virginia (and federal) law require that apprentices are paid at least minimum wage with pay increases at least once per year. Opticians in Virginia earn on average $21.60 per hour.[1] Since the two-year apprenticeship is considered sufficient to protect the public's health, safety, and welfare, and the proposal is financially and professionally beneficial for the affected apprentices, the proposed amendment would produce a net benefit.

Businesses and Entities Affected. The proposed amendment affects individuals interested in obtaining an optician license and optician businesses that sponsor apprentices. As of August 1, 2018, the Board licensed 1,897 opticians. Of those, 85% (1,612) were apprenticeship completers. The Board licenses approximately 55 individuals by exam annually. Most optician businesses would be considered small businesses.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. By reducing the time it takes to become a licensed optician through the apprenticeship route by one year, more individuals may be encouraged to seek licensure and employment as opticians.

Effects on the Use and Value of Private Property. As described above, the proposed amendment may result in an increase in the supply of licensed opticians and optician apprentices. This would make it less costly for firms that offer optician services to hire and employ such professionals. Consequently, the net value of such firms may increase.

Real Estate Development Costs. The proposed amendment does not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. By reducing the time it takes to become a licensed optician through the apprenticeship route by one year, more individuals may be encouraged to seek licensure and employment as opticians. Having a potential greater supply of optician apprentices and licensed opticians may make it less costly for small firms that offer optician services to hire and employ such professionals.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

Other Entities. The proposed amendment does not adversely affect other entities.

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[1]Source: U.S. Department of Labor, Bureau of Labor Statistics: https://www.bls.gov/oes/current/oes_va.htm

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis.

Summary:

The amendment reduces the optician apprenticeship to a two-year (4,000-hour) program.

Part II
Entry Requirements

18VAC80-30-20. Qualifications of applicant.

An applicant for a license shall furnish satisfactory evidence on an application provided by the board establishing that:

1. The applicant is at least 18 years of age unless emancipated under the provisions of § 16.1-333 of the Code of Virginia;

2. The applicant is a graduate of an accredited high school, ~~or~~ has completed the equivalent of grammar school and a four-year high school course, or is a holder of a certificate of general educational development;

3. The applicant is in good standing as a licensed optician in every jurisdiction where licensed;

4. The applicant has not been convicted in any jurisdiction of a misdemeanor or felony involving sexual offense, drug distribution or physical injury, or any felony that directly relates to the profession of opticianry. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of opticianry. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The licensee shall provide a certified copy of a final order, decree, or case decision by a court or regulatory agency with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the licensee to the board within 10 days after all appeal rights have expired;

5. The applicant has successfully completed one of the following education requirements:

a. A board-approved two-year course in a school of opticianry, including the study of topics essential to qualify for practicing as an optician; or

b. A ~~three year~~ two-year apprenticeship with a minimum of one school year of related instruction or home study while registered in the apprenticeship program in accordance with the standards established by the state Department of Labor and Industry, Division of Registered Apprenticeship, ~~Training~~ and approved by the ~~Board for Opticians~~ board;

6. The applicant has disclosed his current mailing address;

7. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the director of the department to serve as service agent for all actions filed in any court in the Commonwealth; and

8. The applicant shall certify, as part of the application, that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board.

VA.R. Doc. No. R19-5619; Filed January 15, 2019, 2:48 p.m.

BOARD OF MEDICINE

Fast-Track Regulation

Titles of Regulations: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-21).**

18VAC85-40. Regulations Governing the Practice of Respiratory Therapists (amending 18VAC85-40-25).

18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-21).

18VAC85-80. Regulations Governing the Practice of Occupational Therapy (amending 18VAC85-80-25).

18VAC85-101. Regulations Governing the Practice of Radiologic Technology (amending 18VAC85-101-26).

18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists (amending 18VAC85-110-36).

18VAC85-120. Regulations Governing the Licensure of Athletic Trainers (amending 18VAC85-120-30).

18VAC85-130. Regulations Governing the Practice of Licensed Midwives (amending 18VAC85-130-31).

18VAC85-140. Regulations Governing the Practice of Polysomnographic Technologists (amending 18VAC85-140-30).

18VAC85-150. Regulations Governing the Practice of Behavior Analysis (amending 18VAC85-150-30).

18VAC85-160. Regulations Governing the Registration of Surgical Assistants and Surgical Technologists (amending 18VAC85-160-30).

18VAC85-170. Regulations Governing the Practice of Genetic Counselors (amending 18VAC85-170-30).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 6, 2019.

Effective Date: March 22, 2019.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system.

Chapter 101 of the 2018 Acts of the Assembly amended § 54.1-2904 of the Code of Virginia to allow the board to send notices by mail or electronically for renewal of a license.

Purpose: The amendments are intended for consistency with amendments to the Code of Virginia and for efficiency in the operation of the board. The regulatory change will allow the board to send renewal notices electronically and licensees to renew more efficiently to protect the health and safety of patients they serve.

Rationale for Fast-Track Rulemaking Process: The amendments are clarifying or intended for consistency with current practice. There are no substantive changes, so the amendments are not expected to be controversial.

Substance: During the 2018 Session of the General Assembly, legislation was passed authorizing the Board of Medicine to send notices electronically. Consequently, all board regulations are amended to delete the word "mailed," which is interpreted to mean by postal service, and to insert the word "sent."

Issues: There are no substantive changes to the regulation, so there are no real advantages or disadvantages to the public. The amendments are consistent with changes in the Code of Virginia.

There are no disadvantages to the agency or the Commonwealth. The advantages are more efficiency and a more cost-effective method for sending renewal notices.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 101 of the 2018 Acts of Assembly,[1] the

Board of Medicine (Board) proposes to allow an option to send notices for license renewal electronically.

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

Estimated Economic Impact. The Board proposes to allow the option of sending license renewal notices electronically as authorized by the 2018 legislation. Currently, licensees are providing an email address for the purpose of receiving notices and communications from the Board. With other boards under the Department of Health Professions (DHP), renewal notices are currently being sent to the email address on record. If a licensee fails to renew before the renewal deadline, a paper renewal notice is also sent as a courtesy to the licensee. The Board proposes to adopt the same electronic renewal notice process.

According to DHP, each paper renewal notice costs $0.45 ($0.38 for postage and $0.07 for tri-fold generic stock). Currently, there are 69,753 licensees who would likely renew their licenses every two years with a cost of about $15,694 per year, which would be avoided by this change. However, the cost savings from electronic notices would likely be less than this amount because the Board may not have an email address for some of the licensees, and a paper copy would still be sent if renewal does not occur 30 days prior to the expiration of the license. In addition to the savings, electronic notices are likely beneficial because they expedite the renewal process with an almost instantaneous delivery process and also mitigate potential issues that could result from the delivery of paper notices. While the Board may incur small costs to initially implement the electronic notification system, the proposed change would likely produce a net overall benefit.

Businesses and Entities Affected. Currently, the Board regulates 69,753 licensees.

Localities Particularly Affected. The proposed change would not disproportionately affect particular localities.

Projected Impact on Employment. Switching from paper to electronic renewal notices may reduce the demand for U.S. Postal Service workers by a negligible amount.

Effects on the Use and Value of Private Property. The proposed change would not affect the use and value of private property.

Real Estate Development Costs. The proposed change would not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed change would not create costs or other effects on small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed change would not impose adverse impacts on small businesses.

Adverse Impacts:

Businesses. The proposed change would not impose adverse impacts on businesses.

Localities. The proposed change would not impose adverse impacts on localities.

Other Entities. Switching from paper to electronic renewal notices may reduce the demand for U.S. Postal Service workers by a negligible amount.

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[1] http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0101

Agency's Response to Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments delete the word "mailed," which is interpreted to mean by postal service, and insert the word "sent" to clarify how the board notifies licensees and registrants.

18VAC85-20-21. Current addresses.

Each licensee shall furnish the board his current address of record. All notices required by law or by this chapter to be ~~mailed~~ given by the board to any such licensee shall be validly given when ~~mailed~~ sent to the latest address of record given by the licensee. Any change in the address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-40-25. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when ~~mailed~~ sent to the latest address of record provided or served to the licensee. Any change of name or change in the address of record or public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-50-21. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when ~~mailed~~ sent to the latest address of record provided or served to the licensee. Any change of name or address of record or the public address, if different from the

address of record, shall be furnished to the board within 30 days of such change.

18VAC85-80-25. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when ~~mailed~~ sent to the latest address of record provided or served to the licensee. Any change of name or address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-101-26. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when ~~mailed~~ sent to the latest address of record provided or served to the licensee. Any change of name or address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-110-36. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when ~~mailed~~ sent to the latest address of record provided or served to the licensee. Any change of name or address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-120-30. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by these regulations to be ~~mailed~~ given by the board to any such licensee shall be validly given when ~~mailed~~ sent to the latest address of record given to the board. Any change of name or address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-130-31. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when ~~mailed~~ sent to the latest address of record provided or served to the licensee. Any change of name or address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-140-30. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when ~~mailed~~ sent to the latest address of record provided or served to the licensee. Any change of name or change in the address of record or public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-150-30. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when ~~mailed~~ sent to the latest address of record provided or served to the licensee. Any change of name or change in the address of record or public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-160-30. Current name and address.

Each registrant shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such registrant shall be validly given when ~~mailed~~ sent to the latest address of record provided or served to the registrant. Any change of name or address of record or public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-170-30. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when ~~mailed~~ sent to the latest address of record provided or served to the licensee. Any change of name or change in the address of record or public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

VA.R. Doc. No. R19-5696; Filed January 5, 2019, 11:14 a.m.

BOARD OF NURSING

Fast-Track Regulation

Title of Regulation: **18VAC90-15. Regulations Governing Delegation to an Agency Subordinate (amending 18VAC90-15-30).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 6, 2019.

Effective Date: March 22, 2019.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia authorizes the Board of Nursing to promulgate regulations to administer the regulatory system and to delegate the conduct of informal fact-finding proceedings to a qualified agency subordinate.

Purpose: The regulatory change is consistent with the principle of adopting regulations that are clearly written and easily understandable. The current provision in 18VAC90-15-30 regarding maintenance of a list of qualified agency subordinates is unnecessary and inconsistent with current policy, so the provision may be confusing to persons seeking information about the agency subordinate process. It is necessary to retain other provisions in the section because subdivision 10 of § 54.1-2400 requires that the board adopt regulations to specify the criteria for appointment in order for informal fact-finding proceedings to be conducted in a manner that protects the health and safety of the public.

Rationale for Using Fast-Track Rulemaking Process: The amendment is technical in nature, does not change current procedure, and has no impact on the public, therefore it is not expected to be controversial.

Substance: The amendment eliminates the requirement for the executive director to maintain a list of qualified agency subordinates.

Issues: There are no advantages or disadvantages for the public; the amendment is technical and clarifying. There are no advantages or disadvantages for the agency or the Commonwealth.

Small Business Impact Review Report of Findings: This fast-track regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to eliminate the provision that requires the executive director to maintain a list of appropriately qualified persons who may act as an agency subordinate.

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

Estimated Economic Impact. According to the Department of Health Professions (DHP), in the past individuals were contracted to act as agency subordinates to do informal conferences. Back then, the executive director kept a list of who had such a contract and was available to be scheduled. Now part-time DHP employees conduct the informal conferences. Consequently, the list is no longer relevant or maintained in practice. The proposed amendment would produce a net benefit in that there would be increased clarity for readers of the regulation.

Businesses and Entities Affected. The proposed amendment affects readers of the regulation.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendment does not affect employment.

Effects on the Use and Value of Private Property. The proposed amendment does not affect the use and value of private property.

Real Estate Development Costs. The proposed amendment does not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendment does not affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

Other Entities. The proposed amendment does not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The Board of Nursing concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to a periodic review of 18VAC90-15 by the Board of Nursing, the amendment eliminates the requirement that the executive director maintain a list of appropriately qualified persons who may act as agency subordinate.

18VAC90-15-30. Criteria for an agency subordinate.

A. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other

persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

B. ~~The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.~~

~~C.~~ The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

VA.R. Doc. No. R19-5624; Filed January 5, 2019, 11:15 a.m.

Fast-Track Regulation

Title of Regulation: **18VAC90-19. Regulations Governing the Practice of Nursing (amending 18VAC90-19-210, 18VAC90-19-220).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 6, 2019.

Effective Date: March 22, 2019.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Nursing the authority to promulgate regulations to administer the regulatory system. Section 54.1-3018.1 of the Code of Virginia provides the requirements for registration of clinical nurse specialists (CNSs) and § 54.1-3005 authorizes the board to register clinical nurse specialists.

Purpose: The purpose is to align the regulation with statute. Section 54.1-3018.1 of the Code of Virginia requires national certification as a clinical nurse specialist, but the regulation specifies a specialty certification. Since all CNS applicants would have national certification, public health and safety would be adequately protected by registering a CNS without a specialty certification.

Rationale for Using Fast-Track Rulemaking Process: The action is intended to make the regulation consistent with the law, so there is a clearer understanding of the board's authority to register clinical nurse specialists. Since the amended regulation is less restrictive, it should not be controversial.

Substance: The amendments delete references to a specialty certification for a CNS and only require national certification as a clinical nurse specialist. The result is that a CNS who passed the core examination, without taking a specialty examination and having a specialty certification, could be registered as a CNS and could renew such registration by maintaining national certification.

Issues: The primary advantage of the amendment for the public is clearer language to avoid confusion or possible conflict between law and regulation. There are no disadvantages to the public. There are no advantages or disadvantages to the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 83 of the 2016 Acts of Assembly,[1] the Board of Nursing (Board) proposes to amend language concerning clinical nurse specialists to conform to the Code of Virginia.

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

Estimated Economic Impact. Code of Virginia § 54.1-3018.1[2] states that "The Board may register an applicant as a clinical nurse specialist if the applicant: … holds a national clinical nurse specialist certification that prepares the professional nurse to deliver advanced nursing services." The current regulation states that for initial and renewal of registration as a clinical nurse specialist, the applicant must have current "specialty certification." For consistency with the Code of Virginia as amended by Chapter 83, the Board proposes to replace "specialty certification" with "national clinical nurse specialist certification." This would not have a significant impact in practice but would be beneficial in that it may reduce potential confusion among readers of the regulation.

Businesses and Entities Affected. The proposed regulation affects applicants for clinical nurse specialist registration. Thirty-one nurses applied for clinical nurse specialist registration in fiscal year 2017.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments do not significantly affect the use and value of private property.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendments do not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

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[1]See http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0083

[2]See https://law.lis.virginia.gov/vacode/title54.1/chapter30/section54.1-3018.1/

Agency's Response to Economic Impact Analysis: The Board of Nursing concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments replace specialty certification with national certification as a perquisite for registration as a clinical nurse specialist (CNS). Therefore, a CNS who passes the core examination, without taking a specialty examination and having a specialty certification, may be registered as a CNS and renew such registration by maintaining national certification.

Part IV
Clinical Nurse Specialists

18VAC90-19-210. Clinical nurse specialist registration.

A. Initial registration. An applicant for initial registration as a clinical nurse specialist shall:

1. Be currently licensed as a registered nurse in Virginia or hold a current multistate licensure privilege as a registered nurse;

2. Submit evidence of current ~~specialty~~ national clinical nurse specialist certification as required by § 54.1-3018.1 of the Code of Virginia or ~~has~~ have an exception available from March 1, 1990, to July 1, 1990; and

3. Submit the required application and fee.

B. Renewal of registration.

1. Registration as a clinical nurse specialist shall be renewed biennially at the same time the registered nurse license is renewed. If registered as a clinical nurse specialist with a multistate licensure privilege to practice in Virginia as a registered nurse, a licensee born in an even-numbered ~~years~~ year shall renew his license by the last day of the birth month in even-numbered years and a licensee born in an odd-numbered ~~years~~ year shall renew his license by the last day of the birth month in odd-numbered years.

2. The clinical nurse specialist shall complete the renewal form and submit it with the required fee. An attestation of current ~~specialty~~ national certification as a clinical nurse specialist is required unless registered in accordance with an exception.

3. Registration as a clinical nurse specialist shall lapse if the registered nurse license is not renewed or the multistate licensure privilege is lapsed and may be reinstated upon:

a. Reinstatement of RN license or multistate licensure privilege;

b. Payment of reinstatement and current renewal fees; and

c. Submission of evidence of continued ~~specialty~~ national certification as a clinical nurse specialist unless registered in accordance with an exception.

18VAC90-19-220. Clinical nurse specialist practice.

A. The practice of a clinical nurse specialist shall be consistent with the education and experience required for clinical nurse specialist certification.

B. The clinical nurse specialist shall provide those advanced nursing services that are consistent with the standards of specialist practice as established by a national certifying organization for ~~the designated specialty~~ clinical nurse specialists and in accordance with the provisions of Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

C. Advanced practice as a clinical nurse specialist shall include performance as an expert clinician to:

1. Provide direct care and counsel to individuals and groups;

2. Plan, evaluate, and direct care given by others; and

3. Improve care by consultation, collaboration, teaching, and the conduct of research.

VA.R. Doc. No. R19-5517; Filed January 5, 2019, 11:16 a.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Final Regulation

Titles of Regulations: **18VAC95-20. Regulations Governing the Practice of Nursing Home Administrators (amending 18VAC95-20-10, 18VAC95-20-80, 18VAC95-20-175, 18VAC95-20-180, 18VAC95-20-200, 18VAC95-20-220, 18VAC95-20-221, 18VAC95-20-225, 18VAC95-20-230, 18VAC95-20-300, 18VAC95-20-340, 18VAC95-20-380, 18VAC95-20-390, 18VAC95-20-430, 18VAC95-20-470; repealing 18VAC95-20-471).**

18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (amending 18VAC95-30-10, 18VAC95-30-40, 18VAC95-30-70, 18VAC95-30-90, 18VAC95-30-100, 18VAC95-30-120, 18VAC95-30-130, 18VAC95-30-140, 18VAC95-30-150, 18VAC95-30-170, 18VAC95-30-180, 18VAC95-30-200, 18VAC95-30-210).

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

Effective Date: March 6, 2019.

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Summary:

As a result of periodic reviews of the nursing home administrator and assisted living facility administrator regulations, the amendments make numerous changes. The most notable changes (i) add the Health Services Executive credential as a qualification for licensure and (ii) expand the grounds for disciplinary actions or denial of licensure to include causes that would be considered unprofessional conduct but are not explicitly listed in the current regulation.

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

Part I
General Provisions

18VAC95-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the definitions ascribed to them in § 54.1-3100 of the Code of Virginia:

"Board"

"Nursing home"

"Nursing home administrator"

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

"Accredited institution" means any degree-granting college or university accredited by an accrediting body approved by the ~~United States~~ U.S. Department of Education.

