



VIRGINIA

REGISTER OF REGULATIONS

VOL. 34 ISS. 6

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

NOVEMBER 13, 2017

TABLE OF CONTENTS

Register Information Page	589
Publication Schedule and Deadlines	590
Notices of Intended Regulatory Action	591
Regulations	593
4VAC20-120. Pertaining to the Promulgation of a Public Notice on Applications to Encroach in, on or over Subaqueous Lands of the Commonwealth (Final)	593
4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (Final)	594
4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (Emergency)	595
4VAC20-510. Pertaining to Amberjack and Cobia (Final)	595
4VAC20-620. Pertaining to Summer Flounder (Final)	596
4VAC20-1120. Pertaining to Tilefish and Grouper (Final)	597
4VAC20-1330. Living Shoreline Group 2 General Permit for Certain Living Shoreline Treatments Involving Submerged Lands, Tidal Wetlands, or Coastal Primary Sand Dunes and Beaches (Final)	597
8VAC20-440. Regulations Governing the Employment of Professional Personnel (Final)	602
8VAC20-441. Regulations Governing the Employment of Professional Personnel (Final)	602
12VAC5-421. Food Regulations (Forms)	605
12VAC30-20. Administration of Medical Assistance Services (Final)	605
12VAC30-110. Eligibility and Appeals (Final)	606
14VAC5-265. Rules Governing Corporate Governance Annual Disclosures (Final)	608
16VAC25-60. Administrative Regulation for the Virginia Occupational Safety and Health Program (Final)	612
18VAC41-20. Barbering and Cosmetology Regulations (Fast-Track)	618
18VAC50-22. Board for Contractors Regulations (Final)	620
18VAC90-19. Regulations Governing the Practice of Nursing (Fast-Track)	630
18VAC105-20. Regulations Governing the Practice of Optometry (Emergency)	633
18VAC110-20. Regulations Governing the Practice of Pharmacy (Final)	635
18VAC115-20. Regulations Governing the Practice of Professional Counseling (Fast-Track)	637
18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (Fast-Track)	637
18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (Fast-Track)	637
19VAC30-20. Motor Carrier Safety Regulations (Final)	641
21VAC5-110. Retail Franchising Act Rules (Proposed)	641
22VAC40-72. Standards for Licensed Assisted Living Facilities (Final)	645
22VAC40-73. Standards for Licensed Assisted Living Facilities (Final)	645
22VAC40-73. Standards for Licensed Assisted Living Facilities (Final)	705
General Notices/Errata	715

Virginia Code Commission

<http://register.dls.virginia.gov>

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for \$263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

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. **29:5 VA.R. 1075-1192 November 5, 2012**, refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

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 M. LeMunyon**, Vice Chair; **Gregory D. Habeeb**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Leslie L. Lilley**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Timothy Oksman**; **Charles S. Sharp**; **Noah P. Sullivan**; **Mark J. Vucci**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **Karen Perrine**, Assistant Registrar; **Anne Bloomsburg**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

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

November 2017 through November 2018

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
34:6	October 25, 2017	November 13, 2017
34:7	November 8, 2017	November 27, 2017
34:8	November 21, 2017 (Tuesday)	December 11, 2017
34:9	December 6, 2017	December 25, 2017
34:10	December 19, 2017 (Tuesday)	January 8, 2018
34:11	January 3, 2018	January 22, 2018
34:12	January 17, 2018	February 5, 2018
34:13	January 31, 2018	February 19, 2018
34:14	February 14, 2018	March 5, 2018
34:15	February 28, 2018	March 19, 2018
34:16	March 14, 2018	April 2, 2018
34:17	March 28, 2018	April 16, 2018
34:18	April 11, 2018	April 30, 2018
34:19	April 25, 2018	May 14, 2018
34:20	May 9, 2018	May 28, 2018
34:21	May 23, 2018	June 11, 2018
34:22	June 6, 2018	June 25, 2018
34:23	June 20, 2018	July 9, 2018
34:24	July 3, 2018 (Tuesday)	July 23, 2018
34:25	July 18, 2018	August 6, 2018
34:26	August 1, 2018	August 20, 2018
35:1	August 15, 2018	September 3, 2018
35:2	August 29, 2018	September 17, 2018
35:3	September 12, 2018	October 1, 2018
35:4	September 26, 2018	October 15, 2018
35:5	October 10, 2018	October 29, 2018
35:6	October 24, 2018	November 12, 2018
35:7	November 7, 2018	November 26, 2018

*Filing deadlines are Wednesdays unless otherwise specified.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF OPTOMETRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Optometry intends to consider amending **18VAC105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to address the opioid abuse crisis in Virginia by adopting regulations for optometrists prescribing controlled substances containing opioids. The regulations for the management of acute pain include requirements for (i) prescribing a dosage not to exceed seven days, (ii) evaluation of the patient, and (iii) limitations on quantity. Requirements for prescribing an opioid beyond seven days include a reevaluation of the patient, check of the Prescription Monitoring Program, and specific information in the patient record. In addition, if a therapeutic pharmaceutical agent-certified optometrist finds an opioid prescription for chronic pain is necessary, he must refer the patient to a physician or comply with Board of Medicine regulation for managing chronic pain.

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

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

Public Comment Deadline: December 13, 2017.

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.

VA.R. Doc. No. R18-5205; Filed October 16, 2017, 8:52 a.m.

BOARD OF PHARMACY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending **18VAC110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to require an applicant as a pharmacist, a pharmacy intern, or a pharmacy technician to obtain an e-profile ID number that may be utilized by the applicant and the board to track discipline, exam scores, and continuing education. There is no cost to applicants to obtain the number, and there is no cost to the board for using an e-profile ID number to get information from the National Association of Boards of Pharmacy.

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

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

Public Comment Deadline: December 13, 2017.

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.

VA.R. Doc. No. R18-5278; Filed October 16, 2017, 8:33 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 amending **22VAC30-30, Provision of Independent Living Rehabilitation Services**. The purpose of the proposed action is to comply with 45 CFR Part 1329, which implements The Workforce Innovation and Opportunity Act of 2014 for the independent living program and independent living services, and ensure that Virginia's centers for independent living receiving federal funds comply with federal regulations. In addition, this action will bring the regulation up to date with the changes in the independent living movement that have occurred since this regulation was last amended. This action will protect the welfare of citizens because it stipulates the specific, core independent living services that are required by the federal regulations and will allow the individual centers the flexibility to provide additional services that are needed by their specific geographical areas if there are additional funding sources available.

This Notice of Intended 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 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.

Public Comment Deadline: December 13, 2017.

Agency Contact: Vanessa S. Rakestraw, Ph.D., CRC, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7663, TTY (800) 464-9950, or email vanessa.rakestraw@dars.virginia.gov.

VA.R. Doc. No. R18-5333; Filed October 25, 2017, 10:33 a.m.

Notices of Intended Regulatory Action

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-705, Child Protective Services**. The purpose of the proposed action is to comply with 2017 legislative changes and applicable federal law. The action will address changes in the Code of Virginia, comments from any workgroup convened to review the regulation, and comments received during the public comment period for this Notice of Intended Regulatory Action. The agency plans to (i) amend provisions regarding substance-exposed infants in accordance with Chapters 176 and 428 of the 2017 Acts of Assembly; (ii) amend provisions related to active duty members of the United States Armed Forces in accordance with Chapters 88 and 142 of the 2017 Acts of Assembly; (iii) consider adding a new provision for a 24-hour child protective services response to reports alleging abuse or neglect of a child under the age of two years based on Chapter 604 of the 2017 Acts of Assembly; and (iv) consider changes in response to recommendations made by a workgroup examining barriers to treatment for substance-exposed infants established in Chapter 197 of the 2017 Acts of Assembly.

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

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

Public Comment Deadline: December 13, 2017.

Agency Contact: Mary Walter, Program Consultant, Child Protective Services, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7569, FAX (804) 726-7499, or email mary.walter@dss.virginia.gov.

VA.R. Doc. No. R18-5314; Filed October 16, 2017, 8:55 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

<p><u>REGISTRAR'S NOTICE:</u> 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.</p>

Title of Regulation: **4VAC20-120. Pertaining to the Promulgation of a Public Notice on Applications to Encroach in, on or over Subaqueous Lands of the Commonwealth (amending 4VAC20-120-10 through 4VAC20-120-40).**

Statutory Authority: § 28.2-103 of the Code of Virginia.

Effective Date: November 1, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments update the public notice process regarding permit applications and identify projects or activities for which a notice is not necessary.

CHAPTER 120

PERTAINING TO ~~THE PROMULGATION OF A PUBLIC NOTICE ON~~ OF APPLICATIONS TO ENCROACH IN, ON OR OVER SUBAQUEOUS LANDS OF THE COMMONWEALTH FOR PERMITS FOR CERTAIN USES OF STATE-OWNED BOTTOMLANDS

4VAC20-120-10. Authority, ~~prior regulation, effective date~~ Purpose.

A. ~~This chapter is promulgated pursuant to the authority contained in § 28.1-23 [Repealed] of the Code of Virginia.~~

B. ~~This chapter amends the previous Regulation XV concerning the requirement for public notice on all applications to encroach on subaqueous lands of the Commonwealth, and made effective November 1, 1973.~~

C. The effective date of this chapter is March 1, 1983.

The purpose of this chapter is to establish the public notice requirements that are a part of a public interest review for projects and activities requiring permits from the Marine Resources Commission for uses of state-owned bottomlands pursuant to Chapter 12 (§ 28.2-1200 et seq.) of Title 28.2 of the Code of Virginia.

4VAC20-120-20. General.

~~The Marine Resources Commission hereby requires a public notice on all applications for encroachment upon the state-owned bottoms made pursuant to Chapter 12 (§ 28.2-100 et seq.) of Title 28.2 of the Code of Virginia. Such public notice shall be made in accordance with the following provisions.~~

The Marine Resources Commission requires a public notice on all applications that require a permit from the commission pursuant to Chapter 12 (§ 28.2-1200 et seq.) of Title 28.2 of the Code of Virginia except for the following projects or activities:

1. Construction projects, structures, and activities authorized by general permit or regulation promulgated by the commission, unless such general permit or regulation specifically requires such public notice;
2. Replacement or reconstruction of structures previously authorized or permitted by the commission, provided such structures do not result in additional encroachment over state-owned bottomlands;
3. Taking sediment samples for engineering or geotechnical analysis;
4. Recovering objects from state-owned bottomlands, unless those objects have been identified as underwater historic property pursuant to § 10.1-2214 of the Code of Virginia, or from areas excluded from recovery activity by the commission in consultation with the Department of Historic Resources;
5. Restoring sand to any publically owned beach damaged by sand erosion; or
6. Constructing private piers requiring a permit pursuant to § 28.2-1205 D of the Code of Virginia.

4VAC20-120-30. Content and publication.

A. The notice shall include the applicant's name and accurately describe the nature and extent, and location of the proposed project; ~~shall include the location of the project; and shall include the applicant's name and address.~~

Regulations

~~B. For projects which require both a state and federal permit, the district office of the U.S. Army Corps of Engineers will prepare a joint state/federal public notice, with the assistance of the Environmental Division of VMRC, which will be promulgated in accordance with U.S. Army Corps of Engineers chapters and local district policy. The public notice shall be placed in a newspaper having general circulation in the area where the project is proposed.~~

~~C. For projects which qualify under either a project or an activity that also requires a permit from the Norfolk District of the U.S. Army Corps of Engineers nationwide or district general permit, or for which no federal permit is required, the public notice shall be placed in a newspaper having general circulation in the area where the project is proposed (Corps) and for which a Corps public notice is required, a joint state and federal public notice may be used without the placement of a notice in a newspaper by the commission.~~

~~D. Copies of all comments received will be provided to the appropriate districts of the U.S. Army Corps of Engineers and the State Water Control Board Corps and the Department of Environmental Quality.~~

4VAC20-120-40. Commissioner's responsibility and authority.

~~A. The commissioner Marine Resources Commissioner or his designee shall be responsible for seeing ensuring that the newspaper notice is published, as described in 4VAC20-120-30 C above, B and shall be the sole judge concerning the adequacy of content of the newspaper notice and selection of the newspaper.~~

~~B. The cost of publication of the notice required in 4VAC20-120-30 C B shall be borne by the applicant.~~

~~C. Cost of publication of the joint state/federal public notice prepared by the Norfolk and Baltimore districts of the U.S. Army Corps of Engineers will be borne by the district which prepares the notice.~~

VA.R. Doc. No. R18-5330; Filed October 25, 2017; 10:23 a.m.

Final Regulation

<p>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.</p>

Title of Regulation: **4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (amending 4VAC20-260-50).**

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

Effective Date: October 25, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue,

3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendment establishes inspection procedures for oysters kept in individual baskets and clarifies the methods police officers may use to inspect oyster harvests for conformity to culling standards.

4VAC20-260-50. Culling and inspection procedures.

A. All oysters taken from natural public beds, rocks, or shoals shall be placed on the culling board, or in only one basket upon the culling board, and culled by hand at the location of harvest.

1. Culled oysters shall be transferred immediately from the culling board to ~~either~~ the inside open part of the boat, and stored in either a loose pile, or baskets, ~~but only one transfer method may be used on any boat or vessel in any one day.~~

a. Oysters shall not be stored in both a loose pile and in baskets.

b. A single basket may be on board any boat during transfer of culled oysters from the culling board to the inside open part of the boat in a loose pile.

2. The entire harvest shall be subject to inspection, as provided in subsection F of this section.

B. Any oysters taken lawfully by hand from natural public beds, rocks, or shoals from the seaside of the Eastern Shore, and held in sacks, bags, or containers, shall be culled when taken and placed in those sacks, bags, or containers for inspection by any police officer as described in subsection G of this section.

C. If oysters from leased grounds and oysters from public grounds are mixed in the same cargo on a boat or motor vehicle, the entire cargo shall be subject to inspection under this chapter.

D. It shall be unlawful for any person to buy, sell, or report clean cull oysters by any measure other than those described in § 28.2-526 A of the Code of Virginia filled to level full. The container described in § 28.2-526 A 2 is a basket. It shall be unlawful for any person to sell, purchase, or report the sale or purchase of any clean cull oysters harvested from public grounds, as described in 4VAC20-720-40, in excess of the harvest limits described in 4VAC20-720-80.

E. It shall be unlawful for any person to buy, sell, or report seed oysters by any measure other than as described in § 28.2-526 of the Code of Virginia.

F. Oysters may be inspected by any police officer according to any one of the following provisions:

1. For any oysters ~~transferred from the culling board to the inside open part of the boat, vehicle, or trailer or stored in a loose pile in a vehicle, a trailer, or the inside open part of a boat,~~ any the police officer may shall use a shovel to take at least one bushel basket of oysters to inspect, at random, provided that the entire bushel or basket shall be taken from one place in the open pile of oysters. The officer may inspect multiple baskets by repeating this procedure for each basket of oysters shoveled from the loose pile.

2. For any oysters ~~transferred from a vessel to a motor vehicle or trailer, any stored in baskets in a vehicle, a trailer, or the inside open part of a boat,~~ the police officer may shall select one or more baskets of oysters and empty the contents of those baskets into a bushel or basket, as described in § 28.2-526 of the Code of Virginia, basket for inspection. The officer may inspect multiple baskets by repeating this procedure for each basket.

G. In the inspection of oysters harvested by hand from waters of the seaside of the Eastern Shore, the police officer may select any sacks, bags, or containers at random to establish a full metallic measuring bushel or basket for purposes of inspection.

H. On the seaside of the Eastern Shore oysters may be sold without being measured if both the buyer and the seller agree to the number of bushels of oysters in the transaction.

VA.R. Doc. No. R18-5295; Filed October 25, 2017, 3:20 p.m.

Emergency Regulation

Title of Regulation: **4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (amending 4VAC20-260-40).**

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

Effective Dates: October 25, 2017, through November 24, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248 or email jennifer.farmer@mrc.virginia.gov.

Preamble:

The amendment establishes the basket as the only measure for oyster culling tolerance.

4VAC20-260-40. Culling tolerances or standards.

A. In the clean cull areas, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found in any ~~bushel or~~ basket inspected by any police officer, it shall constitute a violation of this chapter, except as described in 4VAC20-260-30 E.

B. In the James River seed areas, if more than a six-quart measure of shells is found in any ~~bushel or~~ basket of seed

oysters inspected by any police officer, it shall constitute a violation of this chapter.

C. In the James River seed areas, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found in any ~~bushel or~~ basket of clean cull oysters inspected by any police officer, it shall constitute a violation of this chapter.

D. From the seaside of the Eastern Shore, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found per ~~bushel or~~ basket of clean cull oysters inspected by any police officer, it shall constitute a violation of this chapter.

E. Any oysters less than the minimum cull size or any amount of shell that exceeds the culling standard shall be returned immediately to the natural beds, rocks, or shoals from where they were taken.

F. Oysters less than the minimum cull size that are adhering so closely to the shell of any marketable oyster as to render removal impossible without destroying the oysters less than the minimum cull size need not be removed, and those oysters shall be considered lawful and shall not be included in the culling tolerances or standards as described in subsections A through D of this section.

G. It shall be unlawful for any person to sell any oysters less than the minimum cull size as described in this section.

VA.R. Doc. No. R18-5326; Filed October 25, 2017, 10:44 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: **4VAC20-510. Pertaining to Amberjack and Cobia (amending 4VAC20-510-25).**

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

Effective Date: October 25, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendment establishes the closure of the commercial cobia season after September 30, 2017.

4VAC20-510-25. Commercial fishery possession limits and season.

A. It shall be unlawful for any person fishing commercially to possess more than two amberjack or more than two cobia

Regulations

at any time, except as described in 4VAC20-510-33. Any amberjack or cobia caught after the possession limit has been reached shall be returned to the water immediately. When fishing from any boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by two. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

B. In 2017 it shall be unlawful for any person fishing commercially to harvest or possess any cobia after September 30.

VA.R. Doc. No. R18-5294; Filed October 25, 2017, 1:13 p.m.

Final Regulation

<p><u>REGISTRAR'S NOTICE:</u> 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.</p>

Title of Regulation: **4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-40).**

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

Effective Date: October 30, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments establish fall 2017 commercial offshore summer flounder fishery management measures, including a change to the season start date and a lower Virginia landing limit.

4VAC20-620-40. Commercial vessel possession and landing limitations.

A. It shall be unlawful for any person harvesting summer flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, D, and E of this section:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel.
2. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.
3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. Nothing in this chapter shall preclude a vessel from possessing any North Carolina vessel possession limit of summer flounder in Virginia; however, no vessel that possesses the North Carolina vessel possession limit of summer flounder shall offload any amount of that possession limit, except as described in subsection J of this section.

C. From March 1 through April 30, it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina landing limit or trip limit.
2. Land in Virginia more than a total of 7,500 pounds of summer flounder.
3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

D. From ~~November 4~~ October 16 through December 31 of each year, ~~if it has not been announced that 85% of the allowable landings have been taken,~~ it shall be unlawful for any person harvesting summer flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of summer flounder in excess of the combined total of the Virginia landing limit described in subdivision 2 of this subsection and the amount of the legal North Carolina landing limit or trip limit.
2. Land in Virginia more than a total of ~~7,500~~ 7,000 pounds of summer flounder.
3. Land in Virginia any amount of summer flounder more than once in any consecutive five-day period.

E. From January 1 through December 31 of each year, any boat or vessel issued a valid federal summer flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of summer flounder, except as described in 4VAC20-620-30 F.

F. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all summer flounder aboard any vessel landing summer flounder in Virginia.

G. Any possession limit described in this section shall be determined by the weight in pounds of summer flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The weight of any summer flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of summer flounder aboard

any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of summer flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection J of this section. A buyer or processor may accept or buy summer flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection J of this section.

H. If a person violates the possession limits described in this section, the entire amount of summer flounder in that person's possession shall be confiscated. Any confiscated summer flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated summer flounder and, at a minimum, secure two bids for purchase of the confiscated summer flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

I. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading summer flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission the name of the vessel, its captain, an estimate of the amount in pounds of summer flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed summer flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of summer flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any summer flounder during the period of 9 p.m. to 7 a.m.

J. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload summer flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

K. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing summer flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

~~L. When it is projected and announced that 85% of the allowable landings have been taken, it shall be unlawful to land summer flounder in Virginia, except as described in subsection A of this section.~~

~~M. L.~~ It shall be unlawful for any person harvesting summer flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of summer flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30 A has been taken.

VA.R. Doc. No. R18-5293; Filed October 25, 2017, 1:17 p.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: 4VAC20-1120. **Pertaining to Tilefish and Grouper (adding 4VAC20-1120-35).**

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

Effective Date: November 1, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendment establishes a recreational fishing season that closes after October 31, 2017.

4VAC20-1120-35. Recreational blueline tilefish season.

It shall be unlawful for any person fishing recreationally to harvest or possess any blueline tilefish after October 31, 2017.

VA.R. Doc. No. R18-5325; Filed October 25, 2017, 10:43 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: 4VAC20-1330. **Living Shoreline Group 2 General Permit for Certain Living Shoreline Treatments Involving Submerged Lands, Tidal Wetlands, or Coastal Primary Sand Dunes and Beaches (adding 4VAC20-1330-10 through 4VAC20-1330-50).**

Statutory Authority: § 28.2-104.1 of the Code of Virginia.