"Active practice" means a minimum of 1,000 hours of practice as a licensed nursing home administrator within the preceding 24 months.

"AIT" means a person enrolled in the administrator-in-training program in nursing home administration in a licensed nursing home.

"Administrator-of-record" means the licensed nursing home administrator designated in charge of the general administration of the facility and identified as such to the facility's licensing agency.

"Approved sponsor" means an individual, business, or organization approved by ~~the National Association of Long Term Care Administrator Boards~~ NAB or by an accredited institution to offer continuing education programs in accordance with this chapter.

"Continuing education" means the educational activities ~~which~~ that serve to maintain, develop, or increase the knowledge, skills, performance, and competence recognized as relevant to the nursing home administrator's professional responsibilities.

["Domains of Practice" means the content areas of tasks, knowledge, and skills necessary for administration of a nursing home as approved by NAB.]

"Full time" means employment of at least 35 hours per week.

"Hour" means 50 minutes of participation in a program for obtaining continuing education.

"Internship" means a practicum or course of study as part of a degree or post-degree program designed especially for the preparation of candidates for licensure as nursing home administrators that involves supervision by an accredited college or university of the practical application of previously studied theory.

"NAB" means the National Association of Long Term Care Administrator Boards.

"National examination" means a test used by the board to determine the competence of candidates for licensure as administered by ~~the National Association of Long Term Care Administrator Boards~~ NAB or any other examination approved by the board.

"Preceptor" means a nursing home administrator currently licensed and registered or recognized by a nursing home administrator licensing board to conduct an administrator-in-training (AIT) program.

18VAC95-20-80. Required fees.

~~A.~~ The applicant or licensee shall submit all fees [~~below~~ in this section] that apply:

1. AIT program application	$215
2. Preceptor application	$65
3. Licensure application	$315

4. Verification of licensure requests from other states	$35
5. Nursing home administrator license renewal	$315
6. Preceptor renewal	$65
7. Penalty for nursing home administrator late renewal	$110
8. Penalty for preceptor late renewal	$25
9. Nursing home administrator reinstatement	$435
10. Preceptor reinstatement	$105
11. Duplicate license	$25
12. Duplicate wall certificates	$40
13. Reinstatement after disciplinary action	$1,000

~~B. For the first renewal after the effective date of this regulation, the following one-time shortfall assessment shall apply:~~

~~1. Nursing home license renewal~~	~~$100~~
~~2. Preceptor renewal~~	~~$20~~

18VAC95-20-175. Continuing education requirements.

A. In order to renew a nursing home administrator license, an applicant shall attest on his renewal application to completion of 20 hours of approved continuing education for each renewal year.

1. Up to 10 of the 20 hours may be obtained through Internet or self-study courses and up to 10 continuing education hours in excess of the number required may be transferred or credited to the next renewal year.

2. Up to two hours of the 20 hours required for annual renewal may be satisfied through delivery of services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic.

3. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following initial licensure.

B. In order for continuing education to be approved by the board, it shall (i) be related to health care administration and shall be approved or offered by ~~the National Association of Long Term Care Administrator Boards (NAB)~~ NAB, an accredited institution, or a government agency~~,~~ or (ii) as provided in subdivision A 2 of this section.

C. Documentation of continuing education.

1. The licensee shall retain in his personal files for a period of three renewal years complete documentation of continuing education including evidence of attendance or participation as provided by the approved sponsor for each course taken.

2. Evidence of attendance shall be an original document provided by the approved sponsor and shall include:

a. Date [~~or dates~~] the course was taken;

b. Hours of attendance or participation;

c. Participant's name; and

d. Signature of an authorized representative of the approved sponsor.

3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of completion on forms provided by the board and evidence of attendance or participation as provided by the approved sponsor.

D. The board may grant an extension of up to one year or an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the administrator, such as a certified illness, a temporary disability, mandatory military service, or officially declared disasters. The request for an extension shall be received in writing and granted by the board prior to the renewal date.

18VAC95-20-180. Late renewal.

A. A person who fails to renew his license or preceptor registration by the expiration date shall~~,~~ within one year of the initial expiration date:

1. Return the renewal notice or request renewal in writing to the board; and

2. Submit the applicable renewal fee and ~~penalty~~ late fee.

B. The documents required in subsection A of this section shall be received in the board office within one year of the initial expiration date. Postmarks shall not be considered.

18VAC95-20-200. Reinstatement for nursing home administrator license or preceptor registration.

A. The board may reinstate a nursing home administrator license or preceptor registration that was not renewed within one year of the initial expiration date.

B. An applicant for nursing home administrator license reinstatement shall apply on a reinstatement form provided by the board, submit the reinstatement fee, and provide one of the following:

1. Evidence of the equivalent of 20 hours of continuing education for each year since the last renewal, not to exceed a total of 60 hours.

2. Evidence of active practice in another state or ~~U.S.~~ United States jurisdiction or in the ~~U.S.~~ United States armed services during the period licensure in Virginia was lapsed.

3. Evidence of requalifying for licensure by meeting the requirements prescribed in 18VAC95-20-220 or 18VAC95-20-225.

C. An applicant for preceptor reinstatement shall apply on a reinstatement form provided by the board, submit the reinstatement fee, and meet the current requirements for a preceptor in effect at the time of application for reinstatement.

D. Any person whose license or registration has been suspended, revoked, or denied renewal by the board under the provisions of 18VAC95-20-470 shall, in order to be eligible for reinstatement, (i) submit a reinstatement application to the board for a license, (ii) pay the appropriate reinstatement fee, and (iii) submit any other credentials as prescribed by the board. After a hearing, the board may, at its discretion, grant the reinstatement.

Part III
Requirements for Licensure

18VAC95-20-220. Qualifications for initial licensure.

One of the following sets of qualifications is required for licensure as a nursing home administrator:

1. Degree and practical experience. The applicant shall (i) hold a baccalaureate or higher degree in a health care-related field that meets the requirements of 18VAC95-20-221 from an accredited institution; (ii) have completed not less than a 320-hour internship that addresses the Domains of Practice as specified in 18VAC95-20-390 in a licensed nursing home as part of the degree program under the supervision of a preceptor; and (iii) have received a passing grade on the national examination;

2. Certificate program. The applicant shall (i) hold a baccalaureate or higher degree from an accredited college or university~~;~~, (ii) successfully complete a program with a minimum of 21 semester hours study in a health care-related field that meets the requirements of 18VAC95-20-221 from an accredited institution~~;~~, (iii) successfully complete not less than a 400-hour internship that addresses the Domains of Practice as specified in 18VAC95-20-390 in a licensed nursing home as part of the certificate program under the supervision of a preceptor~~;~~, and (iv) have received a passing grade on the national examination; ~~or~~

3. Administrator-in-training program. The applicant shall have (i) successfully completed an AIT program ~~which~~ that meets the requirements of Part IV (18VAC95-20-300 et seq.) of this chapter ~~and~~, (ii) received a passing grade on the national examination, and (iii) completed the Domains of Practice form required by the board; or

4. Health Services Executive (HSE) credential. The applicant shall provide evidence that he has met the minimum education, experience, and examination standards established by NAB for qualification as a Health Services Executive.

18VAC95-20-221. Required content for coursework.

To meet the educational requirements for a degree in a health care-related field, an applicant must provide ~~a~~ an official transcript from an accredited college or university that documents successful completion of a minimum of 21 semester hours of coursework concentrated on the administration and management of health care services to include a minimum of three semester hours in each of the content areas in subdivisions 1 through 4 of this section, six semester hours in the content area set out in subdivision 5 of this section, and three semester hours for an internship.

1. ~~Resident care and quality of life~~ Customer care, supports, services: Course content shall address program and service planning, supervision, and evaluation to meet the needs of patients, such as (i) nursing, medical and pharmaceutical care; (ii) rehabilitative, social, psychosocial, and recreational services; (iii) nutritional services; (iv) safety and rights protections; (v) quality assurance; and (vi) infection control.

2. Human resources: Course content shall focus on personnel leadership in a health care management role and must address organizational behavior and personnel management skills such as (i) staff organization, supervision, communication, and evaluation; (ii) staff recruitment, retention, and training; (iii) personnel policy development and implementation; and (iv) employee health and safety.

3. Finance: Course content shall address financial management of health care programs and facilities such as (i) an overview of financial practices and problems in the delivery of health care services; (ii) financial planning, accounting, analysis, and auditing; (iii) budgeting; (iv) health care cost issues; and (v) reimbursement systems and structures.

4. ~~Physical environment and atmosphere~~ Environment: Course content shall address facility and equipment management such as (i) maintenance~~;~~, (ii) housekeeping~~;~~, (iii) safety~~;~~, (iv) inspections and compliance with laws and regulations~~;~~, and (v) emergency preparedness.

5. Leadership and management: Course content shall address the leadership roles in health delivery systems such as (i) government oversight and interaction~~;~~, (ii) organizational policies and procedures~~;~~, (iii) principles of ethics and law~~;~~, (iv) community coordination and cooperation~~;~~, (v) risk management~~;~~, and (vi) governance and decision making.

18VAC95-20-225. Qualifications for licensure by endorsement.

The board may issue a license to any person who:

1. Holds a current, unrestricted license from any state or the District of Columbia; and

2. Meets one of the following conditions:

a. Has ~~practiced nursing home administration for one year~~ been engaged in active practice as a licensed nursing home administrator; or

b. Has education and experience equivalent to qualifications required by this chapter and has provided written evidence of those qualifications at the time of application for licensure.

18VAC95-20-230. Application package.

A. An application for licensure shall be submitted after the applicant completes the qualifications for licensure.

B. An individual seeking licensure as a nursing home administrator or registration as a preceptor shall submit:

1. A completed application as provided by the board;

2. Additional documentation as may be required by the board to determine eligibility of the applicant;

3. The applicable fee;

4. An attestation that he has read and understands and will remain current with the applicable Virginia laws and regulations relating to the administration of nursing homes; and

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

C. With the exception of school transcripts, examination scores, the NPDB report, employer verifications, and verifications from other state boards, all parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for one year, after which time the application shall be destroyed and a new application and fee shall be required.

Part IV
Administrator-In-Training Program

18VAC95-20-300. Administrator-in-training qualifications.

A. To be approved as an administrator-in-training, a person shall:

1. Have received a passing grade on a total of 60 semester hours of education from an accredited institution;

2. Obtain a registered preceptor to provide training;

3. Submit the fee prescribed in 18VAC95-20-80;

4. Submit the application and Domains of Practice form provided by the board; and

5. Submit additional documentation as may be necessary to determine eligibility of the applicant and the number of hours required for the AIT program.

B. With the exception of school transcripts, all required parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for one year after which time the application shall be destroyed and a new application and fee shall be required.

18VAC95-20-340. Supervision of trainees.

A. Training shall be under the supervision of a preceptor who is registered or recognized by a licensing board.

B. A preceptor may supervise no more than two AIT's at any one time.

C. A preceptor shall:

1. Provide direct instruction, planning, and evaluation in the training facility;

2. Shall be routinely present with the trainee in the training facility as appropriate to the experience and training of the AIT and the needs of the residents in the facility; and

3. Shall continually evaluate the development and experience of the AIT to determine specific areas in the Domains of Practice that need to be addressed.

18VAC95-20-380. Qualifications of preceptors.

A. To be registered by the board as a preceptor, a person shall:

1. Hold a current, unrestricted Virginia nursing home administrator license and be employed full time as an administrator of record in a training facility for a minimum of two of the past three years immediately prior to registration; ~~and~~

2. Provide evidence that he has completed the online preceptor training course offered by NAB; and

3. Meet the application requirements in 18VAC95-20-230.

B. To renew registration as a preceptor, a person shall:

1. Hold a current, unrestricted Virginia nursing home license and be employed by or have an agreement with a training facility for a preceptorship; and

2. Meet the renewal requirements of 18VAC95-20-170.

18VAC95-20-390. Training plan.

Prior to the beginning of the AIT program, the preceptor shall develop and submit for board approval a training plan that shall include and be designed around the specific training needs of the administrator-in-training. The training plan shall address the Domains of Practice approved by ~~the National~~

~~Association of Long Term Care Administrator Boards~~ NAB that is in effect at the time the training program is submitted for approval. An AIT program shall include training in each of the learning areas in the Domains of Practice.

18VAC95-20-430. Termination of program.

A. If the AIT program is terminated prior to completion, the trainee and the preceptor shall each submit a written explanation of the causes of program termination to the board within ~~five working~~ 10 business days.

B. The preceptor shall also submit all required monthly progress reports completed prior to termination.

Part V
Refusal, Suspension, Revocation, and Disciplinary Action

18VAC95-20-470. Unprofessional conduct.

The board may refuse to admit a candidate to an examination, refuse to issue or renew a license or registration or approval to any applicant, suspend a license for a stated period of time or indefinitely, reprimand a licensee or registrant, place his license or registration on probation with such terms and conditions and for such time as it may designate, impose a monetary penalty, or revoke a license or registration for any of the following causes:

1. Conducting the practice of nursing home administration in such a manner as to constitute a danger to the health, safety, and well-being of the residents, staff, or public;

2. Failure to comply with federal, state, or local laws and regulations governing the operation of a nursing home;

3. Conviction of a felony or any misdemeanor involving abuse, neglect, or moral turpitude;

4. Violating or cooperating with others in violating any of the provisions of Chapters 1 (§ 54.1-100 et seq.), 24 (§ 54.1-2400 et seq.), and ~~this chapter~~ 31 (§ 54.1-3100 et seq.) of the Code of Virginia or regulations of the board; ~~or~~

5. Inability to practice with reasonable skill or safety by reason of illness or substance abuse or as a result of any mental or physical condition;

6. Abuse, negligent practice, or misappropriation of a resident's property;

7. Entering into a relationship with a resident that constitutes a professional boundary violation in which the administrator uses his professional position to take advantage of the vulnerability of a resident or his family, to include actions that result in personal gain at the expense of the resident, an inappropriate personal involvement [with a resident,] or sexual conduct with a resident;

8. The denial, revocation, suspension, or restriction of a license to practice in another state, the District of Columbia, or a United States possession or territory;

9. Assuming duties and responsibilities within the practice of nursing home administration without adequate training or when competency has not been maintained;

10. Obtaining supplies, equipment, or drugs for personal or other unauthorized use;

11. Falsifying or otherwise altering resident or employer records, including falsely representing facts on a job application or other employment-related documents;

12. Fraud or deceit in procuring or attempting to procure a license or registration or seeking reinstatement of a license or registration; or

13. Employing or assigning unqualified persons to perform functions that require a license, certificate, or registration.

18VAC95-20-471. ~~Criteria for delegation of informal fact-finding proceedings to an agency subordinate.~~ (Repealed.)

~~A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.~~

~~B. Criteria for delegation. Cases that may not be delegated to an agency subordinate include violations of standards of practice as set forth in subdivisions 1, 3 and 5 of 18VAC95-20-470, except as may otherwise be determined by a special conference committee of the board.~~

~~C. Criteria for an agency subordinate.~~

~~1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.~~

~~2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.~~

~~3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.~~

Part I
General Provisions

18VAC95-30-10. Definitions.

A. The following words and terms when used in this chapter shall have the definitions ascribed to them in § 54.1-3100 of the Code of Virginia:

"Assisted living facility"

"Assisted living facility administrator"

"Board"

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

"Accredited institution" means any degree-granting college or university accredited by an accrediting body approved by the U.S. Department of Education.

"Active practice" means a minimum of 1,000 hours of practice as an assisted living facility administrator within the preceding 24 months.

"Administrator-of-record" means the licensed assisted living facility administrator designated in charge of the general administration and management of an assisted living facility, including compliance with applicable regulations, and identified as such to the facility's licensing agency.

"ALF AIT" means ~~an~~ a person enrolled in an administrator-in-training program in a licensed assisted living facility ~~administrator in training~~.

"Approved sponsor" means an individual, business, or organization approved by NAB or by an accredited institution to offer continuing education programs in accordance with this chapter.

"Continuing education" means the educational activities that serve to maintain, develop, or increase the knowledge, skills, performance, and competence recognized as relevant to the assisted living facility administrator's professional responsibilities.

"Domains of [~~practice"~~ Practice"] means the content areas of tasks, knowledge and skills necessary for administration of a residential ~~care/assisted~~ care or assisted living facility as approved by ~~the National Association of Long Term Care Administrator Boards~~ NAB.

"Full time" means employment of at least 35 hours per week.

"Hour" means 50 minutes of participation in a program for obtaining continuing education.

"Internship" means a practicum or course of study as part of a degree or post-degree program designed especially for the preparation of candidates for licensure as assisted living facility administrators that involves supervision by an accredited college or university of the practical application of previously studied theory.

"NAB" means the National Association of Long Term Care Administrator Boards.

"National examination" means a test used by the board to determine the competence of candidates for licensure as administered by NAB or any other examination approved by the board.

"Preceptor" means an assisted living facility administrator or nursing home administrator currently licensed and registered to conduct an ALF AIT program.

18VAC95-30-40. Required fees.

A. The applicant or licensee shall submit all fees ~~below~~ in this subsection that apply:

1. ALF AIT program application	$215
2. Preceptor application	$65
3. Licensure application	$315
4. Verification of licensure requests from other states	$35
5. Assisted living facility administrator license renewal	$315
6. Preceptor renewal	$65
7. Penalty for assisted living facility administrator late renewal	$110
8. Penalty for preceptor late renewal	$25
9. Assisted living facility administrator reinstatement	$435
10. Preceptor reinstatement	$105
11. Duplicate license	$25
12. Duplicate wall certificates	$40
13. Returned check	$35
14. Reinstatement after disciplinary action	$1,000

B. Fees shall not be refunded once submitted.

C. Examination fees are to be paid directly to the service contracted by the board to administer the examination.

~~D. For the first renewal after the effective date of this regulation, the following one-time shortfall assessment shall apply:~~

~~1. Assisted living facility administrator license renewal~~	~~$100~~
~~2. Preceptor renewal~~	~~$20~~

18VAC95-30-70. Continuing education requirements.

A. In order to renew an assisted living administrator license, an applicant shall attest on his renewal application to completion of 20 hours of approved continuing education for each renewal year.

1. Up to 10 of the 20 hours may be obtained through Internet or self-study courses and up to 10 continuing education hours in excess of the number required may be transferred or credited to the next renewal year.

2. Up to two hours of the 20 hours required for annual renewal may be satisfied through delivery of services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic.

3. A licensee is exempt from completing continuing education requirements for the first renewal following initial licensure in Virginia.

B. In order for continuing education to be approved by the board, it shall (i) be related to the [~~domains~~ Domains] of [~~practice~~ Practice] for residential care/assisted living and approved or offered by NAB, an accredited educational institution, or a governmental agency~~,~~ or (ii) be as provided in subdivision A 2 of this section.

C. Documentation of continuing education.

1. The licensee shall retain in his personal files for a period of three renewal years complete documentation of continuing education including evidence of attendance or participation as provided by the approved sponsor for each course taken.

2. Evidence of attendance shall be an original document provided by the approved sponsor and shall include:

a. Date [~~or dates~~] the course was taken;

b. Hours of attendance or participation;

c. Participant's name; and

d. Signature of an authorized representative of the approved sponsor.

3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of completion on forms provided by the board and evidence of attendance or participation as provided by the approved sponsor.

D. The board may grant an extension of up to one year or an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the administrator, such as a certified illness, a temporary disability, mandatory military service, or officially declared disasters. The request for an extension shall be submitted in writing and granted by the board prior to the renewal date.

18VAC95-30-90. Reinstatement for an assisted living facility administrator license or preceptor registration.

A. The board may reinstate an assisted living facility administrator license or preceptor registration that was not renewed within one year of the initial expiration date.

B. An applicant for assisted living facility administrator license reinstatement shall apply on a reinstatement form provided by the board, submit the reinstatement fee, and provide one of the following:

1. Evidence of the equivalent of 20 hours of continuing education for each year since the last renewal, not to exceed a total of 60 hours.

2. Evidence of active practice in another state or ~~U.S.~~ United States jurisdiction or in the ~~U.S.~~ United States armed services during the period licensure in Virginia was lapsed.

3. Evidence of requalifying for licensure by meeting the requirements prescribed in 18VAC95-30-100 and 18VAC95-30-110.

C. An applicant for preceptor reinstatement shall apply on a reinstatement form provided by the board, submit the reinstatement fee, and meet the current requirements for a preceptor in effect at the time of application for reinstatement.

D. Any person whose license or registration has been suspended, revoked, or denied renewal by the board under the provisions of 18VAC95-30-210 shall, in order to be eligible for reinstatement, (i) submit a reinstatement application to the board for a license, (ii) pay the appropriate reinstatement fee, and (iii) submit any other credentials as prescribed by the board. After a hearing, the board may, at its discretion, grant the reinstatement.

18VAC95-30-100. Educational and training requirements for initial licensure.

A. To be qualified for initial licensure as an assisted living facility administrator, an applicant shall hold a high school diploma or general education diploma (GED) and hold one of the following qualifications:

1. Administrator-in-training program.

a. Complete at least 30 semester hours in an accredited college or university in any subject and 640 hours in an ALF AIT program as specified in 18VAC95-30-150;

b. Complete an educational program as a licensed practical nurse and hold a current, unrestricted license or multistate licensure privilege and 640 hours in an ALF AIT program;

c. Complete an educational program as a registered nurse and hold a current, unrestricted license or multistate licensure privilege and 480 hours in an ALF AIT program;

d. Complete at least 30 semester hours in an accredited college or university with courses in the content areas of (i) client/resident care~~;~~, (ii) human resources management~~;~~, (iii) financial management~~;~~, (iv) physical environment~~;~~, and (v) leadership and governance~~;~~, and ~~320~~ 480 hours in an ALF AIT program;

e. Hold a master's or a baccalaureate degree in health care-related field or a comparable field that meets the requirements of subsection B of this section with no internship or practicum and 320 hours in an ALF AIT program; or

f. Hold a master's or baccalaureate degree in an unrelated field and 480 hours in an ALF AIT program; ~~or~~

2. Certificate program.

Hold a baccalaureate or higher degree in a field unrelated to health care from an accredited college or university and successfully complete a certificate program with a minimum of 21 semester hours study in a health care-related field that meets course content requirements of subsection B of this section from an accredited college or university and successfully complete not less than a 320-hour internship or practicum that addresses the [~~domains~~ Domains] of [~~practice~~ Practice] as specified in 18VAC95-30-160 in a licensed assisted living facility as part of the certificate program under the supervision of a preceptor; or

3. Degree and practical experience.

Hold a baccalaureate or higher degree in a health care-related field that meets the course content requirements of subsection B of this section from an accredited college or university and have completed not less than a 320-hour internship or practicum that addresses the Domains of Practice as specified in 18VAC95-30-160 in a licensed assisted living facility as part of the degree program under the supervision of a preceptor.

B. To meet the educational requirements for a degree in a health care-related field, an applicant must provide ~~a~~ an official transcript from an accredited college or university that documents successful completion of a minimum of 21 semester hours of coursework concentrated on the administration and management of health care services to include a minimum of six semester hours in the content area set out in subdivision 1 of this subsection, three semester hours in each of the content areas in subdivisions 2 through 5 of this subsection, and three semester hours for an internship or practicum.

1. ~~Resident/client services management~~ Customer care, supports, and services;

2. Human ~~resource management~~ resources;

3. ~~Financial management~~ Finance;

4. ~~Physical environment management~~ Environment;

5. Leadership and ~~governance~~ management.

18VAC95-30-120. Qualifications for licensure by endorsement or credentials.

A. If applying from any state or the District of Columbia in which a license, certificate, or registration is required to be the administrator of an assisted living facility, an applicant for licensure by endorsement shall hold a current, unrestricted license, certificate, or registration from that state or the District of Columbia. If applying from a jurisdiction that does not have such a requirement, an applicant may apply for licensure by credentials, and no evidence of licensure, certification, or registration is required.

B. The board may issue a license to any person who:

1. Meets the provisions of subsection A of this section;

2. Has not been the subject of a disciplinary action taken by any jurisdiction in which he was found to be in violation of law or regulation governing practice and which, in the judgment of the board, has not remediated;

3. Meets one of the following conditions:

a. Has ~~practiced as the administrator of record~~ been engaged in active practice as an assisted living facility administrator in an assisted living facility that provides assisted living care as defined in § 63.2-100 of the Code of Virginia ~~for at least two of the four years immediately preceding application to the board~~; or

b. Has education and experience substantially equivalent to qualifications required by this chapter and has provided written evidence of those qualifications at the time of application for licensure; and

4. Has successfully passed a national credentialing examination for administrators of assisted living facilities approved by the board.

18VAC95-30-130. Application package.

A. An application for licensure shall be submitted after the applicant completes the qualifications for licensure.

B. An individual seeking licensure as an assisted living facility administrator or registration as a preceptor shall submit:

1. A completed application as provided by the board;

2. Additional documentation as may be required by the board to determine eligibility of the applicant, to include the most recent survey report if the applicant has been serving as an acting administrator of a facility;

3. The applicable fee;

4. An attestation that he has read and understands and will remain current with the applicable Virginia laws and the regulations relating to assisted living facilities; and

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

C. With the exception of school transcripts, examination scores, the NPDB report, employer verifications, and verifications from other state boards, all parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for one year, after which time the application shall be destroyed and a new application and fee shall be required.

Part IV
Administrator-in-Training Program

18VAC95-30-140. Training qualifications.

A. To be approved as an ALF administrator-in-training, a person shall:

1. Meet the requirements of 18VAC95-30-100 A 1;

2. Obtain a registered preceptor to provide training;

3. Submit the application and Domains of Practice form provided by the board and the fee prescribed in 18VAC95-30-40; and

4. Submit additional documentation as may be necessary to determine eligibility of the applicant and the number of hours required for the ALF AIT program.

B. With the exception of school transcripts, all required parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for one year after which time the application shall be destroyed and a new application and fee shall be required.

18VAC95-30-150. Required hours of training.

A. The ALF AIT program shall consist of hours of continuous training as specified in 18VAC95-30-100 A 1 in a facility as prescribed in 18VAC95-30-170 to be completed within 24 months, except a person in an ALF AIT program who has been approved by the board and is serving as an acting administrator shall complete the program within 150 days. An extension may be granted by the board on an individual case basis. The board may reduce the required hours for applicants with certain qualifications as prescribed in subsection B of this section.

B. An ALF AIT program applicant with prior health care work experience may request approval to receive hours of credit toward the total hours as follows:

1. An applicant who has been employed full time for one of the past four years immediately prior to application as an assistant administrator in a licensed assisted living facility or nursing home or as a hospital administrator shall complete 320 hours in an ALF AIT program;

2. An applicant who holds a license or a multistate licensure privilege as a registered nurse and who has held an administrative level supervisory position in nursing for at least one of the past four consecutive years in a licensed assisted living facility or nursing home shall complete 320 hours in an ALF AIT program; or

3. An applicant who holds a license or a multistate licensure privilege as a licensed practical nurse and who has held an administrative level supervisory position in nursing for at least one of the past four consecutive years in a licensed assisted living facility or nursing home shall complete 480 hours in an ALF AIT program.

18VAC95-30-170. Training facilities.

A. Training in an ALF AIT program or for an internship ~~or practicum~~ shall be conducted only in:

1. An assisted living facility or unit licensed by the Virginia Board of Social Services or by a similar licensing body in another jurisdiction;

2. An assisted living facility owned or operated by an agency of any city, county, or the Commonwealth or of the United States government; or

3. An assisted living unit located in and operated by a licensed hospital as defined in § 32.1-123 of the Code of Virginia, a state-operated hospital, or a hospital licensed in another jurisdiction.

B. [~~Training~~ A new ALF AIT program or internship] shall not be conducted in a facility with a provisional license as determined by the Department of Social Services.

18VAC95-30-180. Preceptors.

A. Training in an ALF AIT program shall be under the supervision of a preceptor who is registered or recognized by Virginia or a similar licensing board in another jurisdiction.

B. To be registered by the board as a preceptor, a person shall:

1. Hold a current, unrestricted Virginia assisted living facility administrator or nursing home administrator license;

2. Be employed full time as an administrator in a training facility [~~or facilities~~] for a minimum of ~~one~~ two of the past four years immediately prior to registration or be a regional administrator with on-site supervisory responsibilities for a training facility [~~or facilities~~]; ~~and~~

3. Provide evidence that he has completed the online preceptor training course offered by NAB; and

4. Submit an application and fee as prescribed in 18VAC95-30-40. The board may waive such application

and fee for a person who is already approved as a preceptor for nursing home licensure.

C. A preceptor shall:

1. Provide direct instruction, planning, and evaluation;

2. Be routinely present with the trainee in the training facility as appropriate to the experience and training of the ALF AIT and the needs of the residents in the facility; and

3. Continually evaluate the development and experience of the trainee to determine specific areas needed for concentration.

D. A preceptor may supervise no more than two trainees at any one time.

E. A preceptor for a person who is serving as an acting administrator while in an ALF AIT program shall be present in the training facility for face-to-face instruction and review of the trainee's performance for a minimum of ~~two~~ four hours per week.

F. To renew registration as a preceptor, a person shall:

1. Hold a current, unrestricted Virginia assisted living facility or nursing home license and be employed by or have an agreement with a training facility for a preceptorship; and

2. Meet the renewal requirements of 18VAC95-30-60.

18VAC95-30-200. Interruption or termination of program.

A. If the program is interrupted because the registered preceptor is unable to serve, the trainee shall notify the board within 10 working days and shall obtain a new preceptor who is registered with the board within 60 days.

1. Credit for training shall resume when a new preceptor is obtained and approved by the board.

2. If an alternate training plan is developed, it shall be submitted to the board for approval before the trainee resumes training.

B. If the training program is terminated prior to completion, the trainee and the preceptor shall each submit a written explanation of the causes of program termination to the board within ~~five working~~ 10 business days. The preceptor shall also submit all required monthly progress reports completed prior to termination within 10 business days.

Part V
Refusal, Suspension, Revocation and Disciplinary Action

18VAC95-30-210. Unprofessional conduct.

The board may refuse to admit a candidate to an examination, refuse to issue or renew a license or registration or grant approval to any applicant, suspend a license or registration for a stated period of time or indefinitely, reprimand a licensee or registrant, place his license or registration on probation with such terms and conditions and for such time as it may designate, impose a monetary penalty, or revoke a license or registration for any of the following causes:

1. Conducting the practice of assisted living administration in such a manner as to constitute a danger to the health, safety, and well-being of the residents, staff, or public;

2. Failure to comply with federal, state, or local laws and regulations governing the operation of an assisted living facility;

3. Conviction of a felony or any misdemeanor involving abuse, neglect, or moral turpitude;

4. ~~Failure to comply with any regulations of the board; or~~ Violating or cooperating with others in violating any of the provisions of Chapters 1 (§ 54.1-100 et seq.), 24 (§ 54.1-2400 et seq.), and 31 (§ 54.1-3100 et seq.) of the Code of Virginia or regulations of the board;

5. Inability to practice with reasonable skill or safety by reason of illness or substance abuse or as a result of any mental or physical condition;

6. Abuse, negligent practice, or misappropriation of a resident's property;

7. Entering into a relationship with a resident that constitutes a professional boundary violation in which the administrator uses his professional position to take advantage of the vulnerability of a resident or his family, to include actions that result in personal gain at the expense of the resident, an inappropriate personal involvement [with a resident,] or sexual conduct with a resident;

8. The denial, revocation, suspension, or restriction of a license to practice in another state, the District of Columbia or a United States possession or territory;

9. Assuming duties and responsibilities within the practice of assisted living facility administration without adequate training or when competency has not been maintained;

10. Obtaining supplies, equipment, or drugs for personal or other unauthorized use;

11. Falsifying or otherwise altering resident or employer records, including falsely representing facts on a job application or other employment-related documents;

12. Fraud or deceit in procuring or attempting to procure a license or registration or seeking reinstatement of a license or registration; or

13. Employing or assigning unqualified persons to perform functions that require a license, certificate, or registration.

VA.R. Doc. No. R17-4984; Filed January 5, 2019, 11:13 a.m.

BOARD OF OPTOMETRY

Proposed Regulation

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-5, 18VAC105-20-70; adding 18VAC105-20-48, 18VAC105-20-49).**

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

Public Hearing Information:

February 8, 2019 - 9:05 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 200, Conference Center, Henrico, VA

Public Comment Deadline: April 5, 2019.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Optometry the authority to promulgate regulations to administer the regulatory system.

Purpose: The opioid addiction crisis was declared to be a public health emergency in Virginia on November 21, 2016. In the declaration announcement, it was noted that by the end of 2016, the numbers of fatal opioid overdose deaths were expected to increase by 77%, compared to five years ago. In 2014, for the first time in Virginia, more people died from opioid overdoses than fatal car accidents. Emergency department visits for heroin overdose for January through September 2016 increased 89%, compared to the same nine-month period in 2015. In the first half of 2016, the total number of fatal drug overdoses in Virginia increased 35%, when compared to the same time period in 2015, and in 2013, fatal drug overdoses became the number one cause of unnatural death. In addition to overdoses from opioids, overdoses from heroin and other illicit drugs continue to soar. Many of those who become addicted to heroin started with an addiction to prescription drugs. In order to stem the tide of addiction, practitioners need enforceable rules for proper prescribing of drugs containing an opioid in the treatment of pain to protect the public health and safety.

The purpose of the regulatory action is the establishment of requirements for prescribing controlled substances containing opioids to address the overdose and addiction crisis in the Commonwealth. The goal is to provide optometrists with definitive rules to follow so that they may feel more assured of their ability to treat pain in an appropriate manner to avoid under-prescribing or over-prescribing.

Substance: The proposed provisions for the management of acute pain includes requirements for the evaluation of the patient, limitations on quantity and dosage, and recordkeeping. The proposed provisions for the management of chronic pain require either referral to a pain management specialist or adherence to regulations of the Board of Medicine.

Issues: The primary advantage to the public is a reduction in the amount of opioid medication that is available in Virginia communities. A limitation on the quantity of opioids that may be prescribed should result in fewer people becoming addicted to pain medication, which sometimes leads them to turn to heroin and other illicit drugs. There are no disadvantages to the public; the only covered substance optometrists prescribe is hydrocodone with acetaminophen, so the proposed regulations will not have a negative impact on such prescribing.

The primary advantage to the Commonwealth is the potential reduction in the number of persons addicted to opioids and deaths from overdoses, and there are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Optometry (Board) proposes to promulgate provisions for optometrists prescribing controlled substances containing opioids.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs.

Estimated Economic Impact.

General Opioid Background: The Department of Health Professions reports that in 2014, for the first time in Virginia, more people died from opioid overdoses than from fatal car accidents. Emergency department visits for heroin overdoses for January to September 2016 increased 89 percent, compared to the same nine-month period in 2015. In the first half of 2016, the total number of fatal drug overdoses in Virginia increased 35 percent, when compared to the same period in 2015, and in 2013, fatal drug overdoses became the number one cause of unnatural death. Many of those who become addicted to heroin started with an addiction to prescription drugs. In order to stem the tide of addiction, the Board believes practitioners need enforceable rules for proper prescribing of drugs containing opioid in treatment of pain to protect the public health and safety.

Optometry Background: The Regulations of the Virginia Board of Optometry include certification for qualified optometrists to treat diseases and abnormal conditions of the human eye and its adnexa and to prescribe and administer certain therapeutic pharmaceutical agents (TPA). The certification is referred to as TPA certification. The TPA that a TPA-certified optometrist may prescribe include a limited number of controlled substances containing opioids. The current regulation does not include any requirements that specifically pertain to opioids.

Proposal: The proposed regulation includes the following provisions:

• A TPA-certified optometrist must consider nonpharmacologic and non-opioid treatment prior to prescribing opioid treatment for patients with acute pain.[1]

• Prior to prescribing an opioid for acute pain, the TPA-certified optometrist must perform a health history and physical examination appropriate to the complaint, query the Prescription Monitoring Program (PMP) as set forth in § 54.1-2522.1 of the Code of Virginia, and conduct an assessment of the patient's history and risk of substance abuse.

• When prescribing an opioid, the practitioner must prescribe the lowest effective dose for the fewest number of days, not to exceed a seven-day supply as determined by the manufacturer's directions for use, unless extenuating circumstances are clearly documented in the patient record.

• The optometrist must carefully consider and document in the patient record the reasons to exceed the equivalent of 50 morphine milligrams per day.

• Naloxone shall be considered for patients when risk factors of prior overdose, substance abuse, or concomitant benzodiazepine are present.

• If another prescription for an opioid is to be written beyond seven days, the patient must be reevaluated, the need for continued prescribing must be documented in the patient record, and the optometrist must check the patient's prescription history in the PMP.

• The patient record must include a description of the pain, a presumptive diagnosis for the origin of the pain, an examination appropriate to the complaint, a treatment plan, and the medication prescribed (including date, type, dosage, strength, and quantity prescribed).