Effective Date: November 1, 2017.

Regulations

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

This regulation establishes a general permit that authorizes and encourages the use of living shorelines as the preferred alternative for stabilizing tidal shorelines. The regulation provides for the permitting processes for living shoreline treatments by establishing procedures and qualifications for the general permit and sets forth specific criteria and permit conditions.

CHAPTER 1330
LIVING SHORELINE GROUP 2 GENERAL PERMIT FOR
CERTAIN LIVING SHORELINE TREATMENTS
INVOLVING SUBMERGED LANDS, TIDAL
WETLANDS, OR COASTAL PRIMARY SAND DUNES
AND BEACHES

4VAC20-1330-10. Purpose.

The purpose of this general permit is to provide a streamlined permitting process as an incentive to encourage property owners to utilize a living shoreline approach as appropriate, manage shoreline erosion, and promote the planting and growth of tidal wetland vegetation, sand dunes, and beaches to restore or enhance ecosystem services. The techniques and conditions contained in this general permit are designed to limit the applicability of the permit to situations where the projects are most likely to be successful, so as to limit the potential for adverse impacts on the environment and adjoining or nearby properties.

Approval under this general permit constitutes either the commission or the local wetlands board authorization, or both, required in accordance with Chapters 12 (§ 28.2-1200 et seq.), 13 (§ 28.2-1300 et seq.), and 14 (§ 28.2-1400 et seq.) of Title 28.2 of the Code of Virginia. This general permit shall not conflict with or obviate the need to comply with any other federal, state, or local permitting requirements or authorizations governing the proposed activity.

4VAC20-1330-20. Definitions.

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

"Chairman" means the chairman of a local wetlands board or his designee.

"Commission" or "VMRC" means the Virginia Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources or his designee.

"Dune and beach vegetation" means the vegetative species listed in § 28.2-1400 of the Code of Virginia.

"Fetch" means the distance along open water over which wind blows.

"Fiber log" means biodegradable fibrous material often composed of coconut fiber that is formed into rolls of various lengths and thicknesses used for erosion control and as a growing medium.

"Fiber mat" means a biodegradable fibrous material often composed of coconut fiber that is formed into mats of various sizes and thicknesses used for erosion control and as a growing medium.

"Filter cloth" means a geotextile fabric designed to allow water to pass through the membrane while retaining sediments. For purposes of this chapter, filter cloth is typically utilized under sills and marsh toe revetments to minimize settling and along the landward side of marsh toe revetments to minimize sediment loss from the adjacent marsh substrate.

"Grazing protection" means temporary structures consisting of wooden stakes, string lines, netting, and metal cages intended to protect planted wetland vegetation and introduced ribbed mussels from predation.

"Joint Permit Application" means the current Joint Permit Application utilized by the U.S. Army Corps of Engineers, Virginia Marine Resources Commission, Virginia Department of Environmental Quality, and local wetlands boards to evaluate projects involving submerged lands, wetlands, and coastal primary sand dunes and beaches for permit review and any abbreviated application developed specifically for this general permit.

"Living shoreline" means a shoreline management practice that provides erosion control and water quality benefits; protects, restores, or enhances shoreline habitat; and maintains coastal processes through the strategic placement of plants, stone, sand fill, and other structural and organic materials.

"Marsh toe revetment" means an erosion control structure constructed of riprap or shell bags placed immediately channelward of an eroding marsh. A marsh toe revetment is generally utilized to halt the erosion of an existing vegetated marsh that is currently wide enough to provide erosion control benefits.

"Ribbed mussels" means the Atlantic ribbed mussel (*Geukensia demissa*).

"Riprap" means heavy rock utilized to construct sills and revetments.

"Sand dunes and beaches" means the jurisdictional areas meeting the definitions of coastal primary sand dunes and beaches contained in § 28.2-1400 of the Code of Virginia.

"Sill" means a linear erosion control structure constructed of riprap, shell bags, or other approved material placed channelward of and generally parallel to an eroding shoreline. Sand is often placed landward of the sill to raise the elevation of the substrate and facilitate the establishment of wetlands vegetation.

"Shell bags" means net bags of various sizes filled with oyster or clam shells used for erosion control and as a substrate for other organisms.

"Tidal wetlands" or "wetlands" means the jurisdictional area meeting the definition contained in § 28.2-1300 of the Code of Virginia.

"Unaltered shoreline" means a shoreline segment that does not already have an erosion control structure in place.

"Wetlands board" or "board" means a local wetlands board created pursuant to § 28.2-1303 of the Code of Virginia.

"Wetlands vegetation" means the vegetative species listed in § 28.2-1300 of the Code of Virginia.

"Woven containment bag" means a biodegradable bag generally filled with a mixture of sand, gravel, mulch, and soil and planted with wetlands or beach and dune vegetation.

4VAC20-1330-30. Applicability and procedures.

A. This general permit shall authorize the placement of certain specified sand fill, fiber logs, fiber mats, shell bags, riprap, woven containment bags, and temporary grazing protection in tidal wetlands, beaches, and submerged lands to provide shoreline erosion control while enhancing shoreline habitat and improving the growing conditions for wetlands or dune and beach vegetation. The establishment of oysters and ribbed mussels may be incorporated into the project design.

B. To qualify for this general permit the applicant must submit to VMRC a complete Joint Permit Application or special abbreviated application, any application processing fee required pursuant to Chapter 13 (§ 28.2-1300 et seq.) or Chapter 14 (§ 28.2-1400 et seq.) of Title 28.2 of the Code of Virginia, and any supplemental information deemed necessary by the commission or the applicable wetlands board chairman to fully evaluate the proposal. The commissioner will oversee administration of the provisions of the general permit.

VMRC will forward the application to the Norfolk District of the U.S. Army Corps of Engineers, the appropriate local wetlands board, and the Department of Environmental Quality.

C. The wetlands board and VMRC will review the application concurrently to determine whether:

1. The application is sufficiently complete to allow evaluation.

2. The project satisfactorily meets the general permit criteria.

3. The adjoining property owners to the proposed project have been notified and expressed no opposition to the project.

4. The general permit process is appropriate to use for the specific project.

If the wetlands board chairman and the commissioner determine the proposal affirmatively satisfies all four requirements listed in subdivisions 1 through 4 of this subsection, the commissioner shall issue the general permit. No additional public interest review shall be required. In the event that no comment or request for additional information is received from a wetlands board chairman or designee within 30 days of being provided the application, it shall be assumed the wetlands board has no objection to the issuance of the general permit, and the commissioner may issue the permit.

Should either the wetlands board chairman or the commissioner determine that the proposal does not satisfy all four requirements listed in subdivisions 1 through 4 of this subsection, the general permit process shall not be utilized for the tidal wetlands or coastal primary sand dunes and beaches portions of the project. However, the application may be supplemented with additional information deemed necessary to qualify for the general permit or the proposal could be reviewed in accordance with the applicable standard provisions of Chapters 12 (§ 28.2-1200 et seq.), 13 (§ 28.2-1300 et seq.), and 14 (§ 28.2-1400 et seq.) of Title 28.2 of the Code of Virginia related to submerged lands, wetlands, and coastal primary sand dunes and beaches.

D. In the case when a wetlands board conducts a public hearing and issues a wetlands permit or coastal primary sand dunes and beaches permit and when the subaqueous components of the project satisfy the specific criteria under this regulation, the commissioner may proceed with the issuance of a general permit for the portions of the project involving state-owned submerged lands without the need for further public interest review provided an appeal of the wetlands board decision is not received within the 10-day appeal period provided under §§ 28.2-1311 and 28.2-1411 of the Code of Virginia.

E. Issuance of the general permit does not relieve the permittee from complying with all other applicable local, state, and federal laws and regulations, including those laws and regulations administered by the U.S. Army Corps of Engineers, the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia), erosion and sediment control ordinances, stormwater management programs, and the Virginia Water Protection Permit program.

Regulations

4VAC20-1330-40. Specific criteria.

A. Any project must satisfy the following specific criteria:

1. There is clear evidence of active detrimental erosion at the project site, and the maximum fetch at the project site does not exceed 1.5 miles in any shore angle direction.

2. The maximum water depth at the sill location shall not exceed two feet at mean low water, and the landward edge of the sill shall not be located further than 30 feet channelward of mean low water.

3. The proposal shall include an existing or created tidal wetland with a minimum total width of eight feet.

4. For unaltered shorelines, the project will only qualify for the general permit if the living shoreline components are the only shoreline protection structures proposed along the specific shoreline segment. For previously altered shorelines, an existing erosion control structure will not restrict the use of the general permit for a living shoreline project designed to protect or enhance an existing vegetated wetland provided the resulting vegetated wetlands is at least eight feet in width.

5. Marsh toe revetments and sills shall be constructed of riprap or alternative materials proposed during the review process. The materials shall be of sufficient weight or adequately anchored to prevent being dislodged by anticipated wave action. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of marsh toe revetments and sills.

6. Marsh toe revetments, sills, and associated sand fill shall not be placed on submerged aquatic vegetation or vegetated wetlands, except sand may be placed on vegetated wetlands if deemed necessary to improve wetlands habitat or resiliency provided the sand placement does not raise the elevation of the site above the elevation of jurisdictional tidal vegetated wetlands and provided further that the project results in a net gain in areal coverage of wetlands vegetation through planting or natural revegetation.

7. Marsh toe revetments and sills shall be constructed on filter cloth and to a maximum height of one foot above the elevation of mean high water at the site. Side slopes of the structures shall be no flatter than 2:1. Broken concrete may be utilized for the core of the structure provided it does not contain exposed rebar or other construction debris and provided it is covered with a layer of riprap stone.

8. Sills shall be designed and constructed with a minimum of one five-foot wide gap or window per property and per 100 linear feet. The maximum height of a window shall not exceed one-half the height of the sill and shall not exceed the elevation of mean high water.

9. Coarse sand should be utilized for any required fill. At a minimum the sand shall contain less than 10% very fine material (passing a #100 sieve). The sand shall not be placed in a manner that raises the elevation of any existing wetland area above the elevation of jurisdictional vegetated tidal wetlands (1.5 times the mean tide range above mean low water).

10. Wetland or dune and beach vegetation shall be planted in all jurisdictional areas on which sand is placed where the resulting substrate elevation is appropriate to support the growth of such vegetation. Only those species that are anticipated to survive at the project site elevation and normal salinity regime shall be used. The common reed, *Phragmites* sp., shall not typically be considered appropriate wetlands vegetation for planting purposes.

11. Fiber logs, fiber mats, woven containment bags, and shell bags may be utilized within the jurisdictional tidal wetlands or sand dunes and beaches to create a sill or to otherwise support the growth of wetlands or dune and beach vegetation provided they are not placed on existing vegetation and are not stacked to a height that exceeds mean high water except along the landward limits of the wetlands or dunes and beaches. The bags, fiber mats, and fiber logs shall be maintained and promptly removed should they become displaced or unexpectedly damaged at any time. If available, biodegradable materials are encouraged. The replacement of any failed fiber logs, fiber mats, or bags in the same location shall be allowed without the need to receive additional authorization. Additional sand may be placed to replace any lost sand or to adjust for substrate settlement, provided the elevation of the originally proposed grade is not exceeded without the need to receive additional authorization.

12. Temporary grazing protection may be utilized to protect wetlands, dune and beach vegetation, or ribbed mussels until they become established. The protective structures shall be removed once the vegetation or mussels are established. Such grazing protection is encouraged and should be considered in the project design. Any requested grazing protection shall be specified in the permit application.

13. The permittee agrees to notify the commission upon completion of the project and to provide a brief monitoring report at the end of the first full growing season following planting and after the second year of establishment of vegetation. The monitoring shall be conducted from June through September of each year, and the report shall include at a minimum the permit number, representative photos of the site, and a brief statement concerning the success of the project. Additional documentation is encouraged to allow improved evaluation of the techniques utilized.

14. Any vegetated wetlands or dune and beach vegetation established under this general permit shall not be cut or harvested. Areas shall be replanted as necessary to ensure, at a minimum, no net loss of wetland or dune and beach vegetation within the project area for a period of two years following the initial planting. If necessary to promote the establishment of wetlands or dune and beach vegetation, additional sand may be placed to restore the originally proposed elevation grade.

15. Any measures taken to eradicate invasive species at the project site associated with the living shoreline activity, including Phragmites sp., shall be noted in the permit application or conducted in accordance with a plan evaluated and approved by the applicable wetlands board or locality. Such plans shall include measures to revegetate the area with appropriate native wetlands vegetation.

B. All activities undertaken in accordance with the general permit are subject to the enforcement and penalty provisions contained in Article 2 (§ 28.2-1210 et seq.) of Chapter 12, Article 4 (§ 28.2-1316 et seq.) of Chapter 13, and Article 4 (§ 28.2-1416 et seq.) of Chapter 14 of Title 28.2 of the Code of Virginia. Failure to comply with any criteria or conditions of the general permit constitutes a violation of the permit.

4VAC20-1330-50. Permit conditions.

Permits issued are subject to the following conditions:

1. The project authorized by this general permit shall be completed within two years of the issuance of the permit. Upon written request by the permittee prior to the permit expiration date, the permit may be extended to allow completion of the work. All other conditions remain in effect until revoked by the commission, wetlands board, or the General Assembly.

2. This permit grants no authority to the permittee to encroach on property rights, including riparian rights, of others.

3. The duly authorized agents of the commission and the applicable local government shall have the right to enter upon the premises at reasonable times for the purposes of inspecting the work authorized by the permit and to evaluate compliance with the terms and conditions of the permit. Although the general permit is issued by the commissioner, the applicable local wetlands board retains jurisdiction and may enforce violations and any nonconformance with the permit occurring within tidal wetlands and coastal primary sand dunes and beaches.

4. The permittee shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations concerning the project, specifically including those related to the U.S. Army Corps of Engineers, water quality standards, erosion and sedimentation control, the Chesapeake Bay Preservation Act, the Stormwater

Management Act, and the Virginia Water Protection Permit Program. The granting of this permit shall not relieve the permittee of the responsibility of obtaining any and all other permits or authorization for this project.

5. The permit shall not affect or interfere with the right vouchsafed to the people of Virginia concerning fowling and the catching of and taking of oysters and other shellfish in and from the waters not included within the terms of the permit.

6. The permittee shall to the greatest extent practicable minimize adverse impacts of the project on adjacent properties and wetlands and upon the natural resources of the Commonwealth.

7. The permit may be revoked at any time by the commission upon the failure of the permittee to comply with the terms and conditions hereof or at the will of the General Assembly of Virginia.

8. Any portion of the waters within the boundaries of the Baylor Survey is expressly excluded from this permit.

9. This permit is subject to any lease of oyster planting ground in effect on the date of the permit. Nothing in the permit shall be construed as allowing the permittee to encroach on any lease without the consent of the leaseholder. The permittee shall be liable for any damages to such lease.

10. The issuance of this permit does not confer upon the permittee any interest or title to the submerged lands.

11. All structures authorized by this permit that are not maintained in good repair or are displaced to areas not authorized shall be completely removed within 30 days after notification by the commission or its designated representatives.

12. The permittee agrees to comply with all the terms and conditions as set forth in this permit and that the project will be accomplished within the boundaries as outlined in the plans attached to this permit. Any encroachment beyond the limits of this permit shall constitute a Class 1 misdemeanor.

13. This permit authorizes no claim to archaeological artifacts that may be encountered during the course of construction. If, however, archaeological remains are encountered, the permittee agrees to notify the commission, which will subsequently notify the Department of Historic Resources. The permittee further agrees to cooperate with agencies of the Commonwealth in the recovery of archaeological remains if deemed necessary.

14. The permittee agrees to indemnify and save harmless the Commonwealth of Virginia and any applicable locality

Regulations

from any liability arising from the establishment, operation, or maintenance of said project.

15. This general permit shall be retained by the permittee for the duration of the project as evidence of authorization and shall not be transferred without the written consent of the commissioner.

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 (4VAC20-1330)

[Tidewater Joint Permit Application \(JPA\) for Projects Involving Tidal Waters, Tidal Wetlands, and/or Dunes and Beaches in Virginia \(rev. 5/2017\)](#)

VA.R. Doc. No. R18-5329; Filed October 25, 2017, 10:15 a.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

Titles of Regulations: **8VAC20-440. Regulations Governing the Employment of Professional Personnel (repealing 8VAC20-440-10 through 8VAC20-440-160).**

8VAC20-441. Regulations Governing the Employment of Professional Personnel (adding 8VAC20-441-10 through 8VAC20-441-140).

Statutory Authority: §§ 22.1-16 and 22.1-302 of the Code of Virginia.

Effective Date: December 13, 2017.

Agency Contact: Patty S. Pitts, Assistant Superintendent for Teacher Education and Licensure, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 371-2522, or email patty.pitts@doe.virginia.gov.

Summary:

The regulatory action replaces the existing regulation numbered 8VAC20-440 with a new regulation numbered 8VAC20-441. Amendments reflect changes in the Code of Virginia based on Chapters 106 and 687 of the 2012 Acts of Assembly and Chapters 588 and 650 of the 2013 Acts of Assembly and include (i) defining assistant principals; (ii) clarifying the definitions of teachers and supervisors; (iii) changing notification dates from April 15 to June 15; (iv)

aligning evaluations with the Board of Education Guidelines for Uniform Performance Standards and Evaluation Criteria for Teachers, Principals, and Superintendents; (v) defining the probationary terms for teachers, which, at local option, can be three years and up to five years; (vi) stipulating the evaluation period of teachers and principals; (vii) defining the standard 10-month contract; and (viii) clarifying that a temporarily employed teacher is not required to be licensed by the Board of Education.

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

CHAPTER 441

REGULATIONS GOVERNING THE EMPLOYMENT OF PROFESSIONAL PERSONNEL

8VAC20-441-10. Definitions.

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

"Annual contract" means a contract between a probationary teacher, assistant principal, principal, or supervisor and the local school board that sets forth the terms and conditions of employment for one school year.

"Assistant principal" means a person (i) who is regularly employed full time as an assistant principal and (ii) who holds a valid license issued by the Board of Education necessary to be an assistant principal.

"Board" means the Virginia Board of Education, which has general supervision of the public school system.

"Breach of contract" means, for the purpose of this chapter, a teacher failing to honor a contract for the current or next school year without formal release from that contract from the local school board. "Breach of contract" does not include dismissal for cause.

"Coaching contract" means a separate contract between the employee and the local school board that includes responsibilities for an athletic coaching assignment.

"Continuing contract" means a contract between a teacher, assistant principal, principal, or supervisor who has satisfied the probationary term of service and the local school board.

"Current employer" means the local school board with which the employee is currently under contract.

"Extracurricular activity sponsorship contract" means a separate contract between the employee and the local school board that includes responsibilities, for which a monetary supplement is received, for sponsorship of any student organizations, clubs, or groups, such as service clubs, academic clubs and teams, cheerleading squads, student publication and literary groups, and visual and performing

arts organizations except those that are conducted in conjunction with regular classroom, curriculum, or instructional programs.

"Next school year" means the school year immediately following the current contract year.

"Principal" means a person (i) who is regularly employed full time as a principal and (ii) who holds a valid license issued by the Board of Education necessary to be a principal.

"Prospective employer" means the division in which application for employment is made.

"Supervisor" means a person (i) who is regularly employed full time in an instructional supervisory position as specified in this chapter and (ii) who is required by the board to hold a license prescribed in this chapter to be employed in that position. An instructional supervisory position has authority to direct or evaluate teachers, assistant principals, principals, or other instructional personnel.

"Teacher" means a person (i) who is regularly employed full time as a teacher, guidance counselor, or librarian and (ii) who holds a valid teaching license.

8VAC20-441-20. [(Reserved.) Conditions of employment (fingerprinting, Department of Social Services Registry search, licensure).

A. Applicants who are offered or accept employment must comply with the fingerprinting provisions contained in § 22.1-296.2 of the Code of Virginia.

B. Applicants who are offered or accept employment requiring direct contact with students must satisfy the requirements of § 22.1-296.4 of the Code of Virginia and provide written consent and the personal information necessary for the school board to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services pursuant to § 63.2-1515 of the Code of Virginia.

C. Additional Code of Virginia references for conditions for licensure include §§ 22.1-295, 22.1-298.1, and 22.1-299, of the Code of Virginia.

D. Principals and assistant principals are to be licensed in accordance with § 22.1-293 of the Code of Virginia.]

8VAC20-441-30. Contractual period defined.

The local school board shall define the length of the contract period for each employee. A standard 10-month contract for a teacher shall include 200 days, including:

1. 180 teaching days or 990 instructional hours (minimum required by law); and
2. Up to 20 days for activities such as teaching, participating in professional development, planning, evaluating, completing records and reports, participating

on committees or in conferences, or such other activities as may be assigned or approved by the local school board.

8VAC20-441-40. Annual and continuing contract to be in writing.

Annual and continuing contracts with teachers, assistant principals, principals, and supervisors must be in writing. The local school board may utilize prototypes of contract forms provided by the board or may choose to develop its own contracts, but in so doing must ensure that the essential elements set forth in 8VAC20-441-140 are included.

8VAC20-441-50. Length of the probationary term for teacher.

A probationary term of full-time employment under an annual contract for at least three years and, at the option of the local school board, up to five consecutive years in the same school division is required before a teacher is issued a continuing contract. Once continuing contract status has been attained in a school division in the Commonwealth, another probationary period as a teacher need not be served in any other school division unless a probationary period not exceeding two years is made a part of the contract of employment.

8VAC20-441-60. Calculating term for first year of teaching.

For the purpose of calculating the years of service required to attain continuing contract status, at least 160 contractual teaching days during the school year shall be deemed the equivalent of one year in the first year of service by the teacher.

8VAC20-441-70. Probationary period for principal or supervisor.

A person employed as a principal, assistant principal, or supervisor, including a person who has previously achieved continuing contract status as a teacher, shall serve a probationary term of three consecutive years in such position in the same school division before acquiring continuing contract status as a principal, assistant principal, or supervisor.

8VAC20-441-80. Probationary period when employee separates from service.

If a teacher, principal, assistant principal, or supervisor separates from service during his probationary period and does not return to service in the same school division by the beginning of the year following the year of separation, such person shall be required to begin a new probationary period.

2. A statement explaining the continuing nature of the contract.

D. Coaching and extracurricular. Any athletic coaching contract with school personnel shall, to the maximum extent possible, be written in clear and concise language easily understood by all parties [] and include the following provisions:

- 1. A statement identifying the names and titles of the parties to the contract.
- 2. A statement of the duties to be performed under the contract.
- 3. A statement of the amount of compensation due the employee and the method of payment.
- 4. A statement of expectations of the employee with regard to compliance with local, state, or federal statutes, regulations and constitutional provisions.
- 5. A statement setting forth conditions for termination of the contract.
- 6. A statement identifying the limitations on the use of the experience toward length of service, substitution for teaching experience and rights in favor of the employee.
- 7. A statement of the beginning date of service, the term, and the effective date of the contract.
- 8. A statement of special covenants mutually agreed upon by the employer and employee that form a basis for the contract.

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 (8VAC20-441)

~~[Annual Form – Contract with Professional Personnel~~

~~Continuing Form Contract with Professional Personnel~~

~~Athletic Coaching Contract with School Personnel~~

~~Extracurricular Activity Sponsorship Contract with School Personnel~~

[Annual Form - Contract with Professional Personnel \(eff. 1/2017\)](#)

[Continuing Form Contract with Professional Personnel \(eff. 1/2017\)](#)

[Athletic Coaching Contract with School Personnel \(eff. 1/2017\)](#)

[Extracurricular Activity Sponsorship Contract with School Personnel \(eff. 1/2017\) \]](#)

VA.R. Doc. No. R13-3478; Filed October 20, 2017, 4:35 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Forms

REGISTRAR'S 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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: **12VAC5-421. Food Regulations.**

Agency Contact: Joe Hilbert, Director of Governmental and Regulatory Affairs, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7006, or email joe.hilbert@vdh.virginia.gov.

FORMS (12VAC5-421)

~~Food Establishment Inspection Report Form – Cover Page (eff. 2016)~~

~~Food Establishment Inspection Report Form – Narrative Page with Temperatures (eff. 2016)~~

~~Food Establishment Inspection Report Form – Narrative Page (eff. 2016)~~

[Food Establishment Inspection Report Form - Cover Page \(rev. 9/2017\)](#)

[Food Establishment Inspection Report Form - Narrative \(rev. 9/2017\)](#)

[Food Establishment Inspection Report Form - Narrative with Temperatures \(rev. 9/2017\)](#)

VA.R. Doc. No. R18-5280; Filed October 20, 2017,

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Title of Regulation: **12VAC30-20. Administration of Medical Assistance Services (adding 12VAC30-20-570).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: December 13, 2017.

Regulations

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.

Summary:

Pursuant to Chapter 694 of the 2016 Acts of Assembly, the regulation establishes a reconsideration process for a final agency decision and specifies the scope of testimony or documentary submissions that may be considered during that process.

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

12VAC30-20-570. Reconsideration of final agency decision.

A. Reconsiderations of a DMAS final appeal decision issued on a formal appeal conducted pursuant to § 2.2-4020 of the Code of Virginia shall be conducted in accordance with § 2.2-4023.1 of the Code of Virginia.

B. The DMAS director's review shall be made upon the case record of the formal appeal. Testimony or documentary submissions that were not part of the formal appeal case record prior to issuance of the final agency decision shall not be considered.

VA.R. Doc. No. R17-4817; Filed October 23, 2017, 10:21 a.m.

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 Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC30-110. Eligibility and Appeals (amending 12VAC30-110-10, 12VAC30-110-20, 12VAC30-110-30, 12VAC30-110-70, 12VAC30-110-80, 12VAC30-110-130, 12VAC30-110-170, 12VAC30-110-350; adding 12VAC30-110-35).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: December 13, 2017.

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.

Summary:

To comply with final regulations of the federal Centers for Medicare and Medicaid Services published in 81 FR 86832 (November 30, 2016), the amendments update provisions regarding eligibility, appeals, and enrollment changes.

Part I
Client Appeals

Subpart I
General

Article 1
Definitions

12VAC30-110-10. Definitions.

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

"Action" means a termination of, suspension of, or reduction of in covered benefits or services; a termination, suspension, or reduction in Medicaid eligibility; or covered services an increase in beneficiary liability, including a determination that a beneficiary must incur a greater amount of medical expenses in order to establish income eligibility in accordance with 42 CFR 435.121(e)(4) or 42 CFR 435.831 or is subject to an increase in premiums or cost-sharing charges under Subpart A of 42 CFR Part 447. It also means (i) determinations by a skilled nursing facilities and facility or nursing facilities facility to transfer or discharge residents a resident and (ii) an adverse determinations determination made by a state with regard to the preadmission screening and annual resident review requirements of § 1919(e)(7) of the Social Security Act.

"Adverse determination" means a determination made in accordance with § 1919(b)(3)(F) or 1919(e)(7)(B) of the Social Security Act that the individual does not require the level of services provided by a nursing facility or that the individual does or does not require specialized services.

"Agency" means:

1. An agency that, on the department's behalf, makes determinations regarding applications for benefits provided by the department; and or
2. The department itself.

"Appellant" means (i) an applicant for or recipient of medical assistance benefits from the department who seeks to challenge an action regarding his benefits or his eligibility for benefits and (ii) a nursing facility resident who seeks to challenge a transfer or discharge. Appellant also means an individual who seeks to challenge an adverse determination regarding services provided by a nursing facility.

"Date of action" means the intended date on which a termination, suspension, reduction, transfer, or discharge

becomes effective. It also means the date of the determination made by a state with regard to the preadmission screening and annual resident review requirements of § 1919(e)(7) of the Social Security Act.

"Department" means the Department of Medical Assistance Services.

"Division" means the department's Appeals Division.

"Final decision" means a written determination by a hearing officer that is binding on the department, unless modified on appeal or review.

"Hearing" means the evidentiary hearing described in this ~~regulation~~ chapter, conducted by a hearing officer employed by the department.

"Representative" means an attorney or agent who has been authorized to represent an appellant pursuant to these regulations.

"Send" means to deliver by mail or in electronic format consistent with 42 CFR 431.201 and 42 CFR 435.918.

Article 2
Appeal System

12VAC30-110-20. Appeals Division.

A. ~~The division maintains an appeals system for appellants to challenge (i) actions, as defined in 42 CFR 431.201, regarding services and benefits provided by the department, and (ii) adverse determinations regarding services provided by a nursing facility in accordance with § 1919(b)(3)(F) or 1919(e)(7)(B) that complies with all federal legal authority for appellants to challenge actions, as defined in 42 CFR 431.201, regarding services and benefits provided by the agency or a nursing facility.~~ Appellants shall be entitled to a hearing before a hearing officer. See Subpart II (12VAC30-110-130 et seq.) of this chapter.

B. The appeals system shall be accessible to persons who are limited English proficient and persons who have disabilities, consistent with 42 CFR 435.905(b).

C. In accordance with 42 CFR 435.918, the agency makes electronic appeal correspondence available to applicants and recipients. Applicants and recipients may elect to receive appeal correspondence in electronic format or by regular mail and may change such election.

12VAC30-110-30. Time limitation for appeals.

Hearing officer appeals shall be scheduled and conducted to comply with the ~~90-day time limitation~~ limitations for standard and expedited appeals imposed by federal regulations, unless ~~waived in writing by the appellant or the appellant's representative.~~

1. The agency cannot reach a decision because the appellant requests a delay or fails to take a required action; or

2. There is an administrative or other emergency beyond the agency's control.

All instances in which there is a delay shall be documented in the appellant's record.

12VAC30-110-35. Expedited appeals.

A. An appellant may request and the agency shall provide an expedited appeals process for claims for which the agency determines that the 90-day timeframe for conducting an appeal could jeopardize the individual's life, health, or ability to attain, maintain, or regain maximum function.

B. If an expedited appeal request is granted, the following timeframes for conducting the appeal apply from receipt of the appeal request:

1. Seventy-two hours for:

a. A claim related to services or benefits described in 42 CFR 431.220(a)(1);

b. A MCO, PIHP, or PAHP enrollee who is entitled to a hearing under Subpart F of 42 CFR Part 438;

c. An enrollee in a nonemergency medical transportation prepaid ambulatory health plan who has an action; and

d. An enrollee who is entitled to a hearing under Subpart B of 42 CFR Part 438.

2. Seven business days forS

a. Eligibility claims;

b. Nursing facility claims related to transfer or discharge; or

c. Nursing facility claims related to the agency's preadmission determination or annual resident review.

C. The department shall notify the individual whether the request is granted or denied as expeditiously as possible. Such notice may be provided orally or through the electronic means found in 12VAC30-110-130.

Article 4
Notice and Appeal Rights

12VAC30-110-70. Notification of adverse agency action.

The agency that takes action or makes an adverse determination shall inform the applicant or recipient in a written notice:

1. What action or adverse determination the agency intends to take and the effective date of such action;

2. ~~The~~ A clear statement of the specific reasons for supporting the intended action or adverse determination;

Regulations

3. The specific regulations that support or the change in law that requires the action or adverse determination;
4. The right to request an evidentiary hearing, and the methods and time limits for doing so;
5. The right to request an expedited evidentiary hearing;
6. The circumstances under which benefits are continued if a hearing is requested (see 12VAC30-110-100); and
6. 7. The right to representation.

12VAC30-110-80. Advance notice.

When the agency plans to terminate, suspend, or reduce an individual's eligibility or covered services, the agency must send the notice described in 12VAC30-110-70 at least 10 days before the date of action, except as otherwise permitted by federal law in 42 CFR 431.213 and 42 CFR 431.214.

Subpart II
Hearing Officer Review

Article 1
Commencement of Appeals

12VAC30-110-130. Request for appeal.

A. An appeal may be filed by any of the following methods:

1. By telephone;
2. Via email;
3. In person; and
4. Through other commonly available electronic means supported by the agency.

B. Any ~~written~~ communication in the formats specified in subsection A of this section from an appellant or his representative which that clearly expresses that he wants to present his case to a reviewing authority shall constitute an appeal request. This communication should explain the basis for the appeal.

12VAC30-110-170. Extension of time for filing.

An extension of the 30-day period for filing a Request for Appeal may be granted for good cause shown. Examples of good cause include, ~~but are not limited to,~~ the following situations:

1. Appellant was seriously ill and was prevented from contacting the division;
2. Appellant did not receive notice of the agency's ~~decision~~ action or adverse determination;
3. Appellant sent the Request for Appeal to another government agency in good faith within the time limit;
4. Unusual or unavoidable circumstances prevented a timely filing.

12VAC30-110-350. Dismissal of Request for Appeal.

A. A Request for Appeal may be dismissed if:

1. The appellant or his representative withdraws the request ~~in writing~~ via any of the methods in 12VAC30-110-130. For telephonic appeal withdrawals, the agency shall record the individual's statement and telephonic signature; or
2. The appellant or his representative fails to appear at the scheduled hearing without good cause and does not reply within 10 days after the hearing officer sends an inquiry as to whether the appellant wishes further action on the appeal.

B. Subsequent to the dismissal, the appellant shall receive the written order of dismissal via regular mail or electronic notification in accordance with the individual's election under 42 CFR 435.918(a).

VA.R. Doc. No. R18-5093; Filed October 16, 2017, 6:58 a.m.



TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **14VAC5-265. Rules Governing Corporate Governance Annual Disclosures (adding 14VAC5-265-10 through 14VAC5-265-50).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: January 1, 2018.

Agency Contact: Raquel C. Pino, Policy Advisor, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9873, or email raquel.pino@scc.virginia.gov.

Summary:

The amendments implement the provisions of Article 5.2 (§§ 38.2-1334.11 through 38.2-1334.17) of Chapter 13 of Title 38.2 of the Code of Virginia, which was enacted by Chapter 643 of the 2017 Acts of Assembly and becomes effective on January 1, 2018. Article 5.2 requires each insurer domiciled in the Commonwealth of Virginia, or the

insurance group of which the insurer is a member, to submit to the State Corporation Commission a Corporate Governance Annual Disclosure (CGAD). The CGAD is a confidential report on an insurer or insurance group's corporate governance structure, policies, and practices, which allows the commission to gain and maintain an understanding of the insurer's corporate governance framework. The new regulation sets forth the requirements for what is to be included in the CGAD, which is due June 1, 2018, and annually thereafter. A change since the proposed stage deletes reference to the National Association of Insurance Commissioners' 2016 Annual/2017 Quarterly Financial Analysis Handbook and replaces it with § 38.2-1334.12 of the Code of Virginia.

AT RICHMOND, OCTOBER 17, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2017-00161

Ex Parte: In the matter of Amending the Rules Governing Corporate Governance Annual Disclosures

ORDER ADOPTING RULES

By Order to Take Notice ("Order") entered July 14, 2017, insurers and interested persons were ordered to take notice that subsequent to September 21, 2017, the State Corporation Commission ("Commission") would consider the entry of an order adopting new rules to be set forth in Chapter 265 of Title 14 of the Virginia Administrative Code, entitled Rules Governing Corporate Governance Annual Disclosures ("Rules"), which adds new Rules at 14 VAC 5-265-10 through 14 VAC 5-265-50, unless on or before September 21, 2017, any person objecting to the adoption of the new Rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The new Rules are necessary to implement the provisions of §§ 38.2-1334.11 through 38.2-1334.17 of the Code of Virginia ("Code"), which were enacted in Chapter 643 of the 2017 Acts of Assembly (HB 2102) and require each insurer domiciled in the Commonwealth of Virginia, or the insurance group of which the insurer is a member, to submit to the Commission a Corporate Governance Annual Disclosure. These new rules establish procedures for filing the Corporate Governance Annual Disclosure and its required contents. The amendments to the Code are effective on January 1, 2018.

The Order required insurers and interested persons to file their comments in support of or in opposition to the proposed new Rules with the Clerk on or before September 21, 2017.

On September 15, 2017, the American Council of Life Insurers filed comments in support of the new Rules. No requests for a hearing were filed with the Clerk.

The Commission's Bureau of Insurance ("Bureau") has recommended a non-substantive revision to 14 VAC 5-265-30 of the Rules, deleting the reference to the National Association of Insurance Commissioner's Quarterly Financial Analysis Handbook and replacing it with a reference to § 38.2-1334.12 of the Code.

NOW THE COMMISSION, having considered the proposed new Rules, the comments filed, and the recommended revision to the proposal, is of the opinion that the attached new Rules should be adopted with an effective date of January 1, 2018.

Accordingly, IT IS ORDERED THAT:

(1) The new Rules entitled Rules Governing Corporate Governance Annual Disclosures, to be set out at 14 VAC 5-265-10 through 14 VAC 5-265-50 which are attached hereto and made a part hereof, are hereby ADOPTED effective January 1, 2018.

(2) The Bureau forthwith shall give notice of the adoption of the Rules to all insurers domiciled in Virginia and to interested persons.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the new Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the attached new Rules on the Commission's website: <http://www.scc.virginia.gov/case>.

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

(6) This case is dismissed, and the papers herein shall be place in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Donald C. Beatty.

CHAPTER 265

RULES GOVERNING CORPORATE GOVERNANCE ANNUAL DISCLOSURES

14VAC5-265-10. Purpose and scope.

The purpose of this chapter is to set forth rules and procedures for filing and for the required contents of the Corporate Governance Annual Disclosure that the commission deems necessary to carry out the provisions of

Regulations

Article 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

14VAC5-265-20. Definitions.

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

"Corporate Governance Annual Disclosure" or "CGAD" means a confidential report filed by the insurer or insurance group made in accordance with the requirements of this chapter.

"Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in § 38.2-1322 of the Code of Virginia.

"Insurer" means an insurance company as defined in § 38.2-100 of the Code of Virginia. "Insurer" shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

"Senior management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and shall include, for example and without limitation, the chief executive officer (CEO), chief financial officer, chief operations officer, chief procurement officer, chief legal officer, chief information officer, chief technology officer, chief revenue officer, chief visionary officer, or any other "C" level executive.

"The Act" means Article 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

14VAC5-265-30. Filing procedures.

A. An insurer, or the insurance group of which the insurer is a member, required to file a CGAD by the Act shall, no later than June 1 of each calendar year, submit to the commission a CGAD that contains the information described in 14VAC5-265-40.

B. The CGAD must include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the CGAD has been provided to the insurer's or insurance group's board of directors or the appropriate committee thereof.

C. The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by this chapter and is permitted to customize the CGAD to provide the most relevant information, appropriate to the nature, scale, and complexity of the operations of the insurer or insurance group that is

necessary to permit the commission to gain an understanding of the corporate governance structure, policies, and practices utilized by the insurer or insurance group.

D. For purposes of completing the CGAD, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which (i) the insurer's or insurance group's risk appetite is determined; (ii) the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised; or (iii) the legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

E. Notwithstanding subsection A of this section, [~~and as outlined in § 38.2-1334.12 of the Act,~~] if the CGAD is completed at the insurance group level, then it must be filed with the lead state of the group [~~as determined by the procedures outlined in the 2016 Annual/2017 Quarterly Financial Analysis Handbook adopted by the National Association of Insurance Commissioners~~ in accordance with § 38.2-1334.12 of the Code of Virginia]. In these instances, a copy of the CGAD must also be provided to the chief insurance regulatory official of any state in which the insurance group has a domestic insurer, upon request.

F. An insurer or insurance group may comply with this section by referencing other existing documents (e.g., Own Risk and Solvency Assessment Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission Proxy Statements, foreign regulatory reporting requirements, etc.) if the documents provide information that is comparable to the information described in 14VAC5-265-40. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the commission.

G. Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD, indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

14VAC5-265-40. Contents of Corporate Governance Annual Disclosure.

A. The insurer or insurance group shall be as descriptive as possible in completing the CGAD and include attachments or example documents that are used in the governance process since these may provide a means to demonstrate the strengths of the governance framework and practices.

B. The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:

1. The board of directors (board) and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level at which that oversight occurs (e.g., ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group shall describe and discuss the rationale for the current board size and structure; and
2. The duties of the board and each of its significant committees and how they are governed (e.g., bylaws, charters, informal mandates, etc.), as well as how the board's leadership is structured, including a discussion of the roles of the chief executive officer (CEO) and chairman of the board within the organization.

C. The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:

1. How the qualifications, expertise, and experience of each board member meet the needs of the insurer or insurance group;
2. How an appropriate amount of independence is maintained on the board and its significant committees;
3. The number of meetings held by the board and its significant committees over the past year as well as information on director attendance;
4. How the insurer or insurance group identifies, nominates, and elects members to the board and its committees. The discussion should include, for example:
 - a. Whether a nomination committee is in place to identify and select individuals for consideration;
 - b. Whether term limits are placed on directors;
 - c. How the election and reelection processes function; and
 - d. Whether a board diversity policy is in place and if so, how it [~~function~~ functions];
5. The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance

(including any board or committee training programs that have been put in place).

D. The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors:

1. Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience, and integrity to fulfill their prospective roles, including:
 - a. Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and
 - b. Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.
2. The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:
 - a. Compliance with laws, rules, and regulations; and
 - b. Proactive reporting of any illegal or unethical behavior.
3. The insurer's or insurance group's processes for performance evaluation, compensation, and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the commission to understand how the organization ensures that compensation programs do not encourage or reward excessive risk taking. Elements to be discussed may include, for example:
 - a. The board's role in overseeing management compensation programs and practices;
 - b. The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;
 - c. How compensation programs are related to both company and individual performance over time;
 - d. Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;
 - e. Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; or

Regulations

f. Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

4. The insurer's or insurance group's plans for CEO and senior management succession.

E. The insurer or insurance group shall describe the processes by which the board, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:

1. How oversight and management responsibilities are delegated between the board, its committees, and senior management;

2. How the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks;

3. How reporting responsibilities are organized for each critical risk area. The description should allow the commission to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include, for example, the following critical risk areas of the insurer:

a. Risk management processes (a Own Risk and Solvency Assessment (ORSA) Summary Report filer may refer to its ORSA Summary Report filed pursuant to Article 5.1 (§ 38.2-1334.3 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia);

b. Actuarial function;

c. Investment decision-making processes;

d. Reinsurance decision-making processes;

e. Business strategy and finance decision-making processes;

f. Compliance function;

g. Financial reporting and internal auditing; and

h. Market conduct decision-making processes.

14VAC5-265-50. Severability clause.

If any provision in this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of the provision to other persons or circumstances shall not be affected thereby.