• Due to a higher risk of fatal overdose when opioids are prescribed for a patient also taking benzodiazepines, sedative hypnotics, tramadol, or carisoprodol, a TPA-certified optometrist shall only co-prescribe these substances when there are extenuating circumstances and shall document in the patient record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

• If an optometrist treats a patient for whom an opioid prescription is necessary for chronic pain,[2] the licensee shall either: (1) refer the patient to a medical doctor who is a pain management specialist, or (2) comply with regulations of the Board of Medicine, 18VAC85-21-60 through 18VAC85-21-120, if choosing to manage the chronic pain with an opioid prescription.

• Definitions for "acute pain," "chronic pain," "controlled substance," and the "Prescription Monitoring Program" have been added to the regulation.

Analysis: The proposed provisions increase time costs for both TPA-certified optometrists and patients, and recordkeeping costs for the optometry practice. By effectively requiring additional office visits for opioid treatment beyond seven days, fees paid by patients and/or their insurance carriers would increase as well. By discouraging the use of opioids, the proposed provisions may result in some patients experiencing more pain or being in pain for more time than without the proposed requirements.

The proposed requirements are designed, of course, to help reduce opioid addiction and opioid-related deaths. It is not known how successful the provisions would be in achieving those goals. To the extent that the proposals would be successful in reducing opioid addiction and opioid-related deaths, the benefits likely would exceed the costs. If the provisions are ineffective in reducing opioid addiction and opioid-related deaths, then the costs would exceed the benefits.

Businesses and Entities Affected. The proposed amendments potentially affect the 1,669 TPA-certified optometrists licensed in Virginia, and their practices.[3] All or most of their practices would qualify as small businesses.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments do not significantly affect the use and value of private property.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendments moderately increase time and recordkeeping costs for optometry practices.

Alternative Method that Minimizes Adverse Impact. There is not an apparent alternative method that achieves the same policy goal at a lower cost.

Adverse Impacts:

Businesses. The proposed amendments moderately increase time and recordkeeping costs for optometry practices.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments may result in some patients experiencing more pain or being in pain for more time than without the proposed requirements.

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[1]Acute pain is defined as "pain that occurs within the normal course of a disease or condition for which controlled substances may be prescribed for no more than three months."

[2]Chronic pain is defined as "nonmalignant pain that goes beyond the normal course of a disease or condition for which controlled substances may be prescribed for a period greater than three months."

[3]Data source: Department of Health Professions

Agency's Response to Economic Impact Analysis: The Board of Optometry does not fully concur with the analysis of the Department of Planning and Budget on proposed regulations for 18VAC105-20, Regulations Governing the Practice of Optometry, relating to the prescribing of opioids.

The analysis states that the proposed provisions "increase time costs for both TPA-certified optometrists and patients and recordkeeping costs for the optometry practice." Optometrists on the board uniformly agreed that seven days following an optometric treatment, a patient should not be experiencing pain significant enough to continue prescribing opioids. If that is the case, the current standard of care would necessitate that the patient be rechecked to assess the problem, and a referral for medical care may be warranted. Therefore, the proposed regulations for opioid prescribing are consistent with current practices and do not represent an increase in costs to the practice or the patient.

Summary:

Proposed regulations for optometrists prescribing controlled substances include (i) provisions for the management of acute pain that require prescribing a dosage not to exceed seven days and include requirements for the evaluation of the patient and limitations on quantity; (ii) requirements for prescribing an opioid beyond seven days to include a reevaluation of the patient, check of the Prescription Monitoring Program, and specific information in the patient record; and (iii) if a TPA-certified optometrist finds an opioid prescription for chronic pain is necessary, a requirement to refer the patient to a physician or comply with Board of Medicine regulations for managing chronic pain. The proposed amendments replace emergency regulations currently in effect.

18VAC105-20-5. Definitions.

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

"Acute pain" means pain that occurs within the normal course of a disease or condition for which controlled substances may be prescribed for no more than three months.

"Board" means the Virginia Board of Optometry.

"Chronic pain" means nonmalignant pain that goes beyond the normal course of a disease or condition for which controlled substances may be prescribed for a period greater than three months.

"Controlled substance" means drugs listed in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) in Schedules II through V.

"MME" means morphine milligram equivalent.

"NBEO" means the National Board of Examiners in Optometry.

"Prescription Monitoring Program" means the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances.

"TPA" means therapeutic pharmaceutical agents.

"TPA certification" means authorization by the Virginia Board of Optometry for an optometrist to treat diseases and abnormal conditions of the human eye and its adnexa and to prescribe and administer certain therapeutic pharmaceutical agents.

18VAC105-20-48. Prescribing an opioid for acute pain.

A. Nonpharmacologic and non-opioid treatment for pain shall be given consideration prior to treatment with opioids. If an opioid is considered necessary for the treatment of acute pain, a TPA-certified optometrist shall follow the regulations for prescribing and treating with opioids.

B. Prior to initiating treatment with a controlled substance containing an opioid for a complaint of acute pain, a TPA-certified optometrist shall perform a health history and physical examination appropriate to the complaint, query the Prescription Monitoring Program as set forth in § 54.1-2522.1 of the Code of Virginia, and conduct an assessment of the patient's history and risk of substance abuse.

C. Initiation of opioid treatment for all patients with acute pain shall include the following:

1. A prescription for an opioid shall be a short-acting opioid in the lowest effective dose for the fewest number of days, not to exceed seven days as determined by the manufacturer's directions for use, unless extenuating circumstances are clearly documented in the patient record.

2. A TPA-certified optometrist shall carefully consider and document in the patient record the reasons to exceed 50 MME per day.

3. A prescription for naloxone should be considered for any patient when any risk factor of prior overdose,

substance misuse, or concomitant use of benzodiazepine is present.

D. If another prescription for an opioid is to be written beyond seven days, a TPA-certified optometrist shall:

1. Reevaluate the patient and document in the patient record the continued need for an opioid prescription; and

2. Check the patient's prescription history in the Prescription Monitoring Program.

E. The patient record shall include a description of the pain, a presumptive diagnosis for the origin of the pain, an examination appropriate to the complaint, a treatment plan, and the medication prescribed (including date, type, dosage, strength, and quantity prescribed).

F. Due to a higher risk of fatal overdose when opioids are prescribed for a patient also taking benzodiazepines, sedative hypnotics, tramadol, or carisoprodol, a TPA-certified optometrist shall only co-prescribe these substances when there are extenuating circumstances and shall document in the patient record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

18VAC105-20-49. Prescribing an opioid for chronic pain.

If a TPA-certified optometrist treats a patient for whom an opioid prescription is necessary for chronic pain, he shall either:

1. Refer the patient to a doctor of medicine or osteopathic medicine who is a pain management specialist; or

2. Comply with regulations of the Board of Medicine, 18VAC85-21-60 through 18VAC85-21-120, if he chooses to manage the chronic pain with an opioid prescription.

18VAC105-20-70. Requirements for continuing education.

A. Each license renewal shall be conditioned upon submission of evidence to the board of 20 hours of continuing education taken by the applicant during the previous license period. A licensee who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle.

1. The 20 hours may include up to two hours of recordkeeping for patient care, including coding for diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products.

2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least 10 of the required continuing education hours shall be in the areas of ocular and general pharmacology~~,~~; diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents~~, or~~; new or advanced clinical devices, techniques, modalities, or procedures; or pain management.

3. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer may communicate with one another.

4. A licensee may also include up to two hours of training in cardiopulmonary resuscitation (CPR).

5. Two hours of the 20 hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to the renewal deadline unless an extension or waiver has been granted by the Continuing Education Committee. A request for an extension or waiver shall be received prior to the renewal deadline of each year.

C. All continuing education courses shall be offered by an approved sponsor or accrediting body listed in subsection G of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board which will require that the licensee provide evidence substantiating participation in required continuing education courses within 14 days of the renewal date.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor or accrediting body as listed in subsection G of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses shall be credited according to the date on which the post-test was graded as indicated on the continuing education certificate.

F. A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

G. An approved continuing education course or program, whether offered by correspondence, electronically, or in person, shall be sponsored, accredited, or approved by one of the following:

1. The American Optometric Association and its constituent organizations.

2. Regional optometric organizations.

3. State optometric associations and their affiliate local societies.

4. Accredited colleges and universities providing optometric or medical courses.

5. The American Academy of Optometry and its affiliate organizations.

6. The American Academy of Ophthalmology and its affiliate organizations.

7. The Virginia Academy of Optometry.

8. Council on Optometric Practitioner Education (COPE).

9. State or federal governmental agencies.

10. College of Optometrists in Vision Development.

11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 credit.

12. Providers of training in cardiopulmonary resuscitation (CPR).

13. Optometric Extension Program.

H. In order to maintain approval for continuing education courses, providers or sponsors shall:

1. Provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course, and contact information of the provider or sponsor for verification. The certificate of attendance shall be based on verification by the sponsor of the attendee's presence throughout the course, either provided by a post-test or by a designated monitor.

2. Maintain documentation about the course and attendance for at least three years following its completion.

I. Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with § 54.1-3215 of the Code of Virginia.

VA.R. Doc. No. R18-5205; Filed January 5, 2019, 11:20 a.m.

BOARD OF PHARMACY

Fast-Track Regulation

Title of Regulation: **18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, and Warehousers (amending 18VAC110-50-20, 18VAC110-50-30, 18VAC110-50-40, 18VAC110-50-60, 18VAC110-50-70, 18VAC110-50-80, 18VAC110-50-100 through 18VAC110-50-130).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 6, 2019.

Effective Date: March 22, 2019.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system. Section 54.1-3435.4:01 of the Code of Virginia requires the board to regulate, including registering, nonresident warehousers, and § 54.1-3435.4:2 of the Code of Virginia requires the board to regulate, including registering, nonresident third-party logistics providers.

Purpose: Regulations pertaining to nonresident warehousers and nonresident third-party logistics providers are the same as those for the resident entities of the same type. Requirements for security, storage, policies and procedures, handling of adulterated drugs, and safeguards against diversion are necessary to ensure the safety and integrity of the supply of prescription drugs and devices shipped into the Commonwealth by nonresident entities.

Rationale for Using Fast-Track Rulemaking Process: Regulations pertaining to nonresident warehousers and third-party logistics providers are the same as those for the resident entities of the same type; therefore, they should not be controversial and may use the fast-track rulemaking process.

Substance: Regulations for nonresident warehousers and nonresident third-party logistics providers are identical to those for resident warehousers and third-party logistics providers, including fees for initial applications and renewal. The functions performed, the security protections, and the need to safeguard the drug supply are the same, regardless of whether the entity is located in Virginia or is shipping drugs and devices for Virginia patients.

Issues: The primary advantage to the public is protection of drugs and devices to ensure their efficacy and integrity and to guard against diversion. The primary advantage to the agency

is compliance with a statutory mandate for regulation. There are no disadvantages to the public or the agency.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 96 of the 2018 Acts of the Assembly,[1] the Board of Pharmacy (Board) proposes amendments relating to a requirement for registration of nonresident warehousers and third-party logistics providers. The proposed changes to the regulation would establish fees and requirements for nonresident warehousers and third-party logistics providers consistent with those currently in the regulation for resident entities of the same type.

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

Estimated Economic Impact. Pursuant to the legislative mandate, the Board proposes to subject nonresident warehousers to the same regulation that applies to resident warehousers. The legislative mandate also requires nonresident third-party logistics providers and entities that distribute medical gases to register with the Board. In the 2013 federal Drug Supply Chain and Security Act, the definition of "wholesale distributor" was changed to exclude third-party logistics providers and entities that distribute medical gases. Nonresident facilities of these types were formerly registered in the Commonwealth as nonresident wholesale distributors and were subject to this regulation and the same registration fees. Thus, the likely impact of registration on these entities will be a change in their license category and compliance with the legislative mandate.

Businesses and Entities Affected. In September 2018, there were 97 resident warehousers and 671 nonresident wholesale distributors. DHP does not have an estimate on the number of nonresident warehousers that may apply for registration. DHP estimates that fewer than 100 of the nonresident wholesale distributors may apply to convert their license category to nonresident third-party logistics providers.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendments would not affect employment.

Effects on the Use and Value of Private Property. The proposed amendments would not affect the use and value of private property.

Real Estate Development Costs. The proposed amendments are unlikely to affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendments do not impose costs on small businesses. The main effect on them is having to change their license category.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not have adverse impact on small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

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[1]http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0096

Agency's Response to Economic Impact Analysis: The Board of Pharmacy concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 96 of the 2018 Acts of the Assembly, the amendments establish registration of and requirements for nonresident warehousers and third-party logistics providers, consistent with requirements for resident entities of the same type.

CHAPTER 50
REGULATIONS GOVERNING WHOLESALE DISTRIBUTORS, MANUFACTURERS, ~~AND~~ WAREHOUSERS, AND THIRD-PARTY LOGISTICS PROVIDERS

18VAC110-50-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial application fees.

1. Nonrestricted manufacturer permit	$270
2. Restricted manufacturer permit	$180
3. Wholesale distributor license	$270
4. Warehouser permit	$270
5. Nonresident wholesale distributor registration	$270
6. Controlled substances registration	$90
7. Third-party logistics provider permit	$270

8. Nonresident manufacturer registration	$270
9. Nonresident warehouser registration	$270
10. Nonresident third-party logistics provider registration	$270

C. Annual renewal fees shall be due on February 28 of each year.

1. Nonrestricted manufacturer permit	$270
2. Restricted manufacturer permit	$180
3. Wholesale distributor license	$270
4. Warehouser permit	$270
5. Nonresident wholesale distributor registration	$270
6. Controlled substances registration	$90
7. Third-party logistics provider permit	$270
8. Nonresident manufacturer registration	$270
9. Nonresident warehouser registration	$270
10. Nonresident third-party logistics provider registration	$270

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Nonrestricted manufacturer permit	$90
2. Restricted manufacturer permit	$60
3. Wholesale distributor license	$90
4. Warehouser permit	$90
5. Nonresident wholesale distributor registration	$90
6. Controlled substances registration	$30
7. Third-party logistics provider permit	$90
8. Nonresident manufacturer registration	$90
9. Nonresident warehouser registration	$90
10. Nonresident third-party logistics provider registration	$90

E. Reinstatement fees.

1. Any entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

2. Engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement~~,~~ but shall apply for a new permit or registration.

3. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Nonrestricted manufacturer permit	$240
b. Restricted manufacturer permit	$210
c. Wholesale distributor license	$240
d. Warehouser permit	$240
e. Nonresident wholesale distributor registration	$240
f. Controlled substances registration	$180
g. Third-party logistics provider permit	$240
h. Nonresident manufacturer registration	$240
i. Nonresident warehouser registration	$240
j. Nonresident third-party logistics provider registration	$240

F. Application for change or inspection fees.

1. Reinspection fee	$150
2. Inspection fee for change of location, structural changes, or security system changes	$150
3. Change of ownership fee	$50
4. Change of responsible party	$50

G. The fee for a returned check shall be $35.

H. The fee for verification of license, permit, or registration shall be $25.

18VAC110-50-30. Application; location of business; inspection required.

A. Any person or entity desiring to obtain a license as a wholesale distributor~~,~~; registration as a nonresident wholesale distributor ~~or,~~ nonresident manufacturer, nonresident

warehouser, or nonresident third-party logistics provider; or permit as a manufacturer, warehouser, or third-party logistics provider shall file an application with the board on a form approved by the board. An application shall be filed for a new license, registration, or permit, or for acquisition of an existing wholesale distributor, manufacturer, warehouser, nonresident wholesale distributor, nonresident manufacturer, ~~or~~ third-party logistics provider, nonresident warehouser, or nonresident third-party logistics provider.

B. A licensee or permit holder proposing to change the location of an existing license or permit, or make structural or security system changes to an existing location, shall file an application for approval of the changes following an inspection conducted by an authorized agent of the board.

C. A license, permit, or registration shall not be issued to any wholesale distributor, manufacturer, warehouser, nonresident warehouser, nonresident wholesale distributor, nonresident manufacturer, ~~or~~ third-party logistics provider, or nonresident third-party logistics provider to operate from a private dwelling or residence or to operate without meeting the applicable facility requirements for proper storage and distribution of drugs or devices. Before any license, permit, or registration is issued, the applicant shall demonstrate compliance with all federal, state, and local laws and ordinances.

D. If a wholesale distributor, manufacturer, warehouser, or third-party logistics provider engages in receiving, possessing, storing, using, manufacturing, distributing, or otherwise disposing of any Schedules II through V controlled substances, it shall also obtain a controlled substances registration from the board in accordance with § 54.1-3422 of the Code of Virginia~~,~~ and shall also be duly registered with the DEA and in compliance with all applicable laws and rules for the storage, distribution, shipping, handling, and transporting of controlled substances.

E. The proposed location, structural changes, or security system changes shall be inspected by an authorized agent of the board prior to issuance of a license or permit.

1. Applications that indicate a requested inspection date, or requests that are received after the application is filed, shall be honored provided a 14-day notice is allowed prior to the requested inspection date.

2. Requested inspection dates that do not allow a 14-day notice to the board may be adjusted by the board to provide 14 days for the scheduling of the inspection.

3. At the time of the inspection, the proposed prescription drug storage area shall comply with 18VAC110-50-40 and 18VAC110-50-50, and wholesale distributors shall meet the requirements of 18VAC110-50-90.

4. If an applicant substantially fails to meet the requirements for issuance of a permit or license and a reinspection is required, or if the applicant is not ready for the inspection on the established date and fails to notify the inspector or the board at least 24 hours prior to the inspection, the applicant shall pay a reinspection fee as specified in 18VAC110-50-20 prior to a reinspection being conducted.

F. Prescription drugs shall not be stocked within the proposed location or moved to a new location until approval is granted by the inspector or board staff.

18VAC110-50-40. Safeguards against diversion of drugs.

A. The holder of the license as a wholesale distributor or permit as a manufacturer, warehouser, or third-party logistics provider, or registration as a nonresident wholesale distributor, nonresident warehouser, nonresident third-party logistics provider, or nonresident manufacturer shall restrict access to all areas in which prescription drugs are stored or kept for sale to only those persons specifically designated as necessary for the manufacture, receipt, storage, distribution, or quality control of the controlled substance inventory and shall provide reasonable security measures to include appropriate locking devices on all access doors to these areas and adequate lighting both inside and outside the facility to deter unauthorized entry and diversion.

B. The holder of the license, permit, or registration, except for those distributors of only medical gases other than nitrous oxide, shall install a device for the detection of breaking subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device.