[DOCUMENTS INCORPORATED BY REFERENCE (14VAC5-265)

Financial Analysis Handbook, Volume 1, 2016 Annual/2017 Quarterly, National Association of Insurance Commissioners,

444 North Capitol Street, NW, Suite 700, Washington, DC 20001, <http://www.naic.org/>]

VA.R. Doc. No. R17-5187; Filed October 17, 2017, 2:55 p.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

Title of Regulation: 16VAC25-60. Administrative Regulation for the Virginia Occupational Safety and Health Program (amending 16VAC25-60-30, 16VAC25-60-90, 16VAC25-60-110 through 16VAC25-60-150, 16VAC25-60-245, 16VAC25-60-260).

Statutory Authority: §§ 40.1-6 and 40.1-22 of the Code of Virginia.

Effective Date: December 15, 2017.

Agency Contact: Jay Withrow, Director of Legal Support, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-9873, or email jay.withrow@doli.virginia.gov.

Summary:

The amendments include (i) requiring an employer to comply with the Virginia Department of Transportation (VDOT) Work Area Protection Manual in lieu of the federal Manual on Uniform Traffic Control Devices when working under a contract for construction, repair, or maintenance between the employer and either the Commonwealth or any political subdivision or public body when the contract requires employer compliance with the VDOT manual; (ii) clarifying the anti-retaliation safeguards for public sector employees and the procedures to enforce those safeguards; (iii) clarifying what documents may be disclosed in regards to the Voluntary Protection Program (§ 40.1-49.13 of the Code of Virginia); (iv) clarifying that the Commissioner of Labor and Industry can request penalties or fines for occupational discrimination or anti-retaliation cases at the litigation stage; (v) establishing that the commissioner's burden of proof is a preponderance of the evidence and that burden for proving an affirmative defense lies with the employer; and (vi) making certain changes in terminology.

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

16VAC25-60-30. Applicability to public employers.

A. All occupational safety and health standards adopted by the board shall apply to public employers and their employees in the same manner as to private employers.

B. All sections of this chapter shall apply to public employers and their employees. Where specific procedures are set out for the public sector, such procedures shall take precedence.

C. The following portions of Title 40.1 of the Code of Virginia shall apply to public employers: §§ 40.1-10, subdivision A 1 of § 40.1-49.4 A(1), 40.1-49.8, 40.1-51, 40.1-51.1, 40.1-51.2, 40.1-51.2:1, 40.1-51.3, 40.1-51.3:2, and 40.1-51.4:2.

D. Section 40.1-51.2:2 A of the Code of Virginia shall apply to public employers the Commonwealth and its agencies except that the commissioner shall not bring action in circuit court in the event that a voluntary agreement cannot be obtained.

E. Sections 40.1-7, 40.1-49.4 F, 40.1-49.9, 40.1-49.10, 40.1-49.11, 40.1-49.12, and 40.1-51.2:2 of the Code of Virginia shall apply to public employers other than the Commonwealth and its agencies.

F. If the commissioner determines that an imminent danger situation, as defined in § 40.1-49.4 F of the Code of Virginia, exists for an employee of the Commonwealth or one of its agencies, and if the employer does not abate that imminent danger immediately upon request, the Commissioner of Labor and Industry shall forthwith petition the governor to direct that the imminent danger be abated.

G. If the commissioner is unable to obtain a voluntary agreement to resolve a violation of § 40.1-51.2:1 of the Code of Virginia by the Commonwealth or one of its agencies, the Commissioner of Labor and Industry shall petition for redress in the manner provided in this chapter 16VAC25-60-300 B.

16VAC25-60-90. Release of information and disclosure pursuant to requests under the Virginia Freedom of Information Act and subpoenas.

A. Pursuant to the Virginia Freedom of Information Act (FOIA) (§ 2.2-3700 et seq. of the Code of Virginia) and with the exceptions stated in subsections B through H of this section, employers, employees and their representatives shall have access to information gathered in the course of an inspection.

B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner pursuant to § 40.1-49.8 of the Code of Virginia are confidential. Pursuant to the requirements set forth in § 40.1-11 of the Code of Virginia, individuals shall have the right to request a copy of their own interview statements.

C. All file documents contained in case files which that are under investigation, and where a citation has not been issued, are not disclosable until:

1. The decision has been made not to issue citations; or

2. Six months has lapsed following the occurrence of an alleged violation.

D. Issued citations, orders of abatement, and proposed penalties are public documents and are releasable upon a written request. All other file documents in cases where a citation has been issued are not disclosable until the case is a final order of the commissioner or the court, except that once a copy of file documents in a contested case has been provided to legal counsel for the employer in response to a request for discovery, or to a third party in response to a subpoena duces tecum, such documents shall be releasable upon a written request, subject to the exclusions in this regulation section and the Virginia Freedom of Information Act.

E. Information required to be kept confidential by law shall not be disclosed by the commissioner or by any employee of the department. In particular, the following specific information is deemed to be nondisclosable:

1. The identity of and statements of an employee or employee representative who has complained of hazardous conditions to the commissioner;
2. The identities of employers, owners, operators, agents, or employees interviewed during inspections and their interview statements;
3. Employee medical and personnel records obtained during VOSH inspections. Such records may be released to the employee or his duly authorized representative upon a written, and endorsed request; and
4. Employer trade secrets, commercial, and financial data.

F. The commissioner may decline to disclose a document that is excluded from the disclosure requirements of the Virginia FOIA, particularly documents and evidence related to criminal investigations, writings protected by the attorney-client privilege, documents compiled for use in litigation, and personnel records.

G. An effective program of investigation and conciliation of complaints of discrimination requires confidentiality. Accordingly, disclosure of records of such complaints, investigations, and conciliations will be presumed to not serve the purposes of Title 40.1 of the Code of Virginia, except for statistical and other general information that does not reveal the identities of particular employers or employees.

H. All information gathered through participation in consultation services or training programs of the department shall be withheld from disclosure except for statistical data which that does not identify individual employers.

I. All information gathered through participation in voluntary protection programs of the department pursuant to § 40.1-49.13 of the Code of Virginia shall be withheld from

Regulations

disclosure except for statistical data that does not identify individual employers and for the following:

1. Participant applications and amendments, onsite evaluation reports, and annual self-evaluations;

2. Agency staff correspondence containing recommendations to the commissioner, approval letters, notifications to compliance staff removing the participants from the general inspection list, and related formal correspondence.

~~I. J.~~ J. The commissioner, in response to a subpoena, order, or other demand of a court or other authority in connection with a proceeding to which the department is not a party, shall not disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without the approval of the Commissioner of Labor and Industry.

~~J. K.~~ K. The commissioner shall disclose information and statistics gathered pursuant to the enforcement of Virginia's occupational safety and health laws, standards, and regulations where it has been determined that such a disclosure will serve to promote the safety, health, and welfare of employees. Any person requesting disclosure of such information and statistics should include in his written request any information that will aid the commissioner in this determination.

16VAC25-60-110. Discrimination Whistleblower discrimination; discharge or retaliation; remedy for retaliation.

A. In carrying out his duties under § 40.1-51.2:2 of the Code of Virginia, the commissioner shall consider case law, regulations, and formal policies of federal OSHA. An employee's engagement in activities protected by Title 40.1 does not automatically render him immune from discharge or discipline for legitimate reasons. Termination or other disciplinary action may be taken for a combination of reasons, involving both discriminatory and nondiscriminatory motivations. In such a case, a violation of § 40.1-51.2:1 of the Code of Virginia has occurred if the protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity.

Employee whistleblower activities, protected by § 40.1-51.2:1 of the Code of Virginia, include, ~~but are not limited to:~~

1. Making any complaint to his employer or any other person under or related to the safety and health provisions of Title 40.1 of the Code of Virginia;
2. Instituting or causing to be instituted any proceeding under or related to the safety and health provisions of Title 40.1 of the Code of Virginia;

3. Testifying or intending to testify in any proceeding under or related to the safety and health provisions of Title 40.1 of the Code of Virginia;

4. Cooperating with or providing information to the commissioner during a worksite inspection; or

5. Exercising on his own behalf or on behalf of any other employee any right afforded by the safety and health provisions of Title 40.1 of the Code of Virginia.

Discharge or discipline of an employee who has refused to complete an assigned task because of a reasonable fear of injury or death will be considered retaliatory only if the employee has sought abatement of the hazard from the employer and the statutory procedures for securing abatement would not have provided timely protection. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, an abatement of the dangerous condition.

Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations shall not be regarded as retaliatory action prohibited by § 40.1-51.2:1 of the Code of Virginia.

B. A complaint pursuant to § 40.1-51.2:2 of the Code of Virginia may be filed by the employee himself or anyone authorized to act in his behalf.

The investigation of the commissioner shall include an opportunity for the employer to furnish the commissioner with any information relevant to the complaint.

An attempt by an employee to withdraw a previously filed complaint shall not automatically terminate the investigation of the commissioner. Although a voluntary and uncoerced request from the employee that his complaint be withdrawn shall receive due consideration, it shall be the decision of the commissioner whether further action is necessary to enforce the statute.

The filing of a retaliation complaint with the commissioner shall not preclude the pursuit of a remedy through other channels. Where appropriate, the commissioner may postpone his investigation or defer to the outcome of other proceedings.

C. Subsection A of § 40.1-51.2:2 of the Code of Virginia provides that the commissioner shall bring an action in circuit court when it is determined that a violation of § 40.1-51.2:1 of the Code of Virginia has occurred and a voluntary agreement could not be obtained. Subsection A of § 40.1-

51.2:2 further provides that the court "shall have jurisdiction, for cause shown, to restrain violations and order appropriate relief." The court's authority to restrain violations and order appropriate relief includes the ability to issue penalties or fines to the employer that would be payable to the employee. In determining the appropriate level of penalties or fines, the court may look to subsections G, H, I, and J of § 40.1-49.4 of the Code of Virginia.

Part III
Occupational Safety and Health Standards

16VAC25-60-120. General industry standards.

A. The occupational safety or health standards adopted as rules or regulations by the board either directly or by reference, from 29 CFR Part 1910 shall apply by their own terms to all employers and employees at places of employment covered by the Virginia State Plan for Occupational Safety and Health.

B. The employer shall comply with the manufacturer's specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of all machinery, vehicles, tools, materials and equipment, unless specifically superseded by a more stringent corresponding requirement in 29 CFR Part 1910. The use of any machinery, vehicle, tool, material or equipment that is not in compliance with any applicable requirement of the manufacturer is prohibited; and shall either be identified by the employer as unsafe by tagging or locking the controls to render them inoperable or be physically removed from its place of use or operation.

16VAC25-60-130. Construction industry standards.

A. The occupational safety or health standards adopted as rules or regulations by the Virginia Safety and Health Codes Board either directly, or by reference, from 29 CFR Part 1926 shall apply by their own terms to all employers and employees engaged in either construction work or construction related activities covered by the Virginia State Plan for Occupational Safety and Health.

B. The employer shall comply with the manufacturer's specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of all machinery, vehicles, tools, materials and equipment, unless specifically superseded by a more stringent corresponding requirement in 29 CFR Part 1926. The use of any machinery, vehicle, tool, material or equipment that is not in compliance with any applicable requirement of the manufacturer is prohibited, and shall either be identified by the employer as unsafe by tagging or locking the controls to render them inoperable or be physically removed from its place of use or operation.

~~4.~~ C. For the purposes of the applicability of such Part 1926 standards, the key criteria utilized to make such a decision

shall be the activities taking place at the worksite, not the primary business of the employer. Construction work shall generally include any building, altering, repairing, improving, demolishing, painting or decorating any structure, building, highway, or roadway; and any draining, dredging, excavation, grading or similar work upon real property. Construction also generally includes work performed in traditional construction trades such as carpentry, roofing, masonry work, plumbing, trenching and excavating, tunneling, and electrical work. Construction does not include maintenance, alteration or repair of mechanical devices, machinery, or equipment, even when the mechanical device, machinery or equipment is part of a pre-existing structure.

D. The employer shall comply with the Virginia Department of Transportation (VDOT) Work Area Protection Manual in lieu of the federal Manual on Uniform Traffic Control Devices (Part VI of the MUTCD, 1988 Edition, Revision 3, or Part VI of the MUTCD, Millennium Edition - referenced in 16VAC25-175-1926.200 through 16VAC25-175-1926.202) when working under a contract for construction, repair, or maintenance between the employer and the Commonwealth; agencies, authorities, or instrumentalities of the Commonwealth; or any political subdivision or public body of the Commonwealth when such contract stipulates employer compliance with the VDOT Work Area Protection Manual in effect at the time of contractual agreement.

~~2.~~ E. Certain standards of 29 CFR Part 1910 have been determined by federal OSHA to be applicable to construction and have been adopted for this application by the board.

~~3.~~ F. The standards adopted from 29 CFR Part 1910.19 and 29 CFR Part 1910.20 containing respectively, special provisions regarding air contaminants and requirements concerning access to employee exposure and medical records shall apply to construction work as well as general industry.

16VAC25-60-140. Agriculture standards.

A. The occupational safety or health standards adopted as rules or regulations by the board either directly, or by reference, from 29 CFR Part 1910 and 29 CFR Part 1928 shall apply by their own terms to all employers and employees engaged in either agriculture or agriculture related activities covered by the Virginia State Plan for Occupational Safety and Health.

B. For the purposes of applicability of such Part 1910 and Part 1928 standards, the key criteria utilized to make a decision shall be the activities taking place at the worksite, not the primary business of the employer. Agricultural operations shall generally include any operation involved in the growing or harvesting of crops or the raising of livestock or poultry, or activities integrally related to agriculture, conducted by a farmer or agricultural employer on sites such as farms, ranches, orchards, dairy farms or similar establishments. Agricultural operations do not include

Regulations

construction work as described in ~~subdivision 1~~ subsection C of 16VAC25-60-130, nor ~~does it~~ do they include operations or activities substantially similar to those that occur in a general industry setting and are therefore not unique and integrally related to agriculture.

C. The employer shall comply with the manufacturer's specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of all machinery, vehicles, tools, materials and equipment, unless specifically superseded by a more stringent corresponding requirement in 29 CFR Part 1910 or 29 CFR Part 1928. The use of any machinery, vehicle, tool, material or equipment that is not in compliance with any applicable requirement of the manufacturer is prohibited; and shall either be identified by the employer as unsafe by tagging or locking the controls to render them inoperable or be physically removed from its place of use or operation.

16VAC25-60-150. Maritime standards.

A. The occupational safety or health standards adopted as rules or regulations by the board either directly, or by reference, from 29 CFR Part 1915, 29 CFR Part 1917, 29 CFR Part 1918, and 29 CFR Part 1919 shall apply by their own terms to all public sector employers and employees engaged in maritime related activities covered by the Virginia State Plan for Occupational Safety and Health.

B. The employer shall comply with the manufacturer's specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of all machinery, vehicles, tools, materials and equipment, unless specifically superseded by a more stringent corresponding requirement in Part 1915, 1917, 1918 or 1919. The use of any machinery, vehicle, tool, material or equipment that is not in compliance with any applicable requirement of the manufacturer is prohibited; and shall either be identified by the employer as unsafe by tagging or locking the controls to render them inoperable or be physically removed from its place of use or operation.

16VAC25-60-245. Take Use of administrative subpoenas to take and preserve testimony, examine witnesses, and administer oaths.

A. Subdivision 4 of § 40.1-6 of the Code of Virginia authorizes the commissioner, in the discharge of his duties, to take and preserve testimony, examine witnesses and administer oaths. In accordance with subdivision 5 of § 40.1-6 of the Code of Virginia, the Commissioner of Labor and Industry may appoint such representatives as are necessary to carry out the functions outlined in subdivision 4 of § 40.1-6 of the Code of Virginia. Such appointments shall be made in writing; identify the individual being appointed, the length of appointment, and the method of withdrawal of such appointment; and specify what duties are being prescribed.

B. The oath shall be administered by the commissioner's appointed representative to the witness as follows: "Do you swear or affirm to tell the truth."

C. Testimony given under oath shall be recorded by a court reporter.

D. Questioning of employers, owners, operators, agents or employees under oath shall be in private in accordance with subdivision 2 of § 40.1-49.8 of the Code of Virginia.

E. An employer's refusal to make an owner, operator, agent or employee available to the commissioner for examination under this section shall be considered a refusal to consent to the commissioner's inspection authority under § 40.1-49.8 of the Code of Virginia. Upon such refusal the commissioner may seek an administrative search warrant in accordance with the provisions contained in §§ 40.1-49.9 through 40.1-49.12 of the Code of Virginia; and obtain an order from the appropriate judge commanding the employer to make the subject owner, operator, agent or employee available for examination at a specified location by a date and time certain.

F. In accordance with § 40.1-10 of the Code of Virginia, if any person who may be sworn to give testimony shall willfully fail or refuse to answer any legal and proper question propounded to him concerning the subject of the examination under § 40.1-6 of the Code of Virginia, he shall be guilty of a misdemeanor. Such person, upon conviction thereof, shall be fined not exceeding \$100 nor less than \$25 or imprisoned in jail not exceeding 90 days or both. Any such refusal on the part of any person to comply with this section may be referred by the Commissioner of Labor and Industry to the appropriate attorney for the Commonwealth for prosecution.

Part VI Citation and Penalty

16VAC25-60-260. Issuance of citation and proposed penalty.

A. Each citation shall be in writing and describe with particularity the nature of the violation or violations, including a reference to the appropriate safety or health provision of Title 40.1 of the Code of Virginia or the appropriate rule, regulation, or standard. In addition, the citation must fix a reasonable time for abatement of the violation. The citation will contain substantially the following: "NOTICE: This citation will become a final order of the commissioner unless contested within fifteen working days from the date of receipt by the employer." The citation may be delivered to the employer or his agent by the commissioner or may be sent by certified mail or by personal service to an officer or agent of the employer or to the registered agent if the employer is a corporation.

4. No citation may be issued after the expiration of six months following the occurrence of any alleged violation.

The six-month ~~time frame~~ timeframe is deemed to be tolled on the date the citation is issued by the commissioner, without regard for when the citation is received by the employer. For purposes of calculating the six-month ~~time frame~~ timeframe for citation issuance, the following requirements shall apply:

~~a.~~ 1. The six-month ~~time frame~~ timeframe begins to run on the day after the incident or event occurred or notice was received by the commissioner (as specified below), in accordance with § 1-210 A of the Code of Virginia. The word "month" shall be construed to mean one calendar month in accordance with § 1-223 of the Code of Virginia.

~~b.~~ 2. An alleged violation is deemed to have "occurred" on the day it was initially created by commission or omission on the part of the creating employer, and every day thereafter that it remains in existence uncorrected.

~~e.~~ 3. Notwithstanding subdivision ~~1-a~~ [2 1] of this subsection, if an employer fails to notify the commissioner of any work-related incident resulting in a fatality or in the in-patient hospitalization of three or more persons within eight hours of such occurrence as required by § 40.1-51.1 D of the Code of Virginia, the six-month ~~time frame~~ timeframe shall not be deemed to commence until the commissioner receives actual notice of the incident.

~~d.~~ 4. Notwithstanding subdivision ~~1-a~~ [2 1] of this subsection, if the commissioner is first notified of a work-related incident resulting in an injury or illness to an ~~employee(s)~~ employee or employees through receipt of an Employer's Accident Report (EAR) form from the Virginia Workers' Compensation Commission as provided in § 65.2-900 of the Code of Virginia, the six-month ~~time frame~~ timeframe shall not be deemed to commence until the commissioner actually receives the EAR form.

~~e.~~ 5. Notwithstanding subdivision ~~1-a~~ [2 1] of this subsection, if the commissioner is first notified of a work-related hazard, or incident resulting in an injury or illness to an ~~employee(s)~~ employee or employees, through receipt of a complaint in accordance with 16VAC25-60-100 or referral, the six-month ~~time frame~~ timeframe shall not be deemed to commence until the commissioner actually receives the complaint or referral.

B. A citation issued under subsection A of this section to an employer who violates any VOSH law, standard, rule or regulation shall be vacated if such employer demonstrates that:

1. Employees of such employer have been provided with the proper training and equipment to prevent such a violation;
2. Work rules designed to prevent such a violation have been established and adequately communicated to

employees by such employer and have been effectively enforced when such a violation has been discovered;

3. The failure of employees to observe work rules led to the violation; and

4. Reasonable steps have been taken by such employer to discover any such violation.

C. For the purposes of subsection B of this section only, the term "employee" shall not include any officer, management official, or supervisor having direction, management control, or custody of any place of employment which was the subject of the violative condition cited.

D. The penalties as set forth in § 40.1-49.4 of the Code of Virginia shall also apply to violations relating to the requirements for ~~record keeping~~ recordkeeping, reports, or other documents filed or required to be maintained and to posting requirements.

E. In determining the amount of the proposed penalty for a violation the commissioner will ordinarily be guided by the system of penalty adjustment set forth in the VOSH Field Operations Manual. In any event the commissioner shall consider the gravity of the violation, the size of the business, the good faith of the employer, and the employer's history of previous violations.

F. On multi-employer worksites for all covered industries, citations shall normally be issued to an employer whose employee is exposed to an occupational hazard (the exposing employer). Additionally, the following employers shall normally be cited, whether or not their own employees are exposed:

1. The employer who actually creates the hazard (the creating employer);
2. The employer who is either:
 - a. Responsible, by contract or through actual practice, for safety and health conditions on the entire worksite, and has the authority for ensuring that the hazardous condition is corrected (the controlling employer); or
 - b. Responsible, by contract or through actual practice, for safety and health conditions for a specific area of the worksite, or specific work practice, or specific phase of a construction project, and has the authority for ensuring that the hazardous condition is corrected (the controlling employer); or
3. The employer who has the responsibility for actually correcting the hazard (the correcting employer).