2. The installation shall be hardwired and both the installation and device shall be based on accepted burglar alarm industry standards.

3. The device shall be maintained in operating order and shall have an auxiliary source of power.

4. The device shall fully protect all areas where prescription drugs are stored and shall be capable of detecting breaking by any means when activated.

5. Access to the alarm system shall be restricted to the person named on the application as the responsible party or to persons specifically designated in writing in a policy and procedure manual.

6. The system shall be activated whenever the drug storage areas are closed for business.

C. Distribution or delivery of prescription drugs shall be accomplished in a manner to prevent diversion or possession of drugs by unauthorized persons.

1. The holder of the license, permit, or registration shall only deliver prescription drugs to a person authorized to

possess such drugs at a location where the person is authorized to possess such drugs, and only at a time when someone authorized to possess such drugs is in attendance.

2. The holder of the license, permit, or registration shall affirmatively verify that the person to whom prescription drugs are delivered is authorized by law to receive such drugs.

3. Prescription drugs may be transferred to an authorized agent of a person who may lawfully possess prescription drugs, provided the transfer occurs on the premises of the wholesale distributor, manufacturer, warehouser, third-party logistics provider, nonresident wholesale distributor, nonresident warehouser, nonresident third-party logistics provider, or nonresident manufacturer and provided the identity and authorization of the agent is verified, and such transfer is only used to meet the immediate needs of a patient ~~or patients~~.

Part II
Wholesale Distributors and Third-Party Logistics Providers

18VAC110-50-60. Special or limited-use licenses.

The board may issue a limited-use wholesale distributor license, limited-use nonresident wholesale distributor registration, ~~or~~ limited-use third-party logistics provider permit, or limited-use nonresident third-party logistics provider registration to entities that do not engage in the wholesale distribution of prescription drugs or in the acts of a third-party logistics provider except medical gases and may waive certain requirements of regulation based on the limited nature of such distribution.

18VAC110-50-70. Minimum required information.

A. The application form for a new license, registration as a nonresident wholesale distributor or a nonresident third-party logistics provider, or permit as a third-party logistics provider or any change of ownership shall include at least the following information:

1. The name, full business address, and telephone number of the applicant or licensee, registrant, or permit holder and name and telephone number of a designated contact person;

2. All trade or business names used by the applicant or licensee, registrant, or permit holder;

3. The federal employer identification number of the applicant or licensee, registrant, or permit holder;

4. The type of ownership and name of the owner of the entity, including:

a. If an individual, the name, address, and social security number or control number;

b. If a partnership, the name, address, and social security number or control number of each partner who is specifically responsible for the operations of the facility, and the name of the partnership and federal employer identification number;

c. If a corporation:

(1) The name and address of the corporation, federal employer identification number, state of incorporation, and the name and address of the resident agent of the corporation;

(2) The name, address, social security number or control number, and title of each corporate officer and director who is specifically responsible for the operations of the facility;

(3) For nonpublicly held corporations, the name and address of each shareholder that owns 10% or more of the outstanding stock of the corporation;

(4) The name, federal employer identification number, and state of incorporation of the parent company;

d. If a sole proprietorship, the full name, address, and social security number or control number of the sole proprietor and the name and federal employer identification number of the business entity;

e. If a limited liability company, the name and address of each member, the name and address of each manager, the name of the limited liability company and federal employer identification number, the name and address of the resident agent of the limited liability company, and the name of the state in which the limited liability company was organized;

5. Name, business address and telephone number, ~~and~~ social security number or control number, and documentation of required qualifications as stated in 18VAC110-50-80 of the person who will serve as the responsible party;

6. A list of all states in which the entity is licensed, registered, or permitted to purchase, possess, and distribute prescription drugs, and into which it ships prescription drugs;

7. A list of all disciplinary actions imposed against the entity by state or federal regulatory bodies, including any such actions against the responsible party, principals, owners, directors, or officers over the last seven years;

8. A full description, for nonresident wholesale distributors, including the address, square footage, security and alarm system description, temperature and humidity control, and other relevant information of the facility or warehouse space used for prescription drug storage and distribution; and

9. An attestation providing a complete disclosure of any past criminal convictions and violations of the state and

federal laws regarding drugs or devices or an affirmation and attestation that the applicant has not been involved in, or convicted of, any criminal or prohibited acts. Such attestation shall include the responsible party, principals, owners, directors, or officers.

B. An applicant or licensee, registrant, or permit holder shall notify the board of any changes to the information required in this section within 30 days of such change.

18VAC110-50-80. Minimum licensure and permitting qualifications~~,~~ and eligibility~~, and~~; responsible party.

A. The board shall use the following factors in determining the eligibility for licensure of wholesale distributors, registration of nonresident wholesale distributors or nonresident third-party logistics providers, and permitting of third-party logistics providers:

1. The existence of grounds to deny an application as set forth in § 54.1-3435.1 of the Code of Virginia;

2. The applicant's past experience in the manufacture or distribution of drugs or devices;

3. Compliance with the recordkeeping requirements;

4. Prior disciplinary action by a regulatory authority, prior criminal convictions, or ongoing investigations related to the manufacturing, distribution, prescribing, or dispensing of drugs by the responsible party or immediate family members of the responsible party, and owners, directors, or officers; and

5. The responsible party's credentials as set forth in subsection B of this section.

B. Requirements for the person named as the responsible party.

1. The responsible party shall be the primary contact person for the board as designated by the wholesale distributor, nonresident wholesale distributor, ~~or~~ third-party logistics provider, or nonresident third-party logistics provider, who shall be responsible for managing the wholesale distribution operations at that location;

2. The responsible party shall have a minimum of two years of verifiable experience in a pharmacy or wholesale distributor or third-party logistics provider licensed, registered, or permitted in Virginia or another state where the person's responsibilities included~~, but were not limited to,~~ managing or supervising the recordkeeping, storage, and shipment for drugs or devices;

3. A person may only serve as the responsible party for one wholesale distributor license, nonresident wholesale distributor registration, ~~or~~ third-party logistics provider permit, or nonresident third-party logistics provider registration at any one time;

4. The responsible party shall be employed full time in a managerial position and actively engaged in daily operations of the wholesale distributor, nonresident wholesale distributor, ~~or~~ third-party logistics provider, or nonresident third-party logistics provider;

5. The responsible party shall be present on a full-time basis at the location of the wholesale distributor, nonresident wholesale distributor, ~~or~~ third-party logistics provider, or nonresident third-party logistics provider during normal business hours, except for time periods when absent due to illness, family illness or death, vacation, or other authorized absence; and

6. The responsible party shall be aware of, and knowledgeable about, all policies and procedures pertaining to the operations of the wholesale distributor, nonresident wholesale distributor, ~~or~~ third-party logistics provider, or nonresident third-party logistics provider and all applicable state and federal laws related to wholesale distribution of prescription drugs or the legal acts of a third-party logistics provider.

C. The person named as the responsible party on the application shall submit the following with the application:

1. A passport size and quality photograph taken within 30 days of submission of the application;

2. A resume listing employment, occupations, or offices held for the past seven years including names, addresses, and telephone numbers of the places listed;

3. An attestation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth;

4. A criminal history record check through the Central Criminal Records Exchange; and

5. A description of any involvement by the person with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund, during the past seven years, which manufactured, administered, prescribed, distributed, or stored drugs and devices and any lawsuits, regulatory actions, or criminal convictions related to drug laws or laws concerning third-party logistics providers or wholesale distribution of prescription drugs in which such businesses were named as a party.

D. Responsibilities of the responsible party.

1. Ensuring that any employee engaged in operations is adequately trained in the requirements for the lawful and appropriate wholesale distribution of prescription drugs or the legal acts of a third-party logistics provider;

2. Requiring any employee who has access to prescription drugs to attest that ~~he~~ the employee has not been convicted of a violation of any federal or state drug law or any law

relating to third-party logistics providers or to the manufacture, distribution, or dispensing of prescription drugs;

3. Maintaining current working knowledge of requirements for wholesale distributors or third-party logistics providers and assuring continued training for employees;

4. Maintaining proper security, storage, and shipping conditions for all prescription drugs; and

5. Maintaining all required records.

E. Each nonresident wholesale distributor or nonresident third-party logistics provider shall designate a registered agent in Virginia for service of any notice or other legal document. Any nonresident wholesale distributor or nonresident third-party logistics provider that does not ~~so~~ designate a registered agent shall be deemed to have designated the Secretary of the Commonwealth to be its true and lawful agent, upon ~~who~~ whom may be served all legal process in any action or proceeding against such nonresident wholesale distributor or nonresident third-party logistics provider. A copy of any such service of legal documents shall be mailed to the nonresident wholesale distributor or nonresident third-party logistics provider by the board by certified mail at the address of record.

18VAC110-50-100. Examination of drug shipments and accompanying documents.

A. Upon receipt, each shipping container shall be visually examined for identity to determine if it may contain contaminated, contraband, counterfeit, suspected of being counterfeit, or damaged drugs, or drugs or devices that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination, adulteration, misbranding, counterfeiting, suspected counterfeiting, or other damage to the contents.

B. Upon receipt of drugs, a wholesale distributor, nonresident wholesale distributor, ~~or~~ third-party logistics provider, or nonresident third-party logistics provider must review records for accuracy, completeness, and the integrity of the drugs considering the total facts and circumstances surrounding the transactions and the wholesale ~~distributors~~ distributor, nonresident wholesale distributor, ~~or~~ third-party logistics provider, or nonresident third-party logistics provider involved.

C. Each outgoing shipment shall be carefully inspected for identity of the drugs and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.

18VAC110-50-110. Returned, damaged, and counterfeit drugs; investigations.

A. Any drug or device returned to a manufacturer, another wholesale distributor, or a third-party logistics provider shall be kept under the proper conditions and documentation showing that proper conditions were maintained shall be provided to the manufacturer, wholesale distributor, ~~or~~ nonresident wholesale distributor, third-party logistics provider, or nonresident third-party logistics provider to which the drugs are returned.

B. Any drug or device that, or any drug whose immediate or sealed outer or secondary container or labeling, is outdated, damaged, deteriorated, misbranded, adulterated, counterfeited, suspected of being counterfeited or adulterated, or otherwise deemed unfit for human consumption shall be quarantined and physically separated from other drugs and devices until its appropriate disposition.

C. When a drug or device is adulterated, misbranded, counterfeited, or suspected of being counterfeit, or when the immediate or sealed outer or secondary container or labeling of any drug or device is adulterated, misbranded other than misbranding identified by the manufacturer through a recall or withdrawal, counterfeited, or suspected of being counterfeit, the wholesale distributor, nonresident wholesale distributor, ~~or~~ third-party logistics provider, or nonresident third-party logistics provider shall:

1. Provide notice to the board and the manufacturer, wholesale distributor, or third-party logistics provider from which such drug or device was acquired within three business days of that determination.

2. Maintain any such drug or device, its containers and labeling, and its accompanying documentation or any evidence of criminal activity until its disposition by the appropriate state and federal government authorities.

D. The wholesale distributor, nonresident wholesale distributor, ~~or~~ third-party logistics provider, or nonresident third-party logistics provider shall fully cooperate with authorities conducting any investigation of counterfeiting or suspected counterfeiting to include the provision of any records related to receipt or distribution of the suspect drug or device.

18VAC110-50-120. Policies and procedures.

All wholesale distributors, nonresident wholesale distributors, ~~or~~ third-party logistics providers, or nonresident third-party logistics providers shall establish, maintain, and adhere to written policies and procedures for the proper receipt, security, storage, inventory, and distribution of prescription drugs. Wholesale distributors, nonresident wholesale distributors, ~~or~~ third-party logistics providers, or nonresident third-party logistics providers shall include in their policies and procedures at least the following:

1. A procedure for reporting thefts or losses of prescription drugs to the board and other appropriate authorities;

2. A procedure whereby the oldest approved stock of a prescription drug is distributed first. The procedure may permit deviation from this process provided the deviation is temporary and appropriate for the distribution;

3. A procedure for handling recalls and withdrawals of prescription drugs and devices;

4. Procedures for preparing for, protecting against, and handling emergency situations that affect the security and integrity of drugs or the operations of the wholesale distributor, nonresident wholesale distributor, ~~or~~ third-party logistics provider, or nonresident third-party logistics provider;

5. A procedure to ensure that outdated drugs are segregated from other drugs to include the disposition of such drugs;

6. A procedure to ensure initial and ongoing training of all employees;

7. A procedure for ensuring, both initially and on an ongoing basis, that persons with access to prescription drugs have not been convicted of a violation of a drug law or any law related to wholesale distribution of prescription drugs or ~~that of a~~ to third-party logistics ~~provider~~ providers; and

8. A procedure for reporting counterfeit or suspected counterfeit prescription drugs or counterfeiting or suspected counterfeiting activities to the board and other appropriate law enforcement or regulatory agencies.

18VAC110-50-130. Recordkeeping.

A. All records and documentation required in this subsection shall be maintained and made available for inspection and photocopying upon request by an authorized agent of the board for a period of three years following the date the record was created or received by the wholesale distributor, nonresident wholesale distributor, ~~or~~ third-party logistics provider, or nonresident third-party logistics provider. If records are not maintained on premises at the address of record, they shall be made available within 48 hours of such request. A wholesale distributor, nonresident wholesale distributor, ~~or~~ third-party logistics provider, or nonresident third party logistics provider shall establish and maintain the following:

1. Unless otherwise indicated in federal law, inventories and records of all transactions, including the dates of receipt and distribution or other disposition or provision, and records related to the federal requirements for an electronic, interoperable system to identify, trace, and verify prescription drugs as they are distributed;

2. Records documenting monitoring of environmental conditions to ensure compliance with the storage requirements as required in 18VAC110-50-50;

3. Documentation of visual inspection of drugs and accompanying documents required in 18VAC110-50-100, including the date of such inspection and the identity of the person conducting the inspection;

4. Documentation of quarantine of any product and steps taken for the proper reporting and disposition of the product ~~shall be maintained~~, including the handling and disposition of all outdated, damaged, deteriorated, misbranded, or adulterated drugs;

5. An ongoing list of persons or entities from whom it receives prescription drugs and persons or entities to whom it distributes prescription drugs or provides prescription drugs as a third-party logistics provider or nonresident third-party logistics provider; and

6. Copies of the mandated report of thefts or unusual losses of Schedules II through V controlled substances in compliance with the requirements of § 54.1-3404 of the Code of Virginia.

B. Records shall either (i) be kept at the inspection site or immediately retrievable by computer or other electronic means and made readily available at the time of inspection or (ii) if kept at a central location and not electronically retrievable at the inspection site, be made available for inspection within 48 hours of a request by an authorized agent of the board.

C. All facilities shall have adequate backup systems to protect against the inadvertent loss or deliberate destruction of data.

VA.R. Doc. No. R19-5525; Filed January 5, 2019, 11:21 a.m.

BOARD OF COUNSELING

Proposed Regulation

Title of Regulation: **18VAC115-70. Regulations Governing the Registration of Peer Recovery Specialists (adding 18VAC115-70-10 through 18VAC115-70-90).**

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public Hearing Information:

February 8, 2019 - 10:05 a.m. - Department of Health Professions, 9960 Mayland Drive, Conference Center, 2nd Floor, Henrico, VA 23233

Public Comment Deadline: April 5, 2019.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA

23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Regulations of the Board of Counseling are promulgated under the general authority of § 54.1-2400 of the Code of Virginia. The board has specific statutory authority to promulgate regulations for registration of peer recovery specialists in § 54.1-3505 of the Code of Virginia.

Purpose: The intent of the proposed regulation, replacing an emergency regulation currently in effect, is to establish a registry of peer recovery specialists for practice accountability and a list of qualified persons for the purpose of reimbursement by the Department of Medical Assistance Services (DMAS). The availability of a peer recovery specialist can drastically increase the willingness of people struggling with addiction to seek treatment.

The Department of Behavioral Health and Developmental Services (DBHDS) has recently begun using "certified peer recovery specialists" for work with individuals who are in recovery from mental health and substance use disorders. This regulation will ensure that there is a health regulatory board (Board of Counseling) responsible for registration of peer recovery specialists and for taking disciplinary action if necessary. Peer recovery specialists who are not registered are still able to provide peer services but would not be able to be reimbursed by DMAS.

Peer recovery specialists use their life experiences, including their own recovery, to provide effective support for others struggling with mental health or substance use disorders. Legislation in 2017 and subsequent regulations are intended to address concerns jointly expressed by the Department of Health Professions (DHP), DBHDS, and DMAS about the lack of oversight and accountability for individuals who are providing mental health or substance abuse services, but who are not responsible to a health regulatory board with authority to take disciplinary action.

By requiring a person who works as a registered peer recovery specialist in a program approved by DBHDS, or under a licensee of the Virginia Department of Health or DHP, to be registered by the Board of Counseling, the board has the ability to discipline and remove individuals from the registry. Once removed, the individual can no longer be employed in that capacity, which will result in greater protection for the public and a reduction in the possibility of abuse and fraud in Medicaid-funded programs.

Substance: Proposed regulations replace emergency regulations, which became effective on December 18, 2017. Regulations establish definitions for terms used in the chapter, fees charged to applicants and regulants, and requirements for initial registration and renewal of registration, including eight hours of continuing education with one hour devoted to ethics in practice. The regulations include standards of practice similar to all counseling-related professions and grounds for disciplinary action or denial of registration.

Issues: The primary advantage of the amendment for the public is more assurance of competency and accountability for peer recovery specialists who are increasingly important practitioners working with persons who have substance abuse issues, and there are no disadvantages.

There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Counseling proposes to promulgate a permanent regulation for registration of peer recovery specialists. An emergency regulation for registration of peer recovery specialists is currently in effect and will expire on June 17, 2019.

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

Estimated Economic Impact.

Legislation: Chapters 418[1] and 426[2] of the 2017 Acts of Assembly required that the State Board of Behavioral Health and Developmental Services (Board of BHDS) "adopt regulations that establish the qualifications, education, and experience for registration of peer recovery specialists by the Board of Counseling." The Board of BHDS is in the process of doing this in Action 4796.[3] Further, the legislation required that the Board of Counseling "promulgate regulations for the registration of peer recovery specialists who meet the qualifications, education, and experience requirements established by regulations of the Board of Behavioral Health and Developmental Services ..." The Board of Counseling proposes to do this with this current action.

Peer Support Services: Peer support services are an evidence-based mental health model of care that consists of a qualified peer recovery specialist who assists individuals with their recovery from mental illness and substance use disorders. The provision of peer support services facilitates recovery from both serious mental illnesses and substance use disorders. Recovery is a process in which people are able to live, work, learn and fully participate in their communities. For some individuals, recovery is the ability to live a fulfilling and productive life despite their disability. For others, recovery could mean the reduction or complete remission of symptoms.