G. A citation issued under subsection F of this section to an exposing employer who violates any VOSH law, standard, rule or regulation shall be vacated if such employer demonstrates that:

1. The employer did not create the hazard;

Regulations

2. The employer did not have the responsibility or the authority to have the hazard corrected;
3. The employer did not have the ability to correct or remove the hazard;
4. The employer can demonstrate that the creating, the controlling ~~and/or~~ or the correcting employers, as appropriate, have been specifically notified of the hazards to which his employees were exposed;
5. The employer has instructed his employees to recognize the hazard and, where necessary, informed them how to avoid the dangers associated with it;
6. Where feasible, an exposing employer must have taken appropriate alternative means of protecting employees from the hazard; and
7. When extreme circumstances justify it, the exposing employer shall have removed his employees from the job.

H. The commissioner's burden of proving the basis for a VOSH citation, penalty, or order of abatement is by a preponderance of the evidence.

I. The burden of proof in establishing an affirmative defense to a VOSH citation resides with the employer.

VA.R. Doc. No. R16-4561; Filed October 23, 2017, 11:48 a.m.

◆ ————— ◆

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Fast-Track Regulation

Title of Regulation: **18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-200).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 13, 2017.

Effective Date: January 1, 2018.

Agency Contact: Demetrios J. Melis, Executive Director, 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 of the Code of Virginia grants authority to the Board for Barbers and Cosmetology to promulgate regulations "in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or

misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board." The board is the promulgating entity for regulations governing wax technicians, estheticians, and the schools and instructors responsible for their training. Section 54.1-704.2 of the Code of Virginia specifically references the board's jurisdiction over schools, and § 54.1-706 of the Code of Virginia provides discretionary authority for the board to establish different requirements for the different license types.

Purpose: This amendment is needed for consistency in the interpretation and application of the board's laws and regulations. Section 54.1-700 of the Code of Virginia defines esthetics to include the removal of unwanted hair from the body (by nonlaser methods). As a result, those board licensees permitted to remove unwanted hair are licensed wax technicians, licensed cosmetologists, and licensed estheticians and master estheticians.

The board's regulations governing cosmetology and wax technicians (18VAC41-20) currently restrict anyone from teaching the wax curriculum in waxing schools except licensed and certified wax technician instructors or cosmetology instructors. Licensed and certified esthetics instructors and master esthetics instructors are already trained to teach students on waxing in esthetics schools under the board's esthetics regulations (18VAC41-70). The board determined esthetician and master esthetician training in the removal of hair is equivalent to or greater than that required by cosmetology training.

The amendment to 18VAC41-20-200 allows esthetics instructors and master esthetics instructors to teach the waxing program; they already cover waxing and hair removal techniques as part of the esthetics curriculum in waxing schools, and poses no additional risk to public health, safety, or welfare.

Rationale for Using Fast-Track Rulemaking Process: The fast-track rulemaking process is being used to amend the board's regulatory language for consistency in the interpretation and application of § 54.1-700 of the Code of Virginia, which defines those license types approved for waxing. The change is not expected to be controversial because members of the regulated community requested the change, it lowers the burden of the current regulatory restriction, and it will increase the overall availability of qualified instructors in waxing programs.

Substance: The board's amendment to 18VAC41-20-200 updates the requirements applicable to schools, to standardize who may teach waxing at waxing schools by allowing licensed and certified esthetics instructors and master esthetics instructors to teach at waxing schools.

Issues: The primary advantage of allowing esthetics instructors and master esthetics instructors to teach waxing at waxing schools is that it promotes economic growth

opportunities. By increasing the number of available instructors for waxing schools, program costs may be reduced for students. This in turn may lead to an increase in the number of students graduating, obtaining licensure, and participating in the waxing profession.

Moreover, this regulatory change will offer esthetics instructors and master esthetics instructors more employment opportunities under their current scope of practice, without any additional training requirements. There are no disadvantages to the public or individual private citizens or businesses.

The primary advantage to the Commonwealth is that the regulatory program will be more consistent by allowing all licensed instructors who are trained in waxing to teach at waxing schools. Currently, while both cosmetologists and estheticians are trained in waxing, only cosmetology and wax technician instructors can teach waxing. There are no identified disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Barbers and Cosmetology (Board) proposes to allow licensed and certified esthetics instructors and master esthetics instructors to teach at waxing schools.

Result of Analysis. Benefits likely outweigh costs for this proposed regulatory change.

Estimated Economic Impact. Currently regulation allows licensed and certified cosmetology instructors to instruct students in waxing programs. Esthetic instructors and master esthetic instructors currently may teach the same waxing skills as are taught in waxing schools but may only do so in esthetics schools. The Board now proposes to allow esthetics instructors and master esthetics instructors to also teach waxing in waxing schools. This change will likely benefit esthetics instructors and master esthetics instructors as it will broaden their potential job opportunities. This change will also benefit waxing schools as they will have a larger pool of instructors from whom to hire.

Businesses and Entities Affected. This change will affect esthetics instructors and master esthetics instructors as well as waxing schools. Board staff reports that the Board currently licenses or certifies 53 individuals as esthetics instructors or master esthetics instructors and that there are 10 waxing schools in the Commonwealth.

Localities Particularly Affected. No localities will be particularly affected by this proposed change.

Projected Impact on Employment. This proposed regulatory change may allow the mix of instructors in waxing schools to change, but it is unlikely to increase employment in that field.

Effects on the Use and Value of Private Property. This proposed regulatory change is unlikely to affect the use or value of private property in the Commonwealth.

Real Estate Development Costs. These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

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. Small businesses are unlikely to incur any additional costs on account of this regulatory change. Small business waxing schools will likely benefit as they will have a larger pool of possible instructors from which to hire.

Alternative Method that Minimizes Adverse Impact. Small businesses are unlikely to incur any costs on account of this regulatory action.

Adverse Impacts:

Businesses. Businesses are unlikely to be adversely affected by this regulatory change.

Localities. No locality is likely to suffer adverse impacts on account of this proposed regulatory change.

Other Entities. No other entities are likely to suffer adverse impacts on account of this proposed regulatory change.

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The amendment allows licensed and certified esthetics instructors and master esthetics instructors to teach the wax technician curriculum at waxing schools.

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, cosmetology, nail technician, or wax technician instructors, respectively.

a. Licensed and certified cosmetology instructors may also instruct in nail and waxing programs.

Regulations

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, 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 clock hours and shall include performances in accordance with 18VAC41-20-220.

b. Cosmetology curricula shall be based on a minimum of 1,500 clock hours and shall include performances in accordance with 18VAC41-20-220.

c. Nail technician curricula shall be based on a minimum of 150 clock hours and shall include performances in accordance with 18VAC41-20-220.

d. 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.

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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (18VAC41-20)

[Barber – Barber Instructor Examination & License Application, A450-1301_02EXLIC-v13 \(rev. 2/2017\)](#)

[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 \(rev. 2/2017\)](#)

[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-v8 \(rev. 2/2017\)](#)~~

[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. R18-4988; Filed October 23, 2017, 1:32 p.m.

BOARD FOR CONTRACTORS

Final Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-30 through 18VAC50-22-60, 18VAC50-22-260).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: January 1, 2018.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

Summary:

Pursuant to Chapter 527 of the 2016 Acts of Assembly, the amendments (i) add an exclusive specialty for businesses that perform, manage, or supervise the remediation of property formerly used to manufacture methamphetamine; (ii) establish the criteria to obtain and maintain the license specialty, including experience and examination requirements; and (iii) require that the remediation work is consistent with applicable remediation standards of other federal or state agencies.

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

18VAC50-22-30. Definitions of specialty services.

The following words and terms when used in this chapter unless a different meaning is provided or is plainly required by the context shall have the following meanings:

"Accessibility services contracting" (Abbr: ASC) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, and private residence elevators in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work. This specialty does not include work on limited use-limited application (LULA) elevators.

"Accessibility services contracting - LULA" (Abbr: ASL) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, private residence elevators, and limited use-limited application (LULA) elevators in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work.

"Alternative energy system contracting" (Abbr: AES) means the service that provides for the installation, repair or improvement, from the customer's meter, of alternative energy generation systems, supplemental energy systems and associated equipment annexed to real property. This service does not include the installation of emergency generators powered by fossil fuels. No other classification or specialty service provides this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Asbestos contracting" (Abbr: ASB) means the service that provides for the installation, removal, or encapsulation of asbestos containing materials annexed to real property. No other classification or specialty service provides for this function.

"Asphalt paving and sealcoating contracting" (Abbr: PAV) means the service that provides for the installation of asphalt paving or sealcoating, or both, on subdivision streets and

adjacent intersections, driveways, parking lots, tennis courts, running tracks, and play areas, using materials and accessories common to the industry. This includes height adjustment of existing sewer manholes, storm drains, water valves, sewer cleanouts and drain grates, and all necessary excavation and grading. The H/H classification also provides for this function.

"Billboard/sign contracting" (Abbr: BSC) means the service that provides for the installation, repair, improvement, or dismantling of any billboard or structural sign permanently annexed to real property. H/H and CBC are the ~~only other~~ classifications that can perform this work except that a contractor in this specialty may connect or disconnect signs to existing electrical circuits. No trade related plumbing, electrical, or HVAC work is included in this function.

"Blast/explosive contracting" (Abbr: BEC) means the service that provides for the use of explosive charges for the repair, improvement, alteration, or demolition of any real property or any structure annexed to real property.

"Commercial improvement contracting" (Abbr: CIC) means the service that provides for repair or improvement to structures not defined as dwellings and townhouses in the USBC. The CBC classification also provides for this function. The CIC specialty does not provide for the construction of new buildings, accessory buildings, electrical, plumbing, HVAC, or gas work.

"Concrete contracting" (Abbr: CEM) means the service that provides for all work in connection with the processing, proportioning, batching, mixing, conveying, and placing of concrete composed of materials common to the concrete industry. This includes ~~but is not limited to~~ finishing, coloring, curing, repairing, testing, sawing, grinding, grouting, placing of film barriers, sealing, and waterproofing. Construction and assembling of forms, molds, slipforms, and pans, centering, and the use of rebar are also included. The CBC, RBC, and H/H classifications also provide for this function.

"Drug lab remediation contracting" (Abbr: DLR) means the service that provides for the cleanup, treatment, containment, or removal of hazardous substances at or in a property formerly used to manufacture methamphetamine or other drugs and may include demolition or disposal of structures or other property. No other classification or specialty provides for this function.

"Drywall contracting" (Abbr: DRY) means the service that provides for the installation, taping, and finishing of drywall, panels and assemblies of gypsum wallboard, sheathing, and cementitious board and the installation of studs made of sheet metal for the framing of ceilings and nonstructural partitioning. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

Regulations

"Electronic/communication service contracting" (Abbr: ESC) means the service that provides for the installation, repair, improvement, or removal of electronic or communications systems annexed to real property including telephone wiring, computer cabling, sound systems, data links, data and network installation, television and cable TV wiring, antenna wiring, and fiber optics installation, all of which operate at 50 volts or less. A firm holding an ESC license is responsible for meeting all applicable tradesman licensure standards. The ELE classification also provides for this function.

"Elevator/escalator contracting" (Abbr: EEC) means the service that provides for the installation, repair, improvement, or removal of elevators or escalators permanently annexed to real property. A firm holding an EEC license is responsible for meeting all applicable individual license and certification regulations. No other classification or specialty service provides for this function.

"Environmental monitoring well contracting" (Abbr: EMW) means the service that provides for the construction of a well to monitor hazardous substances in the ground.

"Environmental specialties contracting" (Abbr: ENV) means the service that provides for installation, repair, removal, or improvement of pollution control and remediation devices. No other specialty provides for this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Equipment/machinery contracting" (Abbr: EMC) means the service that provides for the installation or removal of equipment or machinery including ~~but not limited to~~ conveyors or heavy machinery. Boilers exempted by the Virginia Uniform Statewide Building Code (13VAC5-63) but regulated by the Department of Labor and Industry are also included in this specialty. This specialty does not provide for any electrical, plumbing, process piping, or HVAC functions.

"Farm improvement contracting" (Abbr: FIC) means the service that provides for the installation, repair, or improvement of a nonresidential farm building or structure, or nonresidential farm accessory-use structure, or additions thereto. The CBC classification also provides for this function. The FIC specialty does not provide for any electrical, plumbing, HVAC, or gas fitting functions.

"Finish carpentry contracting" (Abbr: FIN) means the service that provides for the installation, repair, and finishing of cabinets, sash casing, door casing, wooden flooring, baseboards, countertops, and other millwork. Finish carpentry does not include the installation of ceramic tile, marble, and artificial or cultured stone. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Fire alarm systems contracting" (Abbr: FAS) means the service that provides for the installation, repair, or improvement of fire alarm systems that operate at 50 volts or

less. The ELE classification also provides for this function. A firm with an FAS license is responsible for meeting all applicable tradesman licensure standards.

"Fire sprinkler contracting" (Abbr: SPR) means the service that provides for the installation, repair, alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. This specialty does not provide for the installation, repair, or maintenance of other types of fire suppression systems. The PLB classification allows for the installation of systems permitted to be designed in accordance with the plumbing provisions of the USBC. This specialty may engage in the installation of backflow prevention devices in the fire sprinkler supply main and incidental to the sprinkler system installation when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Fire suppression contracting" (Abbr: FSP) means the service that provides for the installation, repair, improvement, or removal of fire suppression systems including ~~but not limited to~~ halon and other gas systems, dry chemical systems, and carbon dioxide systems annexed to real property. No other classification provides for this function. The FSP specialty does not provide for the installation, repair, or maintenance of water sprinkler systems.

"Flooring and floor covering contracting" (Abbr: FLR) means the service that provides for the installation, repair, improvement, or removal of materials that are common in the flooring industry. This includes, ~~but is not limited to~~, wood and wood composite flooring, tack strips or other products used to secure carpet, vinyl and linoleum, ceramic, marble, stone, and all other types of tile, and includes the installation or replacement of subflooring, leveling products, or other materials necessary to facilitate the installation of the flooring or floor covering. This does not include the installation, repair, or removal of floor joists or other structural components of the flooring system. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Framing subcontractor" (Abbr: FRM) means the service which, while serving in the role of a subcontractor to a licensed prime contractor, provides for the construction, removal, repair, or improvement to any framing or rough carpentry necessary for the construction of framed structures, including the installation and repair of individual components of framing systems. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Gas fitting contracting" (Abbr: GFC) means the service that provides for the installation, repair, improvement, or removal of gas piping and appliances annexed to real property. A firm holding a GFC license is responsible for meeting all applicable individual (tradesman) licensure regulations.

"Glass and glazing contracting" (Abbr: GLZ) means the service that provides for the installation, assembly, repair, improvement, or removal of all makes and kinds of glass, glass work, mirrored glass, and glass substitute for glazing; executes the fabrication and glazing of frames, panels, sashes and doors; or installs these items in any structure. This specialty includes the installation of standard methods of weatherproofing, caulking, glazing, sealants, and adhesives. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Home improvement contracting" (Abbr: HIC) means the service that provides for repairs or improvements to dwellings and townhouses as defined in the USBC or structures annexed to those dwellings or townhouses as defined in the USBC. The RBC classification also provides for this function. The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include new construction functions beyond the existing building structure other than decks, patios, driveways, and utility out buildings that do not require a permit per the USBC.

"Industrialized building contracting" (Abbr: IBC) means the service that provides for the installation or removal of an industrialized building as defined in the Virginia Industrialized Building Safety Regulations (13VAC5-91). This classification covers foundation work in accordance with the provisions of the Virginia Uniform Statewide Building Code (13VAC5-63) and allows the licensee to complete internal tie-ins of plumbing, gas, electrical, and HVAC systems. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. The CBC and RBC classifications also provide for this function.

"Insulation and weather stripping contracting" (Abbr: INS) means the service that provides for the installation, repair, improvement, or removal of materials classified as insulating media used for the sole purpose of temperature control or sound control of residential and commercial buildings. It does not include the insulation of mechanical equipment and ancillary lines and piping. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Landscape irrigation contracting" (Abbr: ISC) means the service that provides for the installation, repair, improvement, or removal of irrigation sprinkler systems or outdoor sprinkler systems. The PLB and H/H classifications also provide for this function. This specialty may install backflow prevention devices incidental to work in this specialty when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Landscape service contracting" (Abbr: LSC) means the service that provides for the alteration or improvement of a land area not related to any other classification or service

activity by means of excavation, clearing, grading, construction of retaining walls for landscaping purposes, or placement of landscaping timbers. This specialty may remove stumps and roots below grade. The CBC, RBC, and H/H classifications also provide for this function.

"Lead abatement contracting" (Abbr: LAC) means the service that provides for the removal or encapsulation of lead-containing materials annexed to real property. No other classification or specialty service provides for this function, except that the PLB and HVA classifications may provide this service incidental to work in those classifications.

"Liquefied petroleum gas contracting" (Abbr: LPG) means the service that includes the installation, maintenance, extension, alteration, or removal of all piping, fixtures, appliances, and appurtenances used in transporting, storing, or utilizing liquefied petroleum gas. This excludes hot water heaters, boilers, and central heating systems that require an HVA or PLB license. The GFC specialty also provides for this function. A firm holding an LPG license is responsible for meeting all applicable individual license and certification regulations.

"Manufactured home contracting" (Abbr: MHC) means the service that provides for the installation or removal of a manufactured home as defined in the Virginia Manufactured Home Safety Regulations (13VAC5-95). This classification does not cover foundation work; however, it does allow installation of piers covered under HUD regulations. It does allow a licensee to do internal tie-ins of plumbing, gas, electrical, or HVAC equipment. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter or installing the outside compressor for the HVAC system. No other specialty provides for this function.

"Marine facility contracting" (Abbr: MCC) means the service that provides for the construction, repair, improvement, or removal of any structure the purpose of which is to provide access to, impede, or alter a body of surface water. The CBC and H/H classifications also provide for this function. The MCC specialty does not provide for the construction of accessory structures or electrical, HVAC, or plumbing functions.

"Masonry contracting" (Abbr: BRK) means the service that includes the installation of brick, concrete block, stone, marble, slate, or other units and products common to the masonry industry, including mortarless type masonry products. This includes installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging, and cleaning and welding of reinforcement steel related to masonry construction. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Natural gas fitting provider contracting" (Abbr: NGF) means the service that provides for the incidental repair,

Regulations

testing, or removal of natural gas piping or fitting annexed to real property. This does not include new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment that requires an HVA or PLB license. The GFC specialty also provides for this function. A firm holding an NGF license is responsible for meeting all applicable individual license and certification regulations.

"Painting and wallcovering contracting" (Abbr: PTC) means the service that provides for the application of materials common to the painting and decorating industry for protective or decorative purposes, the installation of surface coverings such as vinyls, wall papers, and cloth fabrics. This includes surface preparation, caulking, sanding, and cleaning preparatory to painting or coverings and includes both interior and exterior surfaces. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Radon mitigation contracting" (Abbr: RMC) means the service that provides for additions, repairs or improvements to buildings or structures, for the purpose of mitigating or preventing the effects of radon gas. No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty.

"Recreational facility contracting" (Abbr: RFC) means the service that provides for the construction, repair, or improvement of any recreational facility, excluding paving and the construction of buildings, plumbing, electrical, and HVAC functions. The CBC classification also provides for this function.

"Refrigeration contracting" (Abbr: REF) means the service that provides for installation, repair, or removal of any refrigeration equipment (excluding HVAC equipment). No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty. This specialty is intended for those contractors who repair or install coolers, refrigerated casework, ice-making machines, drinking fountains, cold room equipment, and similar hermetic refrigeration equipment. The HVA classification also provides for this function.

"Roofing contracting" (Abbr: ROC) means the service that provides for the installation, repair, removal, or improvement of materials common to the industry that form a watertight, weather resistant surface for roofs and decks. This includes roofing system components when installed in conjunction with a roofing project, application of dampproofing or waterproofing, and installation of roof insulation panels and other roof insulation systems above roof deck. The CBC and RBC classifications and the HIC and CIC specialties also provide for this function.

"Sewage disposal systems contracting" (Abbr: SDS) means the service that provides for the installation, repair, improvement, or removal of septic tanks, septic systems, and other onsite sewage disposal systems annexed to real property.

"Steel erection contracting" (Abbr: STL) means the service that provides for the fabrication and erection of structural steel shapes and plates, regardless of shape or size, to be used as structural members, or tanks, including any related riveting, welding, and rigging. This specialty includes the fabrication, placement and tying of steel reinforcing bars (rods), and post-tensioning to reinforce concrete buildings and structures. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Swimming pool construction contracting" (Abbr: POL) means the service that provides for the construction, repair, improvement, or removal of in-ground swimming pools. The CBC and RBC classifications and the RFC specialty also provide for this function. No trade related plumbing, electrical, backflow, or HVAC work is included in this specialty.

"Tile, marble, ceramic, and terrazzo contracting" (Abbr: TMC) means the service that provides for the preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, terrazzo, encaustic, faience, quarry, semi-vitreous, cementitious board, and other tile, excluding hollow or structural partition tile. The CBC and RBC classifications and HIC and CIC specialties also provide for this function.