Research has provided evidence that peer-delivered services generate superior outcomes in terms of decreased substance abuse, engagement of "difficult-to-reach" clients, and reduced rates of hospitalization.[4] Further, peer support has been found to increase participants' senses of hope, control, and ability to effect changes in their lives; increase their self-care, sense of

community belonging, and satisfaction with various life domains; and decrease participants' levels of depression and psychosis.[5]

Peer Recovery Specialists: Peer support services are delivered by peers who have been successful in the recovery process and can extend the reach of treatment beyond the clinical setting into an individual's community and natural environment to support and assist an individual with staying engaged in the recovery process. Peer recovery specialists ("PRSs") are self-identified consumers who are in successful and ongoing recovery from mental illness and/or substance use disorders, or are family members of individuals who are receiving or have received mental health or substance abuse services. PRSs are employed or seek to be employed to deliver collaborative support to others who are seeking to recover from a primary diagnosis of mental illness, addiction, or both. In order for peer support services to be funded by Medicaid,[6] the PRS must be registered with the Department of Health Professions (DHP).

Proposed Regulation: The proposed regulation includes an annual $30 fee for registration. The fee is designed to cover DHP's cost, which is necessary for the registration program. The Board of Counseling also proposes to require that applicants for registration provide a current report from the National Practitioner Data Bank (NPDB). DHP has noted that in reviewing applicants for registration as peer recovery specialists under the emergency regulation, some persons held a license in Virginia or another state. If that license has been disciplined or suspended, there may be grounds to deny registration as a peer recovery specialist if there is evidence of risk to patients. In order to have the information necessary to determine whether such grounds exist, it is necessary to have an NPDB report. The applicant would be charged $4 by the data bank for requesting a report be sent to the Board. To the extent that the required provision of the NPDB report may reduce potential harm to patients, the benefits likely exceed the $4 cost per applicant.

The Board of Counseling proposes to specify that registration applicants must provide evidence of meeting all requirements for peer recovery specialists set by the Department of Behavioral Health and Developmental Services in 12VAC35-250-30.[7] This is required by statute. Including this information in regulation is beneficial in that it improves clarity.

Further, the Board of Counseling proposes to require that registrants complete a minimum of eight contact hours of continuing education (CE) for each annual registration renewal. A minimum of one of these hours must be in courses that emphasize ethics. There is an extensive list of choices of areas and providers for CE. Registrants would likely be able to obtain the required CE with little or potentially no fees. The proposed requirement would, of course, require at least 8 hours of the registrant's time annually.

Businesses and Entities Affected. The proposed regulation affects businesses and other entities that either provide or are considering providing peer support services. According to DHP, there are 70 persons currently registered as peer recovery specialists through the emergency regulation.

Localities Particularly Affected. The proposed regulation does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed regulation helps enable individuals to work as peer recovery specialists.

Effects on the Use and Value of Private Property. The proposed regulation is unlikely to significantly affect the use and value of private property.

Real Estate Development Costs. The proposed regulation is unlikely to affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed regulation is unlikely to significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed regulation does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed regulation does not adversely affect businesses.

Localities. The proposed regulation does not adversely affect localities.

Other Entities. The proposed regulation does not adversely affect other entities.

References:

Davidson, L., C. Bellamy, K. Guy, and R. Miller. 2011. Peer support among persons with severe mental illnesses: a review of evidence and experience. World Psychiatry 11:123-128.

Rowe M., C. Bellamy et al. 2007. Reducing alcohol use, drug use, and criminality among persons with severe mental illness: outcomes of a Group- and Peer-Based Intervention. Psychiatric Services 58:955-61.

Solomon P, J. Draine, and M. Delaney. 1995. The working alliance and consumer case management. Journal of Mental Health Administration 22:126-34.

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[1]See http://leg1.state.va.us/cgi-bin/legp504.exe?171+ful+CHAP0418

[2]See http://leg1.state.va.us/cgi-bin/legp504.exe?171+ful+CHAP0426

[3]See http://townhall.virginia.gov/L/ViewAction.cfm?actionid=4796

[4]See Rowe et al (2007) and Solomon et al (1995)

[5]See Davison et al (2012)

[6]Sources: Department of Medical Assistance Services and Department of Behavioral Health and Developmental Services

[7]See http://townhall.virginia.gov/L/ViewXML.cfm?textid=12638

Agency's Response to Economic Impact Analysis: The Board of Counseling concurs with the analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapters 418 and 426 of the 2017 Acts of Assembly, the proposed regulation (i) establishes the fees required for registration and renewal of registration; (ii) specifies the qualification for registration, which is evidence of meeting the requirements set out in regulations of the Department of Behavioral Health and Developmental Services; (iii) requires that to maintain registration, a registrant complete eight hours of continuing education with a minimum of one hour devoted to ethics; (iv) sets standards of practice to include practicing within the specialist's competency area, practicing in a manner that does not endanger public health and safety, maintaining confidentiality, and avoiding dual relationships that would impair objectivity and increase risk of client exploitation; and (v) makes violation of standards of practice or of applicable law or regulation grounds for disciplinary action by the board.

CHAPTER 70
REGULATIONS GOVERNING THE REGISTRATION OF PEER RECOVERY SPECIALISTS

Part I
General Provisions

18VAC115-70-10. Definitions.

"Applicant" means a person applying for registration as a peer recovery specialist.

"Board" means the Virginia Board of Counseling.

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

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health and development.

"Peer recovery specialist" means a person who by education and experience is professionally qualified in accordance with 12VAC35-250 to provide collaborative services to assist individuals in achieving sustained recovery from the effects of mental illness or addiction, or both.

"Registered peer recovery specialist" or "registrant" means a person who by education and experience is professionally qualified in accordance with 12VAC35-250 and registered by the board to provide collaborative services to assist individuals in achieving sustained recovery from the effects of mental illness or addiction, or both. A registered peer recovery specialist shall provide such services as an employee or independent contractor of DBHDS, a provider licensed by the DBHDS, a practitioner licensed by or holding a permit issued from the Department of Health Professions, or a facility licensed by the Department of Health.

18VAC115-70-20. Fees required by the board.

A. The board has established the following fees applicable to the registration of peer recovery specialists:

Registration	$30
Renewal of registration	$30
Late renewal	$20
Reinstatement of a lapsed registration	$60
Duplicate certificate of registration	$10
Returned check	$35
Reinstatement following revocation or suspension	$500

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC115-70-30. Current name and address.

Each registrant shall furnish the board the registrant's current name and address of record. Any change of name or address of record or public address if different from the address of record, shall be furnished to the board within 60 days of such change. It shall be the duty and responsibility of each registrant to inform the board of the registrant's current address.

Part II
Requirements for Registration and Renewal

18VAC115-70-40. Requirements for registration as a peer recovery specialist.

A. An applicant for registration shall submit:

1. A completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-70-20; and

2. A current report from the National Practitioner Data Bank (NPDB).

B. An applicant for registration as a peer recovery specialist shall provide evidence of meeting all requirements for peer recovery specialists set by DBHDS in 12VAC35-250-30.

18VAC115-70-50. Annual renewal of registration.

All registrants shall renew their registration on or before June 30 of each year. Along with the renewal form, the registrant shall submit the renewal fee as prescribed in 18VAC115-70-20.

18VAC115-70-60. Continued competency requirements for renewal of peer recovery specialist registration.

A. Registered peer recovery specialists shall be required to have completed a minimum of eight contact hours of continuing education for each annual registration renewal. A minimum of one of these hours shall be in courses that emphasize ethics.

Registered peer recovery specialists shall complete continuing competency activities that focus on increasing knowledge or skills in one or more of the following areas:

1. Current body of mental health or substance abuse knowledge;

2. Promoting services, supports, and strategies for the recovery process;

3. Crisis intervention;

4. Values for role of peer recovery specialist;

5. Basic principles related to health and wellness;

6. Stage appropriate pathways in recovery support;

7. Ethics and boundaries;

8. Cultural sensitivity and practice;

9. Trauma and impact on recovery;

10. Community resources; or

11. Delivering peer services within agencies and organizations.

B. The following organizations, associations, or institutions are approved by the board to provide continuing education:

1. Federal, state, or local governmental agencies, public school systems, or licensed health facilities.

2. The American Association for Marriage and Family Therapy and its state affiliates.

3. The American Association of State Counseling Boards.

4. The American Counseling Association and its state and local affiliates.

5. The American Psychological Association and its state affiliates.

6. The Commission on Rehabilitation Counselor Certification.

7. NAADAC, the Association for Addiction Professionals and its state and local affiliates.

8. National Association of Social Workers.

9. National Board for Certified Counselors.

10. A national behavioral health organization or certification body recognized by the board.

11. Individuals or organizations that have been approved as continuing competency sponsors by the American Association of State Counseling Boards or a counseling board in another state.

12. An agency or organization approved by DBHDS.

C. Attestation of completion of continuing education is not required for the first renewal following initial registration in Virginia.

D. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the registrant prior to the renewal date. Such an extension shall not relieve the registrant of the continuing education requirement.

E. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the registrant such as temporary disability, mandatory military service, or officially declared disasters upon written request from the registrant prior to the renewal date.

F. All registrants shall maintain original documentation of official transcripts showing credit hours earned or certificates of participation for a period of three years following renewal.

G. The board may conduct an audit of registrants to verify compliance with the requirement for a renewal period. Upon request, a registrant shall provide documentation as follows:

1. Official transcripts showing credit hours earned; or

2. Certificates of participation.

H. Continuing education hours required by a disciplinary order shall not be used to satisfy renewal requirements.

Part III
Standards of Practice; Disciplinary Actions; Reinstatement

18VAC115-70-70. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Persons registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.

2. Be able to justify all services rendered to clients as necessary.

3. Practice only within the competency area for which they are qualified by training or experience.

4. Report to the board known or suspected violations of the laws and regulations governing the practice of registered peer recovery specialists.

5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services and make appropriate consultations and referrals based on the best interest of clients.

6. Stay abreast of new developments, concepts, and practices that are necessary to providing appropriate services.

7. Document the need for and steps taken to terminate services when it becomes clear that the client is not benefiting from the relationship.

C. In regard to confidentiality and client records, persons registered by the board shall:

1. Not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

2. Disclose client records to others only in accordance with applicable law.

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

4. Maintain timely, accurate, legible, and complete written or electronic records for each client, to include dates of service and identifying information to substantiate treatment plan, client progress, and termination.

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

1. Not engage in dual relationships with clients or former clients that are harmful to the client's well-being, that would impair the practitioner's objectivity and professional judgment, or that would increase the risk of client exploitation. This prohibition includes such activities as providing services to close friends, former sexual partners, employees, or relatives or engaging in business relationships with clients.

2. Not engage in sexual intimacies or romantic relationships with current clients. For at least five years after cessation or termination of professional services, practitioners shall not engage in sexual intimacies or romantic relationships with a client or those included in collateral therapeutic services. Because sexual or romantic relationships are potentially exploitative, the practitioner shall bear the burden of demonstrating that there has been no exploitation. A client's consent to, initiation of, or participation in sexual behavior or involvement with a practitioner does not change the nature of the conduct nor lift the regulatory prohibition.

3. Recognize conflicts of interest and inform all parties of obligations, responsibilities, and loyalties to third parties.

E. Upon learning of evidence that indicates a reasonable probability that another mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, is or may be guilty of a violation of standards of conduct as defined in statute or regulation, persons registered by the board shall advise their clients of the client's right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.

18VAC115-70-80. Grounds for revocation, suspension, restriction, or denial of registration.

In accordance with subdivision 7 of § 54.1-2400 of the Code of Virginia, the board may revoke, suspend, restrict, or decline to issue or renew a registration based upon the following conduct:

1. Conviction of a felony or of a misdemeanor involving moral turpitude or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of registered peer recovery specialists, or any provision of this chapter;

2. Procuring, attempting to procure, or maintaining a registration by fraud or misrepresentation;

3. Conducting one's practice in such a manner so as to make it a danger to the health and welfare of one's clients or to the public, or if one is unable to practice with reasonable skill and safety to clients by reason of illness or abusive use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;

4. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of peer recovery specialists or qualified mental health professionals or any provision of this chapter;

5. Performance of functions outside the board-registered area of competency;

6. Performance of an act likely to deceive, defraud, or harm the public;

7. Intentional or negligent conduct that causes or is likely to cause injury to a client;

8. Action taken against a health or mental health license, certification, registration, or application in Virginia or other jurisdiction;

9. Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation; or

10. Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia.

18VAC115-70-90. Late renewal and reinstatement.

A. A person whose registration has expired may renew it within one year after its expiration date by paying the late renewal fee and the registration fee as prescribed in 18VAC115-70-20 for the year in which the registration was not renewed and by providing documentation of completion of continuing education as prescribed in 18VAC115-70-60.

B. A person who fails to renew registration after one year or more shall:

1. Apply for reinstatement;

2. Pay the reinstatement fee for a lapsed registration; and

3. Submit evidence of current certification as a peer recovery specialist as prescribed by DBHDS in 12VAC35-250-30.

C. A person whose registration has been suspended or who has been denied reinstatement by board order, having met the terms of the order, may submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-70-20. Any person whose registration has been revoked by the board may, three years subsequent to such board action, submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-70-20. The board in its discretion may, after an administrative proceeding, grant the reinstatement sought in this subsection.

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 of the form with a hyperlink to access it. The form is also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (18VAC115-70)

The following form is available online only at https://www.license.dhp.virginia.gov/apply/:

Registered Peer Recovery Specialists Application and Instructions

VA.R. Doc. No. R18-5240; Filed January 5, 2019, 11:12 a.m.

Proposed Regulation

Title of Regulation: **18VAC115-80. Regulations Governing the Registration of Qualified Mental Health Professionals (adding 18VAC115-80-10 through 18VAC115-80-110).**

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public Hearing Information:

February 8, 2019 - 10:05 a.m. - Department of Health Professions, 9960 Mayland Drive, Conference Center, 2nd Floor, Henrico, VA 23233

Public Comment Deadline: April 5, 2019.

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

Basis: Regulations of the Board of Counseling are promulgated under the general authority of § 54.1-2400 of the Code of Virginia. The board has specific statutory authority to promulgate regulations for registration of qualified mental health professionals in § 54.1-3505 of the Code of Virginia.

Purpose: This registration is the result of collaborative efforts by the Department of Health Professions (DHP), the Department of Behavioral Health and Developmental Services (DBHDS), the Department of Medical Assistance Services (DMAS), private providers, and other licensing boards to address concerns about the use of unlicensed and unregistered persons in the provision of services to clients and the lack of accountability for those services. DBHDS has been working with DHP to make titles and definitions for mental health professionals more consistent with licensure and certification under health regulatory boards, but there remains a large group of "qualified" mental health professionals (QMHPs) who have no such oversight. The intent of the regulation is to establish a registry of QMHPs, so there is some accountability for their practice and a listing of qualified persons for the purpose of reimbursement by DMAS.

The purpose of the registration is to address concerns jointly expressed by DHP, DBHDS, and DMAS about the lack of oversight and accountability for persons who are providing mental health care, but who are not responsible to a health regulatory board with authority to take disciplinary action. By requiring a person who works as a QMHP in a program

approved by DBHDS to be registered by the Board of Counseling, persons who have been disciplined and removed from the registry would no longer be able to be employed in that capacity. The purpose is greater protection for the public and a reduction in the incidents of abuse and fraud in Medicaid-funded programs.

Substance: Proposed regulations replace emergency regulations, which became effective on December 18, 2017. Regulations establish definitions used in the chapter, fees charged to applicants and regulants, and requirements for initial registration and renewal of registration, including eight hours of continuing education with one of those hours devoted to ethics in practice. There are standards of practice similar to all counseling-related professions and grounds for disciplinary action or denial of registration.

Issues: The primary advantage of the amendments for the public is more assurance of competency and accountability for persons providing mental health services, and there are no disadvantages. There are no advantages or disadvantages to the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Chapters 418[1] and 426[2] of the 2017 Acts of the Assembly (the legislation) require that the Board of Counseling "promulgate regulations for the registration of qualified mental health professionals, including qualifications, education, and experience necessary for such registration." The Board of Counseling proposes to promulgate such regulations with this action. An emergency regulation for registration of qualified mental health professionals (QMHPs) is currently in effect and will expire on June 17, 2019.

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

Estimated Economic Impact

Background: The legislation defines "qualified mental health professional" (QMHP) as a person who by education and experience is professionally qualified and registered by the Board of Counseling to provide collaborative mental health services for adults or children. Further, the legislation requires that a QMHP provide such services as an employee or independent contractor of the Department of Behavioral Health and Developmental Services (DBHDS) or a provider licensed by DBHDS.

Virginia's Medicaid program has long relied on the State Board of Behavioral Health and Developmental Services (BHDS Board) definitions of QMHPs to determine who is a qualified professional for reimbursement. These definitions are Qualified Mental Health Professional (QMHP), Qualified Mental Health Professional-Adult (QMHP-A), Qualified Mental Health Professional-Child (QMHP-C), and Qualified Mental Health Professional-Eligible (QMHP-E). The BHDS Board's definitions have included varying education and experience requirements. However, these professionals were not issued any licenses or certificates concerning being designated a qualified mental health professional. The eligibility was checked and determined on a case-by-case basis when random checks were conducted, when there were questions raised, etc.

As mentioned, the legislation requires these professionals to register with the Board of Counseling. As a result, in another action (Action 4928),[3] the BHDS Board is proposing to revise its definitions to state that these professionals must be registered with the Board of Counseling and defers all qualification, education, and experience criteria to the definitions of the Board of Counseling regulation.

Proposed Regulation: In this action (Action 4891) the Board of Counseling proposes an initial $50 fee and an annual $30 renewal fee for registration. The fee is designed to cover Department of Health Professions (DHP) cost, which is necessary for the registration program. The Board of Counseling also proposes to require that applicants for registration provide a current report from the National Practitioner Data Bank (NBDB). DHP has noted that in reviewing applicants for registration under the emergency regulation, some persons held a license in Virginia or another state. If that license has been disciplined or suspended, there may be grounds to deny registration as a QMHP if there is evidence of risk to patients. In order to have the information necessary to determine whether such grounds exist, it is necessary to have an NPDB report. The applicant would be charged $4 by the data bank for requesting a report be sent to the Board of Counseling. To the extent that the required provision of the NPDB report may reduce potential harm to patients, the benefits likely exceed the $4 cost per applicant.