"Underground utility and excavating contracting" (Abbr [:] UUC) means the service that provides for the construction, repair, improvement, or removal of main sanitary sewer collection systems, main water distribution systems, storm sewer collection systems, and the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, sewer collection systems at property line, or residential or single-occupancy commercial properties, or on multi-occupancy properties at manhole or wye lateral extend to an invert elevation as engineered to accommodate future building sewers, water distribution systems, or storm sewer collection systems at storm sewer structures. This specialty may install empty underground conduits in rights-of-way, easements, platted rights-of-way in new site development, and sleeves for parking lot crossings if each conduit system does not include installation of any conductor wiring or connection to an energized electrical system. The H/H classification also provides for this function.

"Vessel construction contracting" (Abbr: VCC) means the service that provides for the construction, repair, improvement, or removal of nonresidential vessels, tanks, or piping that hold or convey fluids other than sanitary, storm, waste, or potable water supplies. The H/H classification also provides for this function.

"Water well/pump contracting" (Abbr: WWP) means the service that provides for the installation of a water well system, including geothermal wells, which includes construction of a water well to reach groundwater, as defined

in § 62.1-255 of the Code of Virginia, and the installation of the well pump and tank, including pipe and wire, up to and including the point of connection to the plumbing and electrical systems. No other classification or specialty service provides for construction of water wells. This regulation shall not exclude the PLB, ELE, or HVA classification from installation of pumps and tanks.

Note: Specialty contractors engaging in construction that involves the following activities or items or similar activities or items may fall under the CIC, HIC, and FIC specialty services, or they may fall under the CBC or RBC classification.

Appliances	Fences	Railings
Awnings	Fiberglass	Rigging
Blinds	Fireplaces	Rubber linings
Bulkheads	Fireproofing	Sandblasting
Carpeting	Fixtures	Scaffolding
Ceilings	Grouting	Screens
Chimneys	Guttering	Shutters
Chutes	Interior decorating	Siding
Curtains	Lubrication	Skylights
Curtain walls	Metal work	Storage bins and lockers
Decks	Millwrighting	Stucco
Doors	Mirrors	Vaults
Drapes	Miscellaneous iron	Wall panels
Epoxy	Ornamental iron	Waterproofing
Exterior decoration	Partitions	Windows
Facings	Protective coatings	

Part II
Entry

18VAC50-22-40. Requirements for a Class C license.

A. A firm applying for a Class C license must meet the requirements of this section.

B. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;
2. Has a minimum of two years experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm; and

4. a. Has obtained the appropriate certification for the following specialties:

(1) Blast/explosive contracting (Department of Fire Programs explosive use certification),

(2) Fire sprinkler (NICET Sprinkler III certification), and

(3) Radon mitigation (EPA or DEQ accepted radon certification),

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

~~e.~~ d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

~~e.~~ e. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

C. The firm shall provide information for the past five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

D. The firm and all members of the responsible management of the firm shall disclose at the time of application any current or previous contractor licenses held in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes ~~but is not limited to~~ any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and

Regulations

2. All felony convictions during their lifetimes.

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.

F. A member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-50. Requirements for a Class B license.

A. A firm applying for a Class B license must meet the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;
2. Is a full-time employee of the firm as defined in this chapter, or is a member of responsible management as defined in this chapter;
3. Has passed a board-approved examination as required by § 54.1-1108 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and
4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the date of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;
2. Has a minimum of three years experience in the classification or specialty for which he is the qualifier;
3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm;
4. a. Has obtained the appropriate certification for the following specialties:
 - (1) Blast/explosive contracting (Department of Fire Programs explosive use certification),₂
 - (2) Fire sprinkler (NICET Sprinkler III certification), and
 - (3) Radon mitigation (EPA or DEQ accepted radon certification),₂

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

e- d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

~~d.~~ e. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of \$15,000 or more.

E. Each firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes ~~but is not limited to~~ any monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed ~~above~~ in this subsection have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated or surrendered in connection with a disciplinary action in Virginia or any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, designated employee, all members of the responsible management, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and
2. All felony convictions during their lifetimes.

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.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-60. Requirements for a Class A license.

A. A firm applying for a Class A license shall meet all of the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;
2. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm as defined in this chapter;
3. Has passed a board-approved examination as required by § 54.1-1106 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and
4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the day of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;
2. Has a minimum of five years of experience in the classification or specialty for which he is the qualifier;
3. Is a full-time employee of the firm as defined in this chapter or is a member of the firm as defined in this chapter or is a member of the responsible management of the firm;
4. a. Has obtained the appropriate certification for the following specialties:
 - (1) Blast/explosive contracting (DHCD explosive use certification),
 - (2) Fire sprinkler (NICET Sprinkler III certification), and
 - (3) Radon mitigation (EPA or DEQ accepted radon certification),
- b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing,

HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

~~e. d.~~ Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

~~e. e.~~ Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of \$45,000.

E. The firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes ~~but is not limited to,~~ any monetary penalties, fines, suspensions, revocations, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed ~~above in this [subdivision subsection]~~ have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated, or surrendered in connection with a disciplinary action in Virginia or in any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, all members of the responsible management, the designated employee, and the qualified individual or individuals for the firm:

1. All misdemeanor convictions within three years of the date of application; and
2. All felony convictions during their lifetimes.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a

Regulations

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.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-260. Filing of charges; prohibited acts.

A. All complaints against contractors and residential building energy analyst firms may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.

B. The following acts are prohibited acts:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.
2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license.
3. Failure of the responsible management, designated employee, or qualified individual to report to the board, in writing, the suspension or revocation of a contractor license by another state or conviction in a court of competent jurisdiction of a building code violation.
4. Publishing or causing to be published any advertisement relating to contracting ~~which that~~ contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.
5. Negligence ~~and/or~~ or incompetence in the practice of contracting or residential building energy analyses.
6. Misconduct in the practice of contracting or residential building energy analyses.
7. A finding of improper or dishonest conduct in the practice of contracting by a court of competent jurisdiction or by the board.
8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the

contract shall be signed by both the consumer and the licensee or his agent.

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract ~~which that~~ contains the following minimum requirements:

- a. When work is to begin and the estimated completion date;
 - b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
 - c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;
 - d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating ~~time frames~~ timeframes for payment or performance;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - f. Disclosure of the cancellation rights of the parties;
 - g. For contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that he has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to him through the Board for Contractors;
 - h. Contractor's name, address, license number, class of license, and classifications or specialty services;
 - i. A statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties; and
 - j. Effective with all new contracts entered into after July 1, 2015, a statement notifying consumers of the existence of the Virginia Contractor Transaction Recovery Fund that includes information on how to contact the board for claim information.
10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in subdivisions 8 and 9 of this subsection for construction or contracting work.
11. Failure of the contractor to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to that contract, including, ~~but not limited to,~~ the contract and any addenda or change orders.

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

13. Failing to respond to an agent of the board or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor. Failing or refusing to claim certified mail sent to the licensee's address of record shall constitute a violation of this regulation.

14. Abandonment defined as the unjustified cessation of work under the contract for a period of 30 days or more.

15. The intentional and unjustified failure to complete work contracted for ~~and/or~~ or to comply with the terms in the contract.

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

18. Assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; or combining or conspiring with or acting as agent, partner, or associate for another.

19. Allowing a firm's license to be used by another.

20. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

21. Action by the firm, responsible management as defined in this chapter, designated employee or qualified individual to offer, give, or promise 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 the construction industry.

22. Where the firm, responsible management as defined in this chapter, designated employee or qualified individual has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction, of any felony or of any misdemeanor, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.

23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any misdemeanor conviction for activities carried out while engaged in the practice of contracting.

24. Having been disciplined by any county, city, town, or any state or federal governing body including action by the Virginia Department of Health, which action shall be reviewed by the board before it takes any disciplinary action of its own.

25. Failure to abate a violation of the Virginia Uniform Statewide Building Code, as amended.

26. Failure of a contractor to comply with the notification requirements of the Virginia Underground Utility Damage Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia (Miss Utility).

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

28. Failure to satisfy any judgments.

29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.

30. Failure to honor the terms and conditions of a warranty.

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

32. Failure to ensure that supervision, as defined in this chapter, is provided to all helpers and laborers assisting licensed tradesman.

33. Failure to obtain a building permit or applicable inspection, where required.

34. Failure of a residential building energy analyst firm to ensure that residential building energy analyses conducted by the firm are consistent with the requirements set forth by the board, the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the Energy Star Program.

35. Failure of a residential building energy analyst firm to maintain the general liability insurance required in 18VAC50-22-62 C at any time while licensed by the board.

36. Failure of a contractor holding the drug lab remediation specialty to ensure that remediation work conducted by the firm or properly licensed subcontractors is consistent with the guidelines set forth by the U.S. Environmental Protection Agency, Virginia Department of Environmental

Regulations

Quality, Virginia Department of Health, or Virginia Department of Forensic Science.

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 the 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 (18VAC50-22)

[Contractor Licensing Information, A501-27INTRO-v4 \(rev. 1/2016\)](#)

[Requirements for Qualified Individuals, A501-27EXINFO-v5 \(rev. 1/2016\)](#)

~~Contractor's License Application, A501-27LIC-v7 (rev. 1/2016)~~

~~Additional Specialty Designation Application, A501-27ADDSP-v7 (rev. 1/2016)~~

[Contractor's License Application, A501-27LIC-v10 \(rev. 1/2018\)](#)

[Additional Specialty Designation Application, A501-27ADDSP-v10 \(rev. 1/2018\)](#)

[Adverse Financial History Reporting Form, A406-01AFIN-v1 \(eff. 2/2015\)](#)

~~Change in Qualified Individual and Designated Employee Application, A501-27CH_QIDE-v7 (rev. 1/2016)~~

[Change in Qualified Individual and Designated Employee Application, A501-27CH_QIDE-v9 \(rev. 1/2018\)](#)

[Change of Responsible Management Application, A501-27CHRM-v4 \(rev. 1/2016\)](#)

[Certificate of License Termination, A501-27TERM-v4 \(rev. 12/2015\)](#)

[Criminal Conviction Reporting Form, A406-01CCR-v1 \(eff. 5/2015\)](#)

[Disciplinary Action Reporting Form, A406-01DAR-v1 \(eff. 5/2015\)](#)

[Education Provider Registration/Course Approval Application, A501-27EDREG-v5 \(rev. 1/2014\)](#)

[Education Provider Listing Application, A501-27EDLIST-v4 \(rev. 1/2014\)](#)

[Financial Statement, A501-27FINST-v4 \(rev. 12/2012\)](#)

~~Change in License Class Application, A501-27CHLIC-v7 (rev. 1/2016)~~

[Change in License Class Application, A501CHLIC-v9 \(rev. 1/2018\)](#)

[Firm - Residential Building Energy Analyst Application, A501-2707LIC-v2 \(rev. 7/2013\)](#)

[Statement of Consumer Protections, RBC-9.1 \(rev. 12/2014\)](#)

~~Contractor's Temporary License Application, A501-2703LIC-v2 (rev. 1/2016)~~

[Contractor Temporary License Application, A501-2703LIC-v8 \(rev. 1/2018\)](#)

[Expedited Class A License Application, A501-2705A-v11 \(rev. 1/2018\)](#)]

VA.R. Doc. No. R16-4674; Filed October 16, 2017, 5:59 p.m.

BOARD OF NURSING

Fast-Track Regulation

Title of Regulation: **18VAC90-19. Regulations Governing the Practice of Nursing (amending 18VAC90-19-120).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 13, 2017.

Effective Date: December 28, 2017.

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 establishes the general powers and duties of health regulatory boards, including the responsibility to promulgate regulations.

Purpose: Applicants who received their nursing education in another country are required to have a credentials review by the Commission on Graduates of Foreign Nursing Schools (CGFNS) and an examination of English proficiency. For applicants by endorsement, who have been licensed in another United States jurisdiction, those requirements may have already been met as qualification for licensure in the other jurisdiction. Therefore, it may be unnecessarily burdensome and create delays in licensure to repeat the credentials review and test of English proficiency. Verification from the jurisdiction that the qualification has been met is necessary.

Since assurance of completion of all educational and clinical requirements has already been verified by CGFNS, there is no risk of less competent nurses being granted a license. Public health and safety continues to be protected with assurance that a licensee has minimal competency to practice.

Rationale for Using Fast-Track Rulemaking Process: The amendment is less burdensome for all parties and will facilitate licensure by endorsement for certain applicants, and therefore, the Board of Nursing is confident that the rulemaking is noncontroversial and should be promulgated as a fast-track rulemaking action.

Substance: In examining its process for approval of applications by endorsement, staff has become aware that the requirement for a CGFNS credentials review and test of English proficiency may be duplicative of credentialing already performed by another state. The amendment will allow the board to waive requirements for a CGFNS credentials review and examination of English proficiency for a person whose nursing education was received in another country if the applicant has been licensed in another state and can provide evidence that those requirements were met for licensure in the other state.

Issues: The primary advantage of the amendment is an expedited process for licensure by endorsement of RNs and LPNs who are foreign trained and have been licensed and credentialed in another state. There are no disadvantages.

There is an advantage to the board because an attestation from the other state may eliminate the need for additional documents, which will result in less paperwork and more satisfied applicants. There are no disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. In regard to applying for licensure by endorsement, the Board of Nursing (Board) proposes to allow the waiving of a (new) credentials review by the Commission on Graduates of Foreign Nursing Schools (CGFNS) and examination of English proficiency for a person whose nursing education was received in another country if the applicant has been licensed in another state and she can provide evidence that those requirements were met for licensure in the other state.

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

Estimated Economic Impact. Applicants for nursing licensure by endorsement whose basic nursing education was received in another country must pass a CGFNS credentials review and a CGFNS-approved examination of English language proficiency.¹ The CGFNS review must show that the applicant's secondary education and nursing education are comparable to those required for registered nurses in the Commonwealth.² English proficiency can be demonstrated by achieving passing scores in either the TOEFL iBT³ or the IELTS exam.⁴

The Board proposes to waive the requirements for passing the CGFNS credentials review and a CGFNS-approved

examination of English language proficiency if the applicant can provide evidence from another United States jurisdiction of passing: a) a CGFNS credentials evaluation for educational comparability and b) English language proficiency examination approved by the CGFNS, unless the applicant met the CGFNS criteria for an exemption from the requirement.⁵ CGFNS charges \$350 for a credentials review.⁶ Under the current regulation the applicant would need a new CGFNS credentials review specific to Virginia. The proposed regulation would thus save the applicant who already had a satisfactory credentials evaluation for another state the \$350 fee for a new review, plus the time waiting for the review to be completed.

If the applicant had already passed the English language proficiency exam for a different state, she would not need to take it again even under the current regulation. She would just need to have the examination organization send the scores to the Department of Health Professions (DHP). ETS, the producer of the TOEFL iBT exam, does not charge for sending additional recipients examination scores.^{7,8} Thus the proposed regulation would not significantly affect costs in regard to the English language proficiency examination.

The proposed amendments introduce no new costs and do not change the required qualifications for nursing licensure. The reduced cost for foreign-trained nurses already licensed in another state may moderately increase the number of such individuals who seek licensure and nursing employment in the Commonwealth. Given the cost savings for the affected nurses, the Board's proposal would therefore create a net benefit.

Businesses and Entities Affected. The proposed amendments affect foreign-trained nurses who are already licensed in another United States jurisdiction and are considering applying for nursing licensure in Virginia. The number of such individuals is unavailable. According to DHP, the Board approves licenses for approximately 1,800 Registered Nurse applicants and 400 Licensed Practical Nurse applicants each quarter. Most nurses work for medical practices, long-term care facilities, or hospital systems.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed regulation reduces costs for nurses whose nursing education was received in another country, if the applicant has been licensed in another state and she can provide evidence that a satisfactory credentials review by CGFNS was completed by the other state. Such nurses may be more likely to apply for licensure and employment in the Commonwealth.

Effects on the Use and Value of Private Property. The proposed amendments do not affect the use and value of private property.

Regulations

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.

¹ The passage of an English language proficiency examination is not required if: 1) the entry-level professional education occurred in the United Kingdom, Australia, Barbados, Canada (except most of Quebec), Ireland, Jamaica, New Zealand, South Africa, Trinidad & Tobago, or the United States, and 2) English was the language of instruction, and the language of the textbooks.

² See <http://www.cgfns.org/services/ces-professional-report/>

³ See <https://www.ets.org/toefl/ibt/about>

⁴ See <https://www.ielts.org/en-us>

⁵ See footnote #1.

⁶ Source: <http://www.cgfns.org/services/ces-professional-report/> accessed on September 13, 2017.

⁷Source: <https://www.ets.org/toefl/institutions/scores/reporting>

⁸ Information concerning whether there is a charge for sending additional recipients IELTS scores was not available at the time this report was published. Nevertheless, the TOEFL iBT is believed to be more commonly used.

Agency's Response to Economic Impact Analysis: The Board of Nursing concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendment allows the Board of Nursing to waive requirements for a Commission on Graduates of Foreign Nursing Schools credentials review and examination of English proficiency for a person whose nursing education was received in another country if the applicant has been licensed in another state and can provide evidence that

those requirements were met for licensure in the other state.

18VAC90-19-120. Licensure by endorsement.

A. A graduate of an approved nursing education program who has been licensed by examination in another United States jurisdiction and whose license is in good standing, or is eligible for reinstatement if lapsed, shall be eligible for licensure by endorsement in Virginia provided the applicant satisfies the same requirements for registered nurse or practical nurse licensure as those seeking initial licensure in Virginia.

1. Applicants who have graduated from approved nursing education programs that did not require a sufficient number of clinical hours as specified in 18VAC90-27-100 may qualify for licensure if they can provide evidence of at least 960 hours of clinical practice with an active, unencumbered license in another United States jurisdiction.

2. Applicants whose basic nursing education was received in another country shall meet the requirements of 18VAC90-19-130 for a CGFNS credentials review and examination of English proficiency. However, those requirements may be satisfied if the applicant can provide evidence from another United States jurisdiction of:

a. A CGFNS credentials evaluation for educational comparability; and

b. Passage of an English language proficiency examination approved by the CGFNS, unless the applicant met the CGFNS criteria for an exemption from the requirement.

3. A graduate of a nursing school in Canada where English was the primary language shall be eligible for licensure by endorsement provided the applicant has passed the Canadian Registered Nurses Examination and holds an unrestricted license in Canada.

B. An applicant for licensure by endorsement who has submitted a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia and the required application and fee and has submitted the required form to the appropriate credentialing agency for verification of licensure may practice for 30 days upon receipt of an authorization letter from the board. If an applicant has not received a Virginia license within 30 days and wishes to continue practice, he shall seek an extension of authorization to practice by submitting a request and evidence that he has requested verification of licensure.

C. If the application is not completed within one year of the initial filing date, the applicant shall submit a new application and fee.

VA.R. Doc. No. R18-5226; Filed October 21, 2017, 11:23 a.m.

BOARD OF OPTOMETRY

Emergency 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.

Effective Dates: October 30, 2017, through April 29, 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.

Preamble:

Regulations for optometrists prescribing of controlled substances containing opioids are being promulgated as emergency regulations to address the opioid abuse crisis in Virginia. On November 16, 2016, State Health Commissioner Marissa Levine declared the opioid addiction crisis to be a public health emergency in Virginia. In a news conference about the opioid crisis, Governor McAuliffe noted that the declaration would "provide a framework for further actions to fight it, and to save Virginians' lives." One of those "further actions" is adoption of emergency regulations by the Board of Medicine and the Board of Nursing setting out rules for prescribing opioids and buprenorphine and by the Board of Dentistry for prescribing of opioids for acute pain. Although optometrists are only authorized to prescribe Schedule II controlled substances consisting of hydrocodone in combination with acetaminophen and Schedules III, IV, and VI controlled substances, the Board of Optometry has determined that it should also adopt emergency regulations.

Section 2.2-4011 of the Code of Virginia authorizes an agency to adopt emergency regulations necessitated by an emergency situation upon consultation with the Attorney General, and the necessity for the action is at the sole discretion of the Governor. The declaration by Commissioner Levine is indeed evidence that such an emergency situation exists in the Commonwealth.

The emergency regulations for the management of acute pain include requirements for (i) prescribing a dosage not to exceed seven days, (ii) the evaluation of the patient, and (iii) limitations on quantity. Requirements for prescribing of an opioid beyond seven days include a reevaluation of the patient, check of the Prescription Monitoring Program, and specific information in the patient record. In addition, if a therapeutic pharmaceutical agent-certified optometrist finds an opioid prescription for chronic pain is necessary, he must refer the patient to a physician or comply with Board of Medicine regulation for managing chronic pain.

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.

Regulations

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 (see [33:16 VA.R. 1930-1931 April 3, 2017](#)), 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 December 31 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 December 31 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 October 16, 2017, 8:52 a.m.

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to subsection D of § 54.1-3443 of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322).**

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: December 13, 2017.

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.

Summary:

The amendments add nine compounds into Schedule I of the Drug Control Act as recommended by the Virginia Department of Forensic Science pursuant to § 54.1-3443 of the Code of Virginia. The compounds added by this regulatory action will remain in effect for 18 months or until the compounds are placed in Schedule I by legislative action of the General Assembly.

18VAC110-20-322. Placement of chemicals in Schedule I.