Further, the Board of Counseling proposes to require that registrants complete a minimum of eight contact hours of continuing education (CE) for each annual registration renewal. A minimum of one of these hours must be in courses that emphasize ethics. There is an extensive list of choices of areas and providers for CE. Registrants would likely be able to obtain the required CE with little or potentially no fees. The proposed requirement would, of course, require at least 8 hours of the registrant's time annually. Some of the registrants may already satisfy all or part of the CE requirement through meeting professional licensure requirements.

The Board of Counseling's proposed qualifications are the same as currently exists (prior to the revision) in the BHDS Board regulation. Thus, all individuals eligible under the BHDS Board's definitions would be able to comply and register with the Board of Counseling. The required registration would likely strengthen enforcement and prevent unqualified individuals from providing services to the Medicaid population.

Businesses and Entities Affected. The proposed regulation affects the Department of Behavioral Health and Developmental Services, providers licensed by DBHDS, the Department of Medical Assistance Services, the 1,634 persons currently registered as QMHP-As, the 1,461 persons currently registered as QMHP-Cs, the 124 persons currently registered as trainees, and persons wishing to obtain such registrations.

Localities Particularly Affected. The proposed regulation does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed regulation would not likely significantly affect total employment.

Effects on the Use and Value of Private Property. The proposed regulation is unlikely to significantly affect the use and value of private property.

Real Estate Development Costs. The proposed regulation is unlikely to affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed regulation is unlikely to significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed regulation does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed regulation does not adversely affect businesses.

Localities. The proposed regulation does not adversely affect localities.

Other Entities. The proposed regulation does not adversely affect other entities.

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[1]See http://leg1.state.va.us/cgi-bin/legp504.exe?171+ful+CHAP0418

[2]See http://leg1.state.va.us/cgi-bin/legp504.exe?171+ful+CHAP0426

[3]See http://townhall.virginia.gov/L/ViewAction.cfm?actionid=4928

Agency's Response to Economic Impact Analysis: The Board of Counseling concurs with the analysis of the Department of Planning and Budget.

Summary:

Regulations for registration of qualified mental health professionals are being promulgated pursuant to Chapters 418 and 426 of the 2017 Acts of Assembly. The proposed new regulation (i) establishes the fees required for registration and renewal of registration; (ii) specifies the education and experience necessary to qualify for registration, which includes a requirement of eight hours of continuing education with a minimum of one hour in ethics; (iii) sets standards of practice for qualified mental health professionals to include practicing within their competency area, practicing in a manner that does not endanger public health and safety, maintaining confidentiality, and avoiding dual relationships that would impair objectivity and increase risk of client exploitation; and (iv) makes violation of standards of practice or of applicable law or regulation grounds for disciplinary action by the board.

CHAPTER 80
REGULATIONS GOVERNING THE REGISTRATION OF QUALIFIED MENTAL HEALTH PROFESSIONALS

Part I
General Provisions

18VAC115-80-10. Definitions.

"Accredited" means a school that is listed as accredited on the U.S. Department of Education College Accreditation database found on the U.S. Department of Education website. If education was obtained outside the United States, the board may accept a report from a credentialing service that deems the degree and coursework is equivalent to a course of study at an accredited school.

"Applicant" means a person applying for registration as a qualified mental health professional.

"Board" means the Virginia Board of Counseling.

"Collaborative mental health services" means those rehabilitative supportive services that are provided by a qualified mental health professional, as set forth in a service plan under the direction of and in collaboration with either a mental health professional licensed in Virginia or a person under supervision that has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure.

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

"Face-to-face" means the physical presence of the individuals involved in the supervisory relationship or the use of technology that provides real-time, visual, and audio contact among the individuals involved.

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or

behavioral disorders and associated distresses that interfere with mental health and development.

"Qualified mental health professional" or "QMHP" means a person who by education and experience is professionally qualified and registered by the board to provide collaborative mental health services for adults or children. A QMHP shall not engage in independent or autonomous practice. A QMHP shall provide such services as an employee or independent contractor of DBHDS, the Department of Corrections, or a provider licensed by DBHDS.

"Qualified mental health professional-adult" or "QMHP-A" means a registered QMHP who is trained and experienced in providing mental health services to adults who have a mental illness. A QMHP-A shall provide such services as an employee or independent contractor of DBHDS, the Department of Corrections, or a provider licensed by DBHDS.

"Qualified mental health professional-child" or "QMHP-C" means a registered QMHP who is trained and experienced in providing mental health services to children or adolescents up to the age of 22 who have a mental illness. A QMHP-C shall provide such services as an employee or independent contractor of DBHDS, the Department of Corrections, or a provider licensed by DBHDS.

"Registrant" means a QMHP registered with the board.

18VAC115-80-20. Fees required by the board.

A. The board has established the following fees applicable to the registration of qualified mental health professionals:

Registration	$50
Renewal of registration	$30
Late renewal	$20
Reinstatement of a lapsed registration	$75
Duplicate certificate of registration	$10
Returned check	$35
Reinstatement following revocation or suspension	$500

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC115-80-30. Current name and address.

Each registrant shall furnish the board his current name and address of record. Any change of name or address of record or public address if different from the address of record shall be furnished to the board within 60 days of such change. It shall be the duty and responsibility of each registrant to inform the board of his current address.

Part II
Requirements for Registration

18VAC115-80-40. Requirements for registration as a qualified mental health professional-adult.

A. An applicant for registration shall submit:

1. A completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-80-20; and

2. A current report from the National Practitioner Data Bank (NPDB).

B. An applicant for registration as a QMHP-A shall provide evidence of:

1. A master's degree in psychology, social work, counseling, substance abuse, or marriage and family therapy from an accredited college or university with an internship or practicum of at least 500 hours of experience with persons who have mental illness;

2. A master's or bachelor's degree in human services or a related field from an accredited college with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;

3. A bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits or 22 quarter hours in a human services field and with no less than 3,000 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;

4. A registered nurse licensed in Virginia with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section; or

5. A licensed occupational therapist with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section.

C. Experience required for registration.

1. To be registered as a QMHP-A, an applicant who does not have a master's degree as set forth in subdivision B 1 of this section shall provide documentation of experience in providing direct services to individuals as part of a population of adults with mental illness in a setting where mental health treatment, practice, observation, or diagnosis occurs. The services provided shall be appropriate to the practice of a QMHP-A and under the supervision of a licensed mental health professional or a person under supervision that has been approved by the Board of

Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure. Supervision obtained in another United States jurisdiction shall be provided by a mental health professional licensed in Virginia or licensed in that jurisdiction.

2. Supervision shall consist of face-to-face training in the services of a QMHP-A until the supervisor determines competency in the provision of such services, after which supervision may be indirect in which the supervisor is either on-site or immediately available for consultation with the person being trained.

3. Hours obtained in a bachelor's or master's level internship or practicum in a human services field may be counted toward completion of the required hours of experience.

4. A person receiving supervised training to qualify as a QMHP-A may register with the board. A trainee registration shall expire five years from its date of issuance.

18VAC115-80-50. Requirements for registration as a qualified mental health professional-child.

A. An applicant for registration shall submit:

1. A completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-80-20; and

2. A current report from the National Practitioner Data Bank (NPDB).

B. An applicant for registration as a QMHP-C shall provide evidence of:

1. A master's degree in psychology, social work, counseling, substance abuse, or marriage and family therapy from an accredited college or university with an internship or practicum of at least 500 hours of experience with persons who have mental illness;

2. A master's or bachelor's degree in a human services field or in special education from an accredited college with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;

3. A registered nurse licensed in Virginia with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section; or

4. A licensed occupational therapist with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section.

C. Experience required for registration.

1. To be registered as a QMHP-C, an applicant who does not have a master's degree as set forth in subdivision B 1 of this section shall provide documentation of 1,500 hours of experience in providing direct services to individuals as part of a population of children or adolescents with mental illness in a setting where mental health treatment, practice, observation, or diagnosis occurs. The services provided shall be appropriate to the practice of a QMHP-C and under the supervision of a licensed mental health professional or a person under supervision that has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure. Supervision obtained in another United States jurisdiction shall be provided by a mental health professional licensed in Virginia or licensed in that jurisdiction.

2. Supervision shall consist of face-to-face training in the services of a QMHP-C until the supervisor determines competency in the provision of such services, after which supervision may be indirect in which the supervisor is either on-site or immediately available for consultation with the person being trained.

3. Hours obtained in a bachelor's or master's level internship or practicum in a human services field may be counted toward completion of the required hours of experience.

4. A person receiving supervised training to qualify as a QMHP-C may register with the board. A trainee registration shall expire five years from its date of issuance.

18VAC115-80-60. Registration of qualified mental health professionals with prior experience.

Until December 31, 2018, persons who have been employed as QMHPs prior to December 31, 2017, may be registered with the board by submission of a completed application, payment of the application fee, and submission of an attestation from an employer that they met the qualifications for a QMHP-A or a QMHP-C during the time of employment. Such persons may continue to renew their registrations without meeting current requirements for registration provided they do not allow their registrations to lapse or have board action to revoke or suspend, in which case they shall meet the requirements for reinstatement.

Part III
Renewal of Registration

18VAC115-80-70. Annual renewal of registration.

All registrants shall renew their registrations on or before June 30 of each year. Along with the renewal form, the registrant shall submit the renewal fee as prescribed in 18VAC115-80-20.

18VAC115-80-80. Continued competency requirements for renewal of registration.

A. Qualified mental health professionals shall be required to have completed a minimum of eight contact hours of continuing education for each annual registration renewal. Persons who hold registration both as a QMHP-A and QMHP-C shall only be required to complete eight contact hours. A minimum of one of these hours shall be in a course that emphasizes ethics.

B. Qualified mental health professionals shall complete continuing competency activities that focus on increasing knowledge or skills in areas directly related to the services provided by a QMHP.

C. The following organizations, associations, or institutions are approved by the board to provide continuing education, provided the hours are directly related to the provision of mental health services:

1. Federal, state, or local governmental agencies, public school systems, licensed health facilities, or an agency licensed by DBDHS; and

2. Entities approved for continuing education by a health regulatory board within the Department of Health Professions.

D. Attestation of completion of continuing education is not required for the first renewal following initial registration in Virginia.

E. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the registrant prior to the renewal date. Such extension shall not relieve the registrant of the continuing education requirement.

F. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the registrant, such as temporary disability, mandatory military service, or officially declared disasters, upon written request from the registrant prior to the renewal date.

G. All registrants shall maintain original documentation of official transcripts showing credit hours earned or certificates of participation for a period of three years following renewal.

H. The board may conduct an audit of registrants to verify compliance with the requirement for a renewal period. Upon request, a registrant shall provide documentation as follows:

1. Official transcripts showing credit hours earned; or

2. Certificates of participation.

I. Continuing education hours required by a disciplinary order shall not be used to satisfy renewal requirements.

Part IV
Standards of Practice, Disciplinary Action, and Reinstatement

18VAC115-80-90. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Persons registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.

2. Practice only within the competency area for which they are qualified by training or experience and shall not provide clinical mental health services for which a license is required pursuant to Chapters 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.), and 37 (§ 54.1-3700 et seq.) of the Code of Virginia.

3. Report to the board known or suspected violations of the laws and regulations governing the practice of qualified mental health professionals.

4. Neither accept nor give commissions, rebates, or other forms of remuneration for the referral of clients for professional services and make appropriate consultations and referrals based on the interest of patients or clients.

5. Stay abreast of new developments, concepts, and practices that are necessary to providing appropriate services.

C. In regard to confidentiality and client records, persons registered by the board shall:

1. Not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

2. Disclose client records to others only in accordance with applicable law.

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

4. Maintain timely, accurate, legible, and complete written or electronic records for each client, to include dates of service and identifying information to substantiate treatment plan, client progress, and termination.

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

1. Not engage in dual relationships with clients or former clients that are harmful to the client's well-being, that

would impair the practitioner's objectivity and professional judgment, or that would increase the risk of client exploitation. This prohibition includes such activities as providing services to close friends, former sexual partners, employees, or relatives or engaging in business relationships with clients.

2. Not engage in sexual intimacies or romantic relationships with current clients. For at least five years after cessation or termination of professional services, practitioners shall not engage in sexual intimacies or romantic relationships with a client or those included in collateral therapeutic services. Because sexual or romantic relationships are potentially exploitative, the practitioner shall bear the burden of demonstrating that there has been no exploitation. A client's consent to, initiation of, or participation in sexual behavior or involvement with a practitioner does not change the nature of the conduct nor lift the regulatory prohibition.

3. Recognize conflicts of interest and inform all parties of obligations, responsibilities, and loyalties to third parties.

E. Upon learning of evidence that indicates a reasonable probability that another mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, is or may be guilty of a violation of standards of conduct as defined in statute or regulation, persons registered by the board shall advise their clients of the client's right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.

18VAC115-80-100. Grounds for revocation, suspension, restriction, or denial of registration.

In accordance with subdivision 7 of § 54.1-2400 of the Code of Virginia, the board may revoke, suspend, restrict, or decline to issue or renew a registration based upon the following conduct:

1. Conviction of a felony, or of a misdemeanor involving moral turpitude, or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of qualified mental health professionals, or any provision of this chapter;

2. Procuring, attempting to procure, or maintaining a registration by fraud or misrepresentation;

3. Conducting one's practice in such a manner so as to make it a danger to the health and welfare of one's clients or to the public, or if one is unable to practice with reasonable skill and safety to clients by reason of illness or abusive use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;

4. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of qualified mental health professionals or any regulation in this chapter;

5. Performance of functions outside the board-registered area of competency;

6. Performance of an act likely to deceive, defraud, or harm the public;

7. Intentional or negligent conduct that causes or is likely to cause injury to a client;

8. Action taken against a health or mental health license, certification, registration, or application in Virginia or other jurisdiction;

9. Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation; or

10. Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia.

18VAC115-80-110. Late renewal and reinstatement.

A. A person whose registration has expired may renew it within one year after its expiration date by paying the late renewal fee and the registration fee as prescribed in 18VAC115-80-20 for the year in which the registration was not renewed and by providing documentation of completion of continuing education as prescribed in 18VAC115-80-80.

B. A person who fails to renew registration after one year or more shall:

1. Apply for reinstatement;

2. Pay the reinstatement fee for a lapsed registration; and

3. Submit evidence of completion of 20 hours of continuing education consistent with requirements of 18VAC115-80-80.

C. A person whose registration has been suspended or who has been denied reinstatement by board order, having met the terms of the order, may submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-80-20. Any person whose registration has been revoked by the board may, three years subsequent to such board action, submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-80-20. The board in its discretion may, after an administrative proceeding, grant the reinstatement sought in this subsection.

NOTICE: The following forms used in administering the regulation are not being published. The forms are available in electronic online form only at the listed website. Questions regarding agency forms should be directed to the agency contact.

FORMS (18VAC115-80)

The following forms are available online only at https://www.license.dhp.virginia.gov/apply/:

Qualified Mental Health Profession-Adult, Application and Instructions

Qualified Mental Health Profession-Child, Application and Instructions

Qualified Mental Health Profession-Adult, Grandfathering Application and Instructions

Qualified Mental Health Profession-Child, Grandfathering Application and Instructions

Supervised Trainee, Application and Instructions

VA.R. Doc. No. R18-5242; Filed January 5, 2019, 11:12 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Fast-Track Regulation

Title of Regulation: **22VAC40-880. Child Support Enforcement Program (amending 22VAC40-880-240).**

Statutory Authority: § 63.2-217 of the Code of Virginia; 42 USC § 651 et seq.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 6, 2019.

Effective Date: March 21, 2019.

Agency Contact: Alice Burlinson, Senior Assistant Attorney General, Department of Social Services, 4504 Starkey Road, Southwest, Roanoke, VA 24018, telephone (540) 776-2779, FAX (804) 776-2797, or email alice.burlinson@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia provides that the State Board of Social Services shall adopt regulations not in conflict with Title 63.2 of the Code of Virginia as may be necessary or desirable to carry out the purpose of the title. Section 63.2-1918 of the Code of Virginia provides that there is a rebuttable presumption that the amount of a child support award that would result from the application of the guidelines is the correct amount. While the Code of Virginia lists factors for rebuttal, it states that "[a]dditional factors that may lead to rebuttal of the presumption shall be determined by Department [of Social Services] regulation."

Purpose: In approximately 80% of cases with the Division of Child Support Enforcement, the custodial parent has never received public assistance, or no public assistance debt remains. In such cases, the parents may seek a court order setting an obligation by agreement. The purpose of the amendment is to provide similar flexibility for parents who are subject to administrative support orders. Children need both financial and family support to grow and thrive. This regulation is essential to protect the health and welfare of children by establishing uniform child support enforcement procedures, which facilitate the financial stability of children and families.

Rationale for Using Fast-Track Rulemaking Process: The board does not believe that the amendments will be controversial. The amended regulation provides parents the opportunity for increased participation in setting a child support order. Such participation is voluntary, and judges may already consider parental agreements in court proceedings.

Substance: The amendment allows the department to issue an administrative support order based on an agreement of the parents.

Issues: There are numerous advantages to this regulatory action:

1. It expands parents' involvement in establishing child support obligations and increases their investment in the outcome. This investment can improve a noncustodial parent's willingness to comply with an order and the reliability of payments for the custodial parent.

2. It provides parents with flexibility to make strategic decisions. For example, a custodial parent may consent to a noncustodial parent paying less in the present to pursue education, because such education will allow greater payments in the future.

3. The ability to deviate by parental agreement already exists as a factor in court proceedings.

The agency is aware of no disadvantages to the public or to the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to allow the Department of Social Services (DSS) to issue an administrative child support order based on agreement of the parents.

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

Estimated Economic Impact. Under Virginia law,[1] DSS is authorized to issue an administrative child support order. Any parent who does not have an existing court support order can apply for services at DSS and seek an administrative support order. Such an administrative order is an alternative to obtaining a judicial order from a court if chosen by a parent.

Virginia law also contains presumptive child support guidelines that judges and DSS must follow.[2] Guideline support amount is the starting point in determining the final amount and is the same as the final amount in cases where there are no factors warranting a deviation. Judges can deviate from the presumptive amount by considering a wide spectrum of factors (14 factors).[3] However, under the current regulation, DSS has much less flexibility. DSS can deviate from the presumptive child support guidelines only by imputing income (i.e., using an income that the person should have been earning rather than what he or she actually earns) under certain circumstances. In addition to deviation by imputing income, the Board proposes to allow DSS to deviate from the presumptive guidelines when the parents have a written agreement as to the amount of support to be paid.