A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 1-(1,3-benzodioxol-5-yl)-2-(dimethylamino)-1-pentanone (other names: N,N-Dimethylpentylone, Dipentylone);
2. 4-chloro-alpha-Pyrrolidinovalerophenone (other name: 4-chloro-alpha-PVP);
3. 4-methyl-alpha-Pyrrolidinoheptophenone (other name: MPHP);
4. 4-fluoro-alpha-Pyrrolidinoheptophenone (other name: 4-fluoro-PV8);
5. 1-(4-methoxyphenyl)-2-(pyrrolidin-1-yl)octan-1-one (other name: 4-methoxy-PV9);

Regulations

6. 4-allyloxy-3,5-dimethoxyphenethylamine (other name: Allylescaline);
7. 4-methyl-alpha-ethylaminopentiophenone; and
8. N-(4-fluorophenyl)-2-methyl-N-[1-(2-phenylethyl)-4-piperidiny]-propanamide (other name: para-fluoroisobutyryl fentanyl).

The placement of drugs listed in this subsection shall remain in effect until August 22, 2018, unless enacted into law in the Drug Control Act.

B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 6-ethyl-6-nor-lysergic acid diethylamide (other name: ETH-LAD), its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;
2. 6-allyl-6-nor-lysergic acid diethylamide (other name: AL-LAD), its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;
3. Synthetic opioids:
 - a. N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidiny]-N-phenylpropanamide (other name: beta-hydroxythiofentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation;

- b. N-(2-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidiny]-propanamide (other names: 2-fluorofentanyl, ortho-fluorofentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation; and

- c. N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny]-2-propanamide (other name: Acryl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation;

4. Cannabimimetic agents:

- a. 1-pentyl-N-(phenylmethyl)-1H-indole-3-carboxamide (other name: SDB-006), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; and

- b. Quinolin-8-yl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate (other name: FUB-PB-22), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; and

5. Benzodiazepine: flubromazepam, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until December 13, 2018, unless enacted into law in the Drug Control Act.

C. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 4-Bromo-2,5-dimethoxy-N-[(2-hydroxyphenyl)methyl]-benzeneethanamine (25B-NBOH), its optical, position, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. Methyl N-[1-(cyclohexylmethyl)-1H-indole-3-carbonyl]valinate (MMB-CHMICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide (Tetrahydrofuran fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until February 18, 2019, unless enacted into law in the Drug Control Act.

D. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. 5-methoxy-N-ethyl-N-isopropyltryptamine (5-MeO-EIPT), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. 4-hydroxy-N,N-diisopropyltryptamine (4-OH-DIPT), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and

salts of isomers is possible within the specific chemical designation.

4. (N-methyl aminopropyl)-2,3-dihydrobenzofuran (MAPDB), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

5. 3,4-tetramethylene-alpha-pyrrolidinovalerophenone (TH-PVP), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

6. 4-chloro-alpha-methylamino-valerophenone (4-chloropentedrone), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

7. Synthetic opioids:

a. 2-methoxy-N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-acetamide (Methoxyacetyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopropanecarboxamide (Cyclopropyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

8. Cannabimimetic agent: N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)indazole-3-carboxamide (5-fluoro-ADB-PINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until June 12, 2019, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R18-5254; Filed October 17, 2017, 4:35 p.m.

BOARD OF COUNSELING

Fast-Track Regulation

Titles of Regulations: 18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-105).

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-95).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-50, 18VAC115-60-115).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 13, 2017.

Effective Date: December 28, 2017.

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: Section 54.1-2400 of the Code of Virginia provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system.

Specific authority for regulation of the profession of counseling is found in § 54.1-3503 of the Code of Virginia, which mandates that the board regulate the practice of counseling, substance abuse treatment, and marriage and family therapy; § 54.1-3506 of the Code of Virginia, which requires individuals who engage in the practice of counseling or marriage and family therapy or in the independent practice of substance abuse treatment to hold a license; and § 54.1-103 of the Code of Virginia, which authorizes the board to promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

Purpose: The purpose of the amendments is to open a pathway for those individuals who hold another mental health license to be licensed in substance abuse treatment if they have specific coursework and training in the field. With the crisis of substance abuse being experienced in the Commonwealth, a regulatory action to encourage more treatment providers, who can offer services as a licensee and supervise the services of certified or registered providers, may increase access to care and ultimately offer greater protection for the safety, health, and welfare of all citizens.

The exemption from continuing education for newly licensed persons will not affect the public health and safety since their competency to practice has been determined by examination, education, and a supervised residency within the period immediately prior to licensure.

Rationale for Using Fast-Track Rulemaking Process: The amendments are permissive and less restrictive than current regulations. They will benefit first-time licensees and some applicants for licensure by endorsement for the substance abuse treatment professional license; therefore, they are not expected to be controversial.

Substance: The amendments (i) provide that a person who was licensed by examination is exempt from meeting

Regulations

continuing competency requirements for the first renewal following initial licensure; (ii) eliminate the requirement for official transcripts documenting completion of all the education requirements, so an applicant for licensure by endorsement will not need to obtain an additional master's degree in substance abuse; (iii) require an official transcript to indicate completion of a 60-hour master's degree in mental health and completion of 12 hours of didactic training in substance abuse competencies; and (iv) delete subsection B of 18VAC115-60-50 because the credentials registry referenced in that subsection no longer exists.

Issues: There are no disadvantages to the public. Less restrictive regulation for licensure by endorsement for the Licensed Substance Abuse Treatment Practitioners license may result in more licensed providers to both deliver and supervise substance abuse services.

There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Counseling (Board) proposes to 1) eliminate continuing education requirements for the first renewal of a license issued by examination; and 2) amend the licensure by endorsement requirements to make it possible for persons who hold other behavioral health licenses to obtain a substance abuse treatment professional license.

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

Estimated Economic Impact. The Board proposes to no longer require continuing education for the first renewal of a license issued by examination. This change applies to licensed professional counselors, marriage and family therapists, and substance abuse treatment practitioners. Currently, affected professionals are required to complete 20 hours of continuing education for each yearly license renewal cycle. The requirement could be satisfied many different ways including taking academic courses, continuing education classes, participating in workshops, seminars, conferences, publication of articles, books, etc. The proposed change will provide different types of benefits to different individuals. Some may benefit not having to pay fees for courses or classes; some may benefit from not having to spend the time to complete the activity required; some may benefit from not having to travel; some may benefit from a combination of all of these choices. The Board has determined that the exemption from continuing education for newly licensed persons will not affect the public health and safety since their competency to practice has been determined by examination, education and a supervised residency within the period immediately prior to licensure. Thus, this change is expected to provide a net benefit.

The Board also proposes to delete language requiring transcripts documenting certain education for licensure by endorsement of substance abuse treatment practitioners. According to the Department of Health Professions (DHP), as written, the current requirement amounts to requiring an additional master's degree in substance abuse as a condition of licensure by endorsement. That requirement negates the possibility of licensure by endorsement as it requires the applicants to satisfy the same education requirements as those who are initially licensed through examination. Thus, removal of this language will eliminate a barrier to practicing in Virginia if one has satisfied the educational requirements in another jurisdiction. The proposed regulation would benefit substance abuse treatment professionals licensed in another state who are seeking licensure in the Commonwealth. Additionally, making it easier to obtain licensure may encourage more substance abuse professionals to come to Virginia to practice. This change opens a new pathway for those licensed in another jurisdiction who have specific coursework and training in the field. Therefore, it should not introduce risks of unqualified applicants becoming licensed in Virginia.

Businesses and Entities Affected. The proposed regulation applies to licensed professional counselors, marriage and family therapists, and substance abuse treatment practitioners. DHP reports that in the first nine months of 2017, there were 443 licenses issued. Most of those were likely first time licensees and will qualify for an exemption on their first renewal.

Localities Particularly Affected. The proposed regulation will not affect any particular locality more than others.

Projected Impact on Employment. The proposed elimination of continuing education during the first renewal cycle will reduce the demand for such services. The proposed regulation may also encourage substance abuse treatment professionals licensed in other states to come to Virginia to practice and increase their supply. However, the magnitude of any such effect is not known.

Effects on the Use and Value of Private Property. No effect 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. The proposed regulation does not directly apply to small businesses. However, if an affected practitioner works for a small business it may be indirectly

beneficial to that small business as the proposed regulation eliminates continuing education requirement in the first renewal cycle and makes it easier to obtain a substance abuse treatment license by endorsement. The majority of affected professionals are estimated to operate their practices within a small business.

Alternative Method that Minimizes Adverse Impact. The proposed regulation does not introduce an adverse impact on small businesses.

Adverse Impacts:

Businesses. The proposed regulation does not have an adverse impact on businesses.

Localities. The proposed regulation will not adversely affect localities.

Other Entities. The proposed regulation will not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The Board of Counseling concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments (i) eliminate continuing education requirements for the first renewal of a license issued by examination for licensed professional counselors, marriage and family therapists, and substance abuse treatment practitioners; and (ii) amend the licensure by endorsement requirements to make it possible for persons who hold other behavioral health licenses to obtain a substance abuse treatment professional license.

18VAC115-20-105. Continued competency requirements for renewal of a license.

A. Licensed professional counselors shall be required to have completed a minimum of 20 hours of continuing competency for each annual licensure renewal. A minimum of two of these hours shall be in courses that emphasize the ethics, standards of practice, or laws governing behavioral science professions in Virginia.

B. The board may grant an extension for good cause of up to one year for the completion of continuing competency requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing competency requirement.

C. The board may grant an exemption for all or part of the continuing competency requirements due to circumstances beyond the control of the licensee such as temporary disability, mandatory military service, or officially declared disasters.

D. Those individuals dually licensed by this board will not be required to obtain continuing competency for each license. Dually licensed individuals will only be required to provide

the hours set out in subsection A of this section, subsection A of 18VAC115-50-95 in the Regulations Governing the Practice of Marriage and Family Therapy, or subsection A of 18VAC115-60-115 in the Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.

E. Up to two hours of the 20 hours required for annual renewal may be satisfied through delivery of counseling 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.

F. A professional counselor who was licensed by examination is exempt from meeting continuing competency requirements for the first renewal following initial licensure.

18VAC115-50-95. Continued competency requirements for renewal of a license.

A. Marriage and family therapists shall be required to have completed a minimum of 20 hours of continuing competency for each annual licensure renewal. A minimum of two of these hours shall be in courses that emphasize the ethics, standards of practice, or laws governing behavioral science professions in Virginia.

B. The board may grant an extension for good cause of up to one year for the completion of continuing competency requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing competency requirement.

C. The board may grant an exemption for all or part of the continuing competency requirements due to circumstances beyond the control of the licensee such as temporary disability, mandatory military service, or officially declared disasters.

D. Those individuals dually licensed by this board will not be required to obtain continuing competency for each license. Dually licensed individuals will only be required to provide the hours set out in subsection A of this section, subsection A of 18VAC115-20-105 in the Regulations Governing the Practice of Professional Counseling, or subsection A of 18VAC115-60-115 in the Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.

E. Up to two hours of the 20 hours required for annual renewal may be satisfied through delivery of counseling 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.

Regulations

F. A marriage and family therapist who was licensed by examination is exempt from meeting continuing competency requirements for the first renewal following initial licensure.

18VAC115-60-50. Prerequisites for licensure by endorsement.

~~A.~~ Every applicant for licensure by endorsement shall submit:

1. A completed application;
2. The application processing and initial licensure fee as prescribed in 18VAC115-60-20;
3. Verification of all mental health or health professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement, the applicant shall have no unresolved disciplinary action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;
4. Further documentation of one of the following:

a. A current substance abuse treatment license in good standing in another jurisdiction obtained by meeting requirements substantially equivalent to those set forth in this chapter; ~~or~~

b. A mental health license in good standing in a category acceptable to the board ~~which~~ that required completion of a master's degree in mental health to include 60 graduate semester hours in mental health as documented by an official transcript; and

(1) Board-recognized national certification in substance abuse treatment;

(2) If the master's degree was in substance abuse treatment, two years of post-licensure experience in providing substance abuse treatment;

(3) If the master's degree was not in substance abuse treatment, five years of post-licensure experience in substance abuse treatment plus 12 credit hours of didactic training in the substance abuse treatment competencies set forth in 18VAC115-60-70 C as documented by an official transcript; or

(4) Current substance abuse counselor certification in Virginia in good standing or a Virginia substance abuse treatment specialty licensure designation with two years of post-licensure or certification substance abuse treatment experience; or

c. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials and evidence of post-licensure clinical practice for 24 of the last 60 months immediately preceding his licensure application in Virginia. Clinical

practice shall mean the rendering of direct clinical substance abuse treatment services or clinical supervision of such services.

5. Verification of a passing score on a substance abuse licensure examination as established by the jurisdiction in which licensure was obtained. The examination is waived for an applicant who holds a current and unrestricted license as a professional counselor within the Commonwealth of Virginia;

~~6. Official transcripts documenting the applicant's completion of the education requirements prescribed in 18VAC115-60-60 and 18VAC115-60-70;~~

~~7.~~ 6. An affidavit of having read and understood the regulations and laws governing the practice of substance abuse treatment in Virginia; and

~~8.~~ 7. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB).

~~B. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board recognized entity.~~

18VAC115-60-115. Continued competency requirements for renewal of a license.

A. Licensed substance abuse treatment practitioners shall be required to have completed a minimum of 20 hours of continuing competency for each annual licensure renewal. A minimum of two of these hours shall be in courses that emphasize the ethics, standard of practice, or laws governing behavioral science professions in Virginia.

B. The board may grant an extension for good cause of up to one year for the completion of continuing competency requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing competency requirement.

C. The board may grant an exemption for all or part of the continuing competency requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

D. Those individuals dually licensed by this board will not be required to obtain continuing competency for each license. Dually licensed individuals will only be required to provide the hours set out in subsection A of this section, subsection A of 18VAC115-50-95 in the Regulations Governing the Practice of Marriage and Family Therapy, or subsection A of 18VAC115-20-105 in the Regulations Governing the Practice of Professional Counseling.

E. Up to two hours of the 20 hours required for annual renewal may be satisfied through delivery of counseling 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.

F. A substance abuse treatment practitioner who was licensed by examination is exempt from meeting continuing competency requirements for the first renewal following initial licensure.

VA.R. Doc. No. R18-5141; Filed October 16, 2017, 10:33 a.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

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 Department of State Police will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **19VAC30-20. Motor Carrier Safety Regulations (amending 19VAC30-20-80).**

Statutory Authority: § 52-8.4 of the Code of Virginia; 49 CFR Part 390.

Effective Date: December 14, 2017.

Agency Contact: Kirk Marlowe, Regulatory Coordinator, Bureau of Administrative and Support Services, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2936, or email kirk.marlowe@vsp.virginia.gov.

Summary:

The amendment reflects the effective date of the Federal Motor Carrier Safety Regulations promulgated by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration that are incorporated for compliance purposes.

19VAC30-20-80. Compliance.

Every person and commercial motor vehicle subject to the Motor Carrier Safety Regulations operating in interstate or intrastate commerce within or through the Commonwealth of

Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the United States Department of Transportation, Federal Motor Carrier Safety Administration, with amendments promulgated and in effect as of ~~January 1, 2010~~ November 1, 2017, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 366, 370 through 376, 379, 380 Subpart E, 382, 385, 386 Subpart G, 387, 390 through 397, and 399, which are incorporated in these regulations by reference, with certain exceptions.

VA.R. Doc. No. R18-5332; Filed October 25, 2017, 9:46 a.m.

TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: **21VAC5-110. Retail Franchising Act Rules (amending 21VAC5-110-75).**

Statutory Authority: §§ 12.1-13 and 13.1-572 of the Code of Virginia.

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

Public Comment Deadline: December 1, 2017.

Agency Contact: Jude C. Richnafsky, Senior Examiner, Division of Securities and Retail Franchising, State Corporation Commission, Tyler Building, 1300 East Main Street, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9051, FAX (804) 371-9911, or email jude.richnafsky@scc.virginia.gov.

Summary:

The proposed amendments (i) provide an exemption for franchisors who offer or sell a single unit franchise in which the minimum initial investment is in excess of \$5 million; (ii) require the filing of a notice of claim exemption on Form H, a uniform consent to service of process, and an entity resolution, if applicable; (iii) require the filing of a copy of the franchise disclosure document on a CD-ROM in pdf format or other approved electronic media; and (iv) establish an initial exemption filing fee of \$500, a renewal fee of \$250, and a material amendment fee of \$100.

Regulations

AT RICHMOND, OCTOBER 11, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2017-00050

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Retail Franchising Act

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-572 of the Virginia Retail Franchising Act ("Act"), § 13.1-501 et seq. of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

The rules and regulations issued by the Commission pursuant to the Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website: <http://www.scc.virginia.gov/case>.

Proposed Revision to Chapter 110. Franchise Exemption for Substantial Investment in a Franchise.

The proposed amendment to Chapter 110 provides for an exemption for franchisors that offer or sell a single unit franchise in which the actual minimum initial investment is in excess of \$5 million. This exemption requires that the franchisor provide all of the substantial purchaser information required by the registration process but allows the franchisor in these large transactions the flexibility to conduct the extensive negotiations required without the additional layer of the registration process.

The proposed rule requires a notice filing on Form H, a uniform consent to service of process, an entity resolution, a CD-Rom or other approved electronic media in PDF format of the franchisor's franchise disclosure document ("FDD"), and a \$500 filing fee. A material amendment of the FDD requires that the franchisor file a new Form H, a new FDD and a filing fee of \$100. The exemption must be renewed annually with a new Form H, the new FDD, and a filing fee of \$250.

The Division recommended to the Commission that the proposed revisions should be considered for adoption. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, by regular

mail or e-mail request and also can be found at the Division's website: <http://www.scc.virginia.gov/srf>. Any comments to the proposed rules must be received by December 1, 2017.

Accordingly, IT IS ORDERED THAT:

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

(2) On or before December 1, 2017, comments or request for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall reference Case No. SEC-2017-00050. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) The proposed revisions shall be posted on the Commission's website at <http://www.scc.virginia.gov/case> and on the Division's website at <http://www.scc.virginia.gov/srf>. Interested persons also may request a copy of the proposed revisions from the Division by telephone, mail, or e-mail.

AN ATTESTED COPY hereof, together with a copy of the proposed revisions, shall be provided to the Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

AN ATTESTED COPY hereof shall be sent to the Director of the Division of Securities and Retail Franchising who shall forthwith provide notice of this Order via U.S. mail or a copy of this Order may be sent by e-mail to any interested persons as he may designate.

21VAC5-110-75. Exemptions.

Any offer or sale of a franchise in a transaction that meets the requirements of this section is exempt from the registration requirement of § 13.1-560 of the Act.

1. Sale or transfer by existing franchisee. The sale or transfer of a franchise by a franchisee who is not an affiliate of the franchisor for the franchisee's own account is exempt if:

a. The franchisee's entire franchise is sold or transferred, and the sale or transfer is not effected by or through the franchisor.

b. The sale or transfer is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove the sale or transfer or requires payment of a reasonable transfer fee.

2. Renewal or extension of existing franchise. The offer or sale of a franchise involving a renewal or extension of an

existing franchise where there is no interruption in the operation of the franchised business, and there is no material change in the franchise relationship, is exempt. For purposes of this subdivision, an interruption in the franchised business solely for the purpose of renovating or relocating that business is not a material change in the franchise relationship or an interruption in the operation of the franchised business.

3. Offers and sales to existing franchisees. The offer or sale of an additional franchise to an existing franchisee of the franchisor for the franchisee's own account is exempt if the franchise being sold is substantially the same as the franchise that the franchisee has operated for at least two years at the time of the offer or sale of the franchise, provided the prior sale to the franchisee was pursuant to a franchise offering that was registered or exempt pursuant to the requirements of the Act.

4. Seasoned franchisor.

a. The offer or sale of a franchise by a franchisor is exempt if:

(1) The franchisor has a net equity, according to its most recently audited financial statements, of not less than ~~\$15,000,000~~ \$15 million on a consolidated basis, or ~~\$1,000,000~~ \$1 million on an unaudited basis and is at least 80% owned by a corporation or entity that has a net equity, on a consolidated basis, according to its most recently audited financial statements, of not less than ~~\$15,000,000~~ \$15 million, and the 80% owner guarantees the performance of the franchisor's obligations;

(2) The auditor's report accompanying the audited financial statements described in subdivision 4 a (1) of this section does not contain an explanatory paragraph expressing doubt as to the entity's ability to continue as a going concern; and

(3) The franchisor or any 80% owner of the franchisor or the franchisor's predecessor, or any combination thereof, has had at least 25 franchisees conducting substantially the same franchise business to be offered or sold for the entire five-year period immediately preceding the offer or sale;

b. The exemption set forth in this subdivision 4 ~~of this section~~ may be claimed only if the franchisor:

(1) Files a Form H Notice of Claim of Exemption and other material as set forth in subdivision 7 8 of this section no later than 10 business days before the offer or sale of any franchise; and

(2) Submits financial statements demonstrating compliance with the conditions set forth in subdivision 4 a (1) of this section.

c. An initial exemption filing and any renewal filing shall expire after a period of one year. The franchisor shall file for a renewal by making an exemption filing if it intends to offer or sell franchises for any additional period annually, at least 10 business days before the expiration of the previously filed Notice of Claim of Exemption.