The main economic impact of the proposed change is in time savings to the parents, to DSS, and to the court system in general (e.g., fewer pleadings filed, less law-enforcement time to serve papers, less judge time to hear cases, etc.). The proposed change would also likely provide additional incentives to parents to be more agreeable to the amount of support in order to avoid court costs and delays. According to DSS, parents consenting to the amounts can, and most do, go to the Juvenile and Domestic Relations District Court without attorney representation. Courts also generally set a court date one month to possibly a year forward from the date of filing a petition, whereas DSS can enter an administrative order usually within a month or two of the application. Moreover, DSS sends a caseworker as well as an attorney to be present in the court hearings. Therefore, the proposed regulation would allow consenting parents to obtain an agreed upon order faster, save DSS administrative resources in terms of case worker as well as attorney time offset by increase in staff support needed to address additional administrative order cases, and relieve the court system from the additional workload these cases would represent.

Finally, the child support program is partially funded from a percentage of the collections. Lower administrative support amounts would reduce DSS's collections, but that reduction would likely be offset by collections from a higher number of expected administrative support orders and a higher expected compliance rate with such orders (because of their consensual nature).

Businesses and Entities Affected. The proposed amendments affect DSS, Virginia courts, and persons seeking child support. According to DSS, there were 12,860 administrative orders issued by DSS and 74,880 judicial orders entered by the courts in DSS cases in fiscal year 2018. The total number of judicial orders (with or without DSS involvement) entered by the courts in the Commonwealth is not available. DSS cannot predict how many of the court orders may be shifted from the court system to the DSS administrative order process as a result of this proposed regulation.

Localities Particularly Affected. The proposed regulation does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed regulation is expected to reduce parents' time missed from work, reduce DSS caseworker and attorney time devoted to judicial support orders offset by increase in staff support needed to address additional administrative support order cases, and reduce court caseloads. Reducing time off from work should increase the overall supply of labor; the impacts on DSS and the court system should reduce the demand for their staff time and to a lesser extent the demand for attorney services (because most consenting parents go the courts without legal representation).

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

Real Estate Development Costs. The proposed regulation does not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed regulation may reduce the demand for attorney services at solo or small business law practices by a small margin. Other than that, the proposed regulation does not have costs or other effects on small businesses.

Alternative Method that Minimizes Adverse Impact. There is no alternative method that minimizes the likely marginal impact on small law firms while accomplishing the same goal.

Adverse Impacts:

Businesses. The proposed regulation may adversely affect legal businesses by a small margin.

Localities. The proposed regulation does not adversely affect localities.

Other Entities. The proposed regulation does not adversely affect other entities.

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[1]Virginia Code §§ 63.2-1903 and 63.2-1918

[2]Virginia Code § 20-108.2

[3]Virginia Code § 20-108.1

Agency's Response to Economic Impact Analysis: The Department of Social Services reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comments.

Summary:

The amendments allow the Department of Social Services to issue an administrative support order based on an agreement of the parents as a third factor that may be considered to rebut the presumption of the amount of child support that results from the application of the child support guidelines as the correct amount of child support. This factor is already one that judges may consider in court proceedings.

22VAC40-880-240. Administrative deviation from the child support guideline.

There shall be a rebuttable presumption that the amount of child support that results from the application of the guidelines is the correct amount of child support pursuant to §§ 20-108.1, 20-108.2, and 63.2-1918 of the Code of Virginia. Deviations from the ~~guideline~~ guidelines shall be allowed as follows:

1. When either natural or adoptive parent is found to be voluntarily unemployed or fails to provide financial information upon request, income shall be imputed except as indicated ~~below~~ in this subdivision. A natural or adoptive parent is determined to be voluntarily unemployed when ~~he~~ the parent quits a job without good cause or is fired for cause.

a. The current or last available monthly income shall be used to determine the obligation if that income is representative of what the natural or adoptive parent could earn or otherwise receive.

b. If actual income is not available, use the federal minimum wage multiplied by 40 hours per week and converted to a monthly amount by multiplying the result by 4.333.

2. In non-TANF cases, where there is a signed, written agreement for child support, the child support obligation may be set at the agreed amount but at no less than the statutory minimum pursuant to § 20-108.2 of the Code of Virginia.

3. No other deviations from the child support guidelines may be made in establishing or adjusting administrative support orders or reviewing court orders. Should potential deviation factors exist, as stated in § 20-108.1 of the Code of Virginia, refer the case to court for additional action.

VA.R. Doc. No. R19-5527; Filed January 8, 2019, 9:57 a.m.

EXECUTIVE ORDER NUMBER TWENTY-EIGHT (2019)

Declaration of a State of Emergency for the Commonwealth of Virginia Due to Winter Weather

Importance of the Issue

On this date, January 12, 2019, I declare that a state of emergency exists in the Commonwealth of Virginia based on the need to prepare and coordinate our response to winter weather forecasted to impact the Commonwealth on January 12th. This storm could result in significant snow and ice accumulation, create transportation issues, and result in significant power outages.

State action is required to protect the health and general welfare of Virginia residents. The anticipated effects of this situation constitute a disaster wherein human life and public and private property are, or are likely to be, imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby proclaim a state of emergency exists. Accordingly, I direct state and local governments to render appropriate assistance to prepare for this event, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures to meet this threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Code of Virginia, I order the following:

A. Implementation of the Commonwealth of Virginia Emergency Operations Plan (COVEOP), as amended, by state agencies along with other appropriate state plans.

B. Activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Support Team (VEST), as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to local governments and emergency services assignments of other agencies as necessary and determined by the State Coordinator of Emergency Management and other agencies as appropriate.

C. Activation of the Virginia National Guard and the Virginia Defense Force to state active duty to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia Department of State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police (in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety and Homeland Security) may find necessary. Pursuant to § 52-6 of the Code of Virginia, I authorize the Superintendent of the Department of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. These police officers shall have the same powers and perform the same duties as the Virginia State Police officers appointed by the Superintendent. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and are not subject to the civilian authorities of county or municipal governments.

D. Activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to §§ 44-146.17(5) and 44-146.28:1 of the Code of Virginia. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

E. This Emergency Declaration implements limited relief from the provisions of 49 CFR §§ 390.23 and 395.3 for the purpose of providing direct relief or assistance as a result of this disaster.

F. Authorization of the Virginia Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, over width, registration, license, or hours of service exemptions to all carriers transporting essential emergency relief supplies to, through, and from any area of the Commonwealth. This authorization also applies to water, food, heating oil, motor fuels, or propane, agricultural products, agricultural supplies, livestock and poultry, livestock and poultry feed, forest products and salvaged wood, waste, and trees cut in preparation for the storm, and providing restoration of utilities (including but not limited to electricity, gas, phone, water, wastewater, and cable) or removal of waste to, through and from any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination. Weight exemptions are not valid on posted structures for restricted weight. Weight exemptions are also not valid on interstate highways unless there is an associated federal emergency declaration. The exemption shall not exceed the

duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 30 days from the initial declaration of emergency, whichever is less.

1. All overwidth loads, up to a maximum of 12 feet, and overheight loads up to a maximum of 14 feet, must follow Virginia Department of Motor Vehicles' hauling permit and safety guidelines.

2. In addition to described overweight/overwidth transportation privileges, carriers are also exempt from vehicle registration with the Department of Motor Vehicles. This includes vehicles en route and returning to their home base. The agencies cited in this provision shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

G. Implementation and discontinuance of the transportation-related provisions authorized above shall be disseminated by the publication of administrative notice to all affected and interested parties. I hereby delegate to the Secretary of Public Safety and Homeland Security, after consultation with other affected Cabinet Secretaries, the authority to implement and disseminate this Order as set forth in § 2.2-104 of the Code of Virginia.

H. Authorization of the Commissioner of Agriculture and Consumer Services to grant a temporary waiver of the maximum vapor pressure prescribed in regulation 2VAC5-425 et seq., and to prescribe a vapor pressure limit the Commissioner deems reasonable. The temporary waiver shall remain in effect until emergency relief is no longer necessary, as determined by the Commissioner of Agriculture and Consumer Services.

I. Provision of appropriate assistance, including temporary assignments of non-essential state employees to the Adjunct Emergency Workforce, be rendered by state agencies to respond to this situation.

J. Authorization of appropriate oversight boards, commissions, and agencies to ease building code restrictions, permitting requirements, and to allow for emergency demolition, hazardous waste disposal, debris removal, emergency landfill sitting, and other operations and activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties. All appropriate executive branch agencies are to exercise discretion to the extent allowed by law to address any pending deadlines or expirations affected by or attributable to this emergency event.

K. Authorization for the heads of executive branch agencies, with the concurrence of their Cabinet Secretary, to act, when appropriate, on behalf of their regulatory boards to waive any state requirement or regulation where the federal government has waived the corresponding federal or state regulation based on the impact of events related to this situation.

L. Activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging.

M. Authorization of a maximum of $100,000 in state sum sufficient funds for state and local government mission assignments authorized and coordinated through the Virginia Department of Emergency Management that are allowable as defined by The Stafford Act, 42 USC § 5121 et seq. This funding is also available for state response and recovery operations and incident documentation. Out of this state disaster sum sufficient, an amount estimated at $50,000 is authorized for the Department of Military Affairs for the state's portion of the eligible disaster-related costs incurred for salaries, travel, and meals during mission assignments authorized and coordinated through the Virginia Department of Emergency Management.

N. Implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28(b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

O. During this declared emergency, any person who holds a license, certificate, or other permit issued by any state or political subdivision thereof, evidencing the meeting of qualifications for professional, mechanical, or other skills, the person, without compensation other than reimbursement for actual and necessary expenses, may render aid involving that skill in the Commonwealth during this emergency. Such person shall not be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from such service as set forth in Code of Virginia § 44-146.23(C). Additionally, members and personnel of volunteer, professional, auxiliary, and reserve groups identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments, as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23(A) of the Code of Virginia, shall not be liable for the death of, or any injury to, persons or damage to property as a result of such activities, as provided in § 44-146.23(A) of the Code of Virginia.

P. Designation of physicians, nurses, and other licensed and non-licensed health care providers and other individuals, as well as hospitals, nursing facilities and other licensed and non-licensed health care organizations, political subdivisions and other private entities by state agencies, including the Departments of Health, Behavioral Health and Developmental Services, Social Services, Emergency Management, Transportation, State Police, and Motor

Vehicles, as representatives of the Commonwealth engaged in emergency services activities, at sites designated by the Commonwealth, within the meaning of the immunity provisions of § 44-146.23(A) of the Code of Virginia, in the performance of their disaster-related mission assignments.

Q. As provided in § 44-146.23(F) of the Code of Virginia, no individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, fraternal organization, religious organization, charitable organization, or any other legal or commercial entity and any successor, officer, director, representative, or agent thereof, who, without compensation other than reimbursement for actual and necessary expenses, provides services, goods, real or personal property, or facilities at the request and direction of the State Department of Emergency Management or a county or municipal employee whose responsibilities include emergency management shall be liable for the death of or injury to any person or for the loss of, or damage to, the property of any person where such death, injury, loss, or damage was proximately caused by the circumstances of the actual emergency or its subsequent conditions, or the circumstances of this emergency.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in the paragraphs above pertaining to the Virginia National Guard and pertaining to the Virginia Defense Force, shall be paid from state funds.

Effective Date of this Executive Order

This Executive Order shall be effective January 12, 2019, and shall remain in full force and in effect until February 12, 2019, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 12th day of January, 2019.

/s/ Ralph S. Northam
Governor

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

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

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

BOARD OF ACCOUNTANCY

Title of Document: Board of Accountancy Rights and Responsibilities under FOIA.

Public Comment Deadline: March 6, 2019.

Effective Date: March 6, 2019.

Agency Contact: Kelli Anderson, Communications Manager, Board of Accountancy, 9960 Mayland Drive, Suite 402, Henrico, VA 23233, telephone (804) 367-1586, or email kelli.anderson@boa.virginia.gov.

DEPARTMENT OF TAXATION

Title of Document: Debt Buyer Apportionment Guidelines.

Public Comment Deadline: March 6, 2019.

Effective Date: March 6, 2019.

Agency Contact: Joe Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, or email joseph.mayer@tax.virginia.gov.

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Title of Document: Certified Company Apportionment Guidelines for Business Conducted in Certain Disadvantaged Localities.

Public Comment Deadline: March 6, 2019.

Effective Date: March 6, 2019.

Agency Contact: Joe Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, or email joseph.mayer@tax.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Request for Citizen Nomination of State Surface Waters for Inclusion in Virginia Department of Environmental Quality's Annual Water Quality Monitoring Plan

In accordance with § 62.1-44.19:5 F of the Code of Virginia, Water Quality Monitoring Information and Restoration Act, any person may request that a specific body of water be included in the Department of Environmental (DEQ) annual water quality monitoring plan, and such requests shall include, at a minimum (i) a geographical description of the water body recommended for monitoring, (ii) the reason the monitoring is requested, and (iii) any water quality data that the petitioner may have collected or compiled. Each request received by April 30 shall be reviewed when DEQ develops the annual water quality monitoring plan for the following calendar year. DEQ will respond in writing on its approval or denial of each nomination by August 31. Please see the included nominating form, which is also available at https://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityMonitoring/CitizenMonitoring/FollowupMonitoring.aspx. Use of the nomination form is preferred; however, all nominations with the minimum of information as outlined above will be accepted for review.

Please note that the monitoring program covered by this process is directed at the surface waters of the state. Private ponds, privately owned lakes, and any other bodies of water not deemed to be "state waters" are ineligible. Nominations can be submitted by mail, email, or hand delivered to the receptionist's desk at our Central Office, 1111 East Main Street, Richmond, Virginia.

REQUEST TO INCLUDE A WATER SEGMENT IN DEQ'S ANNUAL MONITORING PLAN

Name:				Date:
Mailing Address:				
Street				
City:		State:		Zip:
E-mail address:				
Home telephone:		Business telephone:		

Geographic description of the water body:

(1) Name of the water body or segment proposed for monitoring:

(2) Description of the upstream and downstream boundaries of the water body proposed for monitoring. Attach a map (preferably a photocopy of a 7.5 minute quad USGS topographic map) which delineates the boundaries:

(3) Reason for requesting that this water body be monitored:

(4) Attach any water quality data that you have collected or compiled. Include the name of the organization/entity that generated the data.

Please mail/FedEX/email the requested information/form to the contact listed below.

Contact Information: Stuart Torbeck, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4461, FAX (804) 698-4032, or email charles.torbeck@deq.virginia.gov.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Soil and Water Conservation Board conducted a small business impact review of **4VAC50-20, Impounding Structure Regulations**, and determined that this regulation should be retained in its current form. The Virginia Soil and Water Conservation Board is publishing its report of findings dated December 5, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

There is a continued need for the regulations as they are mandated by law. No public comments were received that suggested changes would minimize the impact of the regulation on small business. The regulations do not have an adverse impact on small businesses and may provide opportunities for small businesses in the engineering, construction, and environmental services industries.

The regulations are technical in nature and because of that technicality can be difficult to understand. The board recognizes that certain sections of the regulations are in need of clarification and will initiate at least one regulatory action to address that need. The regulations do not overlap, duplicate, or conflict with any known federal or state law or regulation.

Contact Information: Christine Watlington, Department of Conservation and Recreation, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-3319, FAX (804) 371-2630, or email christine.watlington@dcr.virginia.gov.

STATE WATER CONTROL BOARD

Notice of Release of 2018 Water Quality Assessment Guidance

The Virginia Department of Environmental Quality (DEQ) has released the Final 2018 Water Quality Assessment Guidance Manual. Virginia's 2018 Water Quality Assessment Guidance Manual contains the assessment procedures and methods to be used for the development of Virginia's 2018 § 305(b)/§ 303(d) Integrated Report (i.e., combined Water Quality Assessment Report and Impaired Waters Report). The assessment guidance seeks to address all key elements of the U.S. Environmental Protection Agency (EPA) 2006 Assessment Guidance and subsequent updates current to December 2018, in addition to the assessment methodology for Chesapeake Bay Water Quality Standards established by EPA, most recently updated in the May 2010 addendum to Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity, and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries. A copy of the Final 2018 Water Quality Assessment Guidance Manual will be available for download from the DEQ Water Quality Assessment webpage at https://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityAssessments/2018WQAGuidanceManual.aspx. A hard copy can also be requested from Amanda Shaver, Water Quality Assessment Coordinator, using the contact information at the end of this notice.

Section 62.1-44.19:5 C of the Code of Virginia requires DEQ to develop and publish the procedures used for defining and determining impaired waters and provide for public comment on the procedures. A draft version of this guidance was released for 30-day public review and comment on March 5, 2018. Comments were received from five organizations, including the Environmental Protection Agency. DEQ's response to these comments will be available for download at the website provided. Modifications have been made to the guidance document since 2016. A complete list of significant guidance modifications are described in Part II of the manual.

Contact Information: Amanda Shaver, Monitoring Specialist, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4181, FAX (804) 698-4032, or email amanda.shaver@deq.virginia.gov.

Proposed Enforcement Action for Brookfield Stephenson Village LLC

An enforcement action has been proposed for Brookfield Stephenson Village LLC for violations at the Stephenson Village residential development in Frederick County, Virginia. The State Water Control Board proposes to issue a consent order with penalty and injunctive relief to Brookfield Stephenson Village LLC to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Tiffany Severs will accept comments by email at tiffany.severs@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from February 4, 2019, to March 6, 2019.

Proposed Consent Order for Dominion Hills Area Recreation Association Incorporated

An enforcement action has been proposed for Dominion Hills Area Recreation Association Incorporated for violations of the State Water Control Law and regulations at the Dominion Hills Recreation Area located in Arlington County, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with Dominion Hills Recreation Area. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Benjamin Holland will accept comments by email at benjamin.holland@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from February 5, 2019, through March 7, 2019.

Proposed Consent Special Order for Nutri-Blend Inc.

An enforcement action has been proposed for Nutri-Blend Inc. for violations in Buckingham, Virginia. The State Water Control Board proposes to issue a special order by consent to Nutri-Blend Inc. to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Kristen Sadtler will accept comments by email at kristen.sadtler@deq.virginia.gov or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from February 4, 2019, to March 6, 2019.

Proposed Enforcement Action for Tyson Farms Inc.

An enforcement action has been proposed for Tyson Farms Inc. for violations of the State Water Control Law in Temperanceville, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. John Brandt will accept comments by email at john.brandt@deq.virginia.gov, FAX at (757) 518-2009, or postal mail Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462 from February 4, 2019, to March 6, 2019.

VIRGINIA CODE COMMISSION

Notice to State Agencies

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

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

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

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