5. Institutional franchisee.

a. The offer or sale of a franchise to a bank, savings bank, savings and loan association, trust company, insurance company, investment company, or other financial institution, or to a broker-dealer is exempt when the:

(1) Purchaser is acting for itself or in a fiduciary capacity; and

(2) Franchise is not being purchased for the purpose of resale to an individual not exempt under this regulation.

b. The exemption set forth in subdivision 5 a of this section may be claimed only if the franchisor files an initial filing Form H, Notice of Claim of Exemption, and other material as set forth in subdivision 7 8 a of this section, at least 10 business days before each offer or sale of each franchise.

6. Substantial investment.

a. The offer or sale of a franchise by a franchisor is exempt if:

(1) The offer or sale is of a single unit franchise in which the actual minimum initial investment is in excess of \$5 million;

(2) The prospective franchisee is represented by legal counsel in the transaction; and

(3) The franchisor reasonably believes immediately before making the offer or sale that the prospective franchisee, either alone or with the prospective franchisee's representative, has sufficient knowledge and experience in the type of business operated under the franchise such that the prospective franchisee is capable of evaluating the merits and risks of the prospective franchise investment.

b. The exemption set forth in subdivision 6 a of this section may be claimed only if the franchisor:

(1) Files a Form H, Notice of Claim of Exemption, and other materials as set forth in subdivision 8 of this section no later than 10 business days before the offer or sale of any franchise; and

(2) Obtains from the prospective franchisee a signed certification verifying the grounds for the exemption.

Regulations

c. The exemption set forth in subdivision 6 a of this section applies only to the registration provisions, and not the disclosure provisions, of the Act.

d. An initial exemption filing and any renewal filing shall expire after a period of one year. The franchisor shall file for a renewal by making an exemption filing if it intends to offer or sell franchises for any additional period annually at least 10 business days before the expiration of the previously filed Form H, Notice of Claim of Exemption.

~~6.~~ 7. Disclosure requirements.

~~a.~~ a. If a franchisor relies upon any of the exemptions set forth in subdivision 3, 4 ~~or~~ 5, or 6 of this section, the franchisor shall provide a disclosure document complying with 21VAC5-110-55 and 21VAC5-110-95 together with all proposed agreements relating to the sale of the franchise to a prospective franchisee 14 calendar days before the signing of the agreement or the payment of any consideration.

~~b. Franchisors filing a claim of exemption under subdivisions 4 or 5 of this section shall include a self-addressed stamped envelope by which the commission may return to the franchisor a confirmation of receipt of the filing and the exemption file number assigned. Correspondence shall refer to the assigned file number in all subsequent related filings and correspondence with the commission.~~

~~7.~~ 8. Filing requirements for exemptions set forth in subdivisions 4 ~~and~~ 5, and 6 of this section.

a. Initial exemption filing.

(1) The initial exemption period shall expire after a period of one year.

(2) ~~Franchisor~~ The franchisor files an application for exemption of a franchise by filing with the commission no later than 10 business days before the offer or sale of any franchise, the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) Uniform Consent to Service of Process, Form C;

(c) If the applicant is a corporation or partnership, an authorizing resolution is required if the application is verified by a person other than applicant's officer or general partner;

(d) Franchise Disclosure Document on a CD-ROM in PDF format or on other electronic media approved by the Division of Securities and Retail Franchising;

(e) ~~Files an~~ An undertaking by which it agrees to supply any additional information the commission may reasonably request; and

(f) Application fee of \$500 (payable to the Treasurer of Virginia).

b. Amendment to exemption filing.

(1) Upon the occurrence of a material change, the franchisor shall amend the effective exemption filed at the commission.

(2) An application to amend a franchise exemption is made by submitting the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) One clean copy of the amended Franchise Disclosure Document on a CD-ROM in PDF format or on other electronic media approved by the Division of Securities and Retail Franchising; and

(c) Application fee of \$100 (payable to the Treasurer of Virginia).

c. Renewal exemption filing.

(1) A franchise exemption expires at midnight on the annual exemption effective date. An application to renew the franchise exemption shall be filed 10 days prior to the expiration date in order to prevent a lapse of exemption under the Act.

(2) An application for renewal of a franchise exemption is made by submitting the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) One clean copy of the Franchise Disclosure Document on a CD-ROM in PDF format or on other electronic media approved by the Division of Securities and Retail Franchising; and

(c) Application fee of \$250 (payable to the Treasurer of Virginia).

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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (21VAC5-110)

[FORM A, Uniform Franchise Registration Application \(rev. 7/08\):](#)

[FORM B, Franchisor's Costs and Sources of Funds \(rev. 7/08\):](#)

[FORM C, Uniform Consent to Service of Process \(rev. 7/08\)](#):-

[FORM E, Affidavit of Compliance -- Franchise Amendment/Renewal \(rev. 7/08\)](#):-

[FORM F, Guarantee of Performance \(rev. 3/13\)](#):-

[FORM G, Franchisor's Surety Bond \(rev. 7/99\)](#):-

~~[FORM H, Notice of Claim of Exemption \(rev. 7/08\)](#)~~:-

[FORM H, Notice of Claim of Exemption \(undated, filed 10/2017\)](#)

[FORM K, Escrow Agreement \(eff. 7/07\)](#):-

VA.R. Doc. No. R18-5246; Filed October 12, 2017, 2:17 p.m.



TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

Titles of Regulations: 22VAC40-72. Standards for Licensed Assisted Living Facilities (repealing 22VAC40-72-10 through 22VAC40-72-1160).

22VAC40-73. Standards for Licensed Assisted Living Facilities (adding 22VAC40-73-10 through 22VAC40-73-1180).

Statutory Authority: §§ 63.2-217, 63.2-1732, 63.2-1802, 63.2-1805, and 63.2-1808 of the Code of Virginia.

Effective Date: February 1, 2018.

Agency Contact: Judith McGreal, Licensing Program Consultant, Division of Licensing Programs, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 663-5535, FAX (804) 819-7093, TTY (800) 828-1120, or email judith.mcgregal@dss.virginia.gov.

Summary:

This regulatory action repeals the existing regulation, 22VAC40-72, and establishes a comprehensive new regulation, 22VAC40-73, for licensed assisted living facilities. The comprehensive new regulation is intended to improve clarity, incorporate improvements in the language and reflect current federal and state law, relieve intrusive and burdensome requirements that are not necessary, provide greater protection for residents in care, and reflect current standards of care.

Major components of the new regulation include requirements regarding (i) general provisions; (ii) administration and administrative services and personnel; (iii) staffing and supervision; (iv) admission, retention, and discharge of residents; (v) resident care and related

services; (vi) resident accommodations and related provisions; (vii) buildings and grounds; (viii) emergency preparedness; and (ix) additional requirements for facilities that care for adults with serious cognitive impairments who cannot recognize danger or protect their own safety and welfare.

New substantive provisions include:

22VAC40-73-90 – Adds licensee to persons who may not act as attorney-in-fact or trustee unless a resident has no other preferred designee and so requests.

22VAC40-73-100 – Provides for the development and implementation of an enhanced infection control program that addresses the surveillance, prevention, and control of disease and infection.

22VAC40-73-160 – Adds to administrator training requirements that administrators who supervise medication aides, but are not registered medication aides themselves, must have annual training in medication administration.

22VAC40-73-170 - Adds that an unlicensed shared administrator for smaller residential living care facilities must be at each facility for six hours during the day shift of the 10 required hours a week.

22VAC40-73-210 – Increases the annual training hours for direct care staff.

22VAC40-73-220 – Adds requirements regarding private duty personnel.

22VAC40-73-260 – Adds a requirement that at least one person with first aid certification and at least one person with cardiopulmonary resuscitation certification must be in each building, rather than on the premises.

22VAC40-73-280 – Changes an exception (allowing staff to sleep at night under certain circumstances) to one of the staffing requirements to limit its application to facilities licensed for residential living care only.

22VAC40-73-310 – Adds to admission and retention requirements, additional specifications regarding an agreement between a facility and hospice program when hospice care is provided to a resident.

22VAC40-73-325 – Adds a requirement for a fall risk rating for residents who meet the criteria for assisted living care.

22VAC40-73-380 – Adds that mental health, behavioral, and substance abuse issues are included in personal and social information for all residents, not just those meeting criteria for assisted living care.

22VAC40-73-450 – Adds a requirement that staff who complete individualized service plans (ISPs) must complete

Regulations

uniform assessment instrument training as a prerequisite to completing ISP training.

22VAC40-73-490 – Reduces the number of times annually required for health care oversight when a facility employs a full-time licensed health care professional; adds a requirement that all residents be included annually in the health care oversight; adds to the oversight the evaluation of the ability of residents who self-administer medications to continue to safely do so; and adds additional requirements for oversight of restrained residents.

22VAC40-73-540 – Specifies that visiting hours may not be restricted unless a resident so chooses.

22VAC40-73-590 – Adds a requirement that snacks be available at all times, rather than bedtime and between meals.

22VAC40-73-620 – Reduces the number of times annually for oversight of special diets.

22VAC40-73-680 – Adds an allowance for a master list of staff who administer medications to be used in lieu of documentation on individual medication administration records.

22VAC40-73-710 – Adds a prohibition of additional types of restraints and adds review and revision of individualized service plan following application of emergency restraints.

22VAC40-73-750 – Adds a provision that a resident may determine not to have certain furnishings that are otherwise required in his bedroom.

22VAC40-73-880 – Adds to the standard that in a bedroom with a thermostat where only one resident resides, the resident may choose a temperature other than what is otherwise required.

22VAC40-73-900 – Adds that when there is a new facility licensee, there can be no more than two residents residing in a bedroom.

22VAC40-73-930 – Adds to the provision for signaling/call systems that for a resident with an inability to use the signaling device, this must be included on his individualized service plan with frequency of rounds indicated, with a minimum of rounds every two hours when the resident has gone to bed at night, and with an exception permitted under specific circumstances.

22VAC40-73-950 – Specifies that review of emergency plan with staff, residents, and volunteers is semi-annual, rather than quarterly.

22VAC40-73-980 – Adds a requirement for first aid kit in each building, rather than at the facility; eliminates activated charcoal; and adds requirement that 48 hours of

emergency food and water supply be on-site and can be rotating stock.

22VAC40-73-990 – Specifies that participation in resident emergency practice exercise every six months is required of staff currently on duty, rather than all staff, and adds review of resident emergency procedures every six months with all staff.

22VAC40-73-1010 – Removes the exception (for facilities licensed for 10 or fewer with no more than three with serious cognitive impairment) that applied to all requirements for mixed population.

22VAC40-73-1030 – Increases the training required in cognitive impairment for direct care staff, and except for administrator, other staff.

22VAC40-73-1120 – Increases the number of hours per week of activities for residents in a safe, secure environment.

22VAC40-73-1130 – Adds a requirement that when there are 20 or fewer residents present in a special care unit, there must be at least two direct care staff members awake and on duty in the unit, and for every additional 10 residents, or portion thereof, there must be at least one more direct care staff member awake and on duty in the unit, rather than two direct care staff in each unit.

22VAC40-73-1140 - Increases the number of hours of training in cognitive impairment for the administrator and changes the time period in which the training must be received for both the administrator and for direct care staff who work in a special care unit, also increases training in cognitive impairment for others who have contact with residents in a special care unit.

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.

CHAPTER 73

STANDARDS FOR LICENSED ASSISTED LIVING FACILITIES

Part I

General Provisions

22VAC40-73-10. Definitions.

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

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

"Administer medication" means to open a container of medicine or to remove the ordered dosage and to give it to the resident for whom it is ordered.

"Administrator" means the licensee or a person designated by the licensee who is responsible for the general administration and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Admission" means the date a person actually becomes a resident of the assisted living facility and is physically present at the facility.

"Advance directive" means, as defined in § 54.1-2982 of the Code of Virginia, (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia.

"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by 13VAC5-63, the Virginia Uniform Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

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

"Assisted living facility" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm, or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21 years, or 22 years if enrolled in an educational program for the handicapped pursuant to

§ 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments, or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm, or disabled adults. Maintenance or care means the protection, general supervision, and oversight of the physical and mental well-being of an aged, infirm, or disabled individual.

"Attorney-in-fact" means strictly, one who is designated to transact business for another: a legal agent.

"Behavioral health authority" means the organization, appointed by and accountable to the governing body of the city or county that established it, that provides mental health, developmental, and substance abuse services through its own staff or through contracts with other organizations and providers.

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

"Cardiopulmonary resuscitation" or "CPR" means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed, has no pulse, and has stopped breathing; and attempts to restore circulation of the blood and prevent death or brain damage due to lack of oxygen.

"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

"Chapter" or "this chapter" means these regulations, that is, Standards for Licensed Assisted Living Facilities, 22VAC40-73, unless noted otherwise.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms or symptoms from mental illness or intellectual disability and that prohibits [~~an~~ individual the resident] from reaching his highest level of functioning.

Regulations

"Commissioner" means the commissioner of the department, his designee, or authorized representative.

"Community services board" or "CSB" means a public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, developmental, and substance abuse programs and services within the political subdivision or political subdivisions participating on the board.

"Companion services" means assistance provided to residents in such areas as transportation, meal preparation, shopping, light housekeeping, companionship, and household management.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.

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

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

"Days" means calendar days unless noted otherwise.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as an authorized agent of the Commissioner of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary ingredient, [i.e. (e.g.), vitamins, minerals, amino acid, herbs or other botanicals, dietary

substances (such as enzymes), and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients). Dietary supplements may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other staff of a facility who assist residents in the performance of personal care or daily living activities. [Examples are likely to include nursing staff, activity staff, geriatric or personal care assistants, medication aides, and mental health workers but are not likely to include waiters, chauffeurs, cooks, and dedicated housekeeping, maintenance, and laundry personnel.]

"Discharge" means the movement of a resident out of the assisted living facility.

["Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.]

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by denying entry into the facility until the requirements for admission have been met.

"Emergency restraint" means a [situation that may require the use of a restraint where restraint used when] the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"General supervision and oversight" means assuming responsibility for the well-being of residents, either directly or through contracted agents.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable

organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public guardian, it may also serve as a guardian for other individuals.

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

"Health care provider" means a person, corporation, facility, or institution licensed by this Commonwealth to provide health care or professional services, including [~~but not limited to~~] a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization.

"Household member" means any person domiciled in an assisted living facility other than residents or staff.

"Imminent physical threat or danger" means clear and present risk of sustaining or inflicting serious or life threatening injuries.

"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living for himself without requiring the assistance of another person and is assessed as capable of taking medications without the assistance of another person. If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity, this policy shall not be considered in determining independent status.

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

"Individualized service plan" or "ISP" means the written description of actions to be taken by the licensee, including coordination with other services providers, to meet the assessed needs of the resident.

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

"Intellectual disability" means disability, originating before the age of 18 years, characterized concurrently by (i)

significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

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

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney ("durable power of attorney" defines the type of legal instrument used to name the attorney-in-fact and does not change the meaning of attorney-in-fact), trustee, or other person expressly named by a court of competent jurisdiction or the resident as his agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the function or functions for which he has legal authority to act. A resident is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect his life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the resident in a properly executed and signed document. A resident may have different legal representatives for different functions. For any given standard, the term "legal representative" applies solely to the legal representative with the authority to act in regard to the function or functions relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a nurse practitioner, registered nurse, licensed practical nurse (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist. Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

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

Regulations

"Manager" means a designated person who serves as a manager pursuant to 22VAC40-73-170 and 22VAC40-73-180.

"Mandated reporter" means persons specified in § 63.2-1606 of the Code of Virginia who are required to report matters giving reason to suspect abuse, neglect, or exploitation of an adult.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument. An individual who can participate in any way with performance of the activity is not considered to be totally dependent.

["Medical/orthopedic restraint" means the use of a medical or orthopedic support device that has the effect of restricting the resident's freedom of movement or access to his body for the purpose of improving the resident's stability, physical functioning, or mobility.]

"Medication aide" means a staff person who has current registration with the Virginia Board of Nursing to administer drugs that would otherwise be self-administered to residents in an assisted living facility in accordance with the Regulations Governing the Registration of Medication Aides (18VAC90-60). This definition also includes a staff person who is an applicant for registration as a medication aide in accordance with subdivision 2 of 22VAC40-73-670.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.

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

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

"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Nonemergency restraint" means [~~circumstances that may require the use of~~] a restraint [used] for the purpose of providing support to a physically weakened resident.

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

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

"Physician" means an individual licensed to practice medicine or osteopathic medicine in any of the 50 states or the District of Columbia.

["Premises" means a building or buildings, under one license, together with the land or grounds on which located.]

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.

"Private duty personnel" means an individual hired, either directly or through a licensed home care organization, by a resident, family member, legal representative, or similar entity to provide one-on-one services to the resident, such as a private duty nurse, home attendant, personal aide, or companion. Private duty personnel are not hired by the facility, either directly or through a contract.

"Private pay" means that a resident of an assisted living facility is not eligible for [~~benefits under the Auxiliary Grants Program~~ an auxiliary grant].

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

"Public pay" means that a resident of an assisted living facility is eligible for [~~benefits under the Auxiliary Grants Program~~ an auxiliary grant].

"Qualified" means having appropriate training and experience commensurate with assigned responsibilities, or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training, or experience. There are specific definitions for "qualified assessor" and "qualified mental health professional" in this section.

"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an

employee of a public human services agency trained in the completion of the uniform assessment instrument (UAI). For private pay individuals, a qualified assessor is an employee of the assisted living facility trained in the completion of the UAI or an independent private physician or a qualified assessor for public pay individuals.

"Qualified mental health professional" means a behavioral health professional who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including (i) a physician licensed in Virginia; (ii) a psychologist: an individual with a master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience; (iii) a social worker: an individual with at least a master's degree in human services or related field (e.g., social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) from college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (iv) a registered psychiatric rehabilitation provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPRS); (v) a clinical nurse specialist or psychiatric nurse practitioner licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vi) any other licensed mental health professional; or (vii) any other person deemed by the Department of Behavioral Health and Developmental Services as having qualifications equivalent to those described in this definition. Any unlicensed person who meets the requirements contained in this definition shall either be under the supervision of a licensed mental health professional or employed by an agency or organization licensed by the Department of Behavioral Health and Developmental Services.

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

"Resident" means any adult residing in an assisted living facility for the purpose of receiving maintenance or care. [The definition of resident also includes adults residing in an assisted living facility who have independent living status. Adults present in an assisted living facility for part of the day for the purpose of receiving day care services are also considered residents.]

"Residential living care" means a level of service provided by an assisted living facility for adults who may have

physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument, although they may not require minimal assistance with the activities of daily living. This definition includes the services provided by the facility to individuals who are assessed as capable of maintaining themselves in an independent living status.

"Respite care" means services provided in an assisted living facility for the maintenance or care of aged, infirm, or disabled adults for a temporary period of time or temporary periods of time that are regular or intermittent. Facilities offering this type of care are subject to this chapter.

"Restorative care" means activities designed to assist the resident in reaching or maintaining his level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

"Restraint" means either "physical restraint" or "chemical restraint" as these terms are defined in this section.

"Safe, secure environment" means a self-contained special care unit for [~~individuals~~ residents] with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia.

"Sanitizing" means treating in such a way to remove bacteria and viruses through using a disinfectant solution (e.g., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat).

"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring, or long-term nature that affects areas such as thought processes, problem-solving, judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to acute or episodic conditions, nor conditions arising from treatable metabolic or chemical imbalances or caused by reactions to medication or toxic substances. For the purposes of this chapter, serious cognitive impairment means that an individual cannot recognize danger or protect his own safety and welfare. [~~Serious cognitive impairment involves an assessment by a clinical psychologist licensed to practice in~~

Regulations

~~the Commonwealth or by a physician as specified in 22VAC40-73-1090.]~~

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

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

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Staff" or "staff person" means personnel working at a facility who are compensated or have a financial interest in the facility, regardless of role, service, age, function, or duration of employment at the facility. "Staff" or "staff person" also includes those individuals hired through a contract [with the facility] to provide services for the facility.

"Substance abuse" means the use [of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia)], without [a] compelling medical reason, [of or] alcohol [or other legal or illegal drugs] that [(i) results in psychological or physiological [~~dependency~~ dependence] or danger to self or others as a function of continued [and compulsive] use [~~in such a manner as to induce~~ or (ii) results in] mental, emotional, or physical impairment [~~and cause~~ that causes] socially dysfunctional or socially disordering behavior [; and (iii) because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care. All determinations of whether a compelling medical reason exists shall be made by a physician or other qualified medical personnel] .

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

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

"Trustee" means one who stands in a fiduciary or confidential relation to another; especially, one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.

"Uniform assessment instrument" or "UAI" means the department designated assessment form. There is an alternate version of the form that may be used for private pay residents. Social and financial information that is not relevant because of the resident's payment status is not included on the private pay version of the form.

"Volunteer" means a person who works at an assisted living facility who is not compensated. [~~This does not include persons who, either as an individual or as part of an organization, present at or facilitate group activities. An exception to this definition is a person who, either as an individual or as part of an organization, is only present at or facilitates group activities on an occasional basis or for special events.]~~

22VAC40-73-20. Requirements of law and applicability.

A. Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2 of the Code of Virginia include requirements of law relating to licensure, including licensure of assisted living facilities.

B. This chapter applies to assisted living facilities as defined in § 63.2-100 of the Code of Virginia and in 22VAC40-73-10.

1. Each assisted living facility shall comply with Parts I (22VAC40-73-10 et seq.) through IX (22VAC40-73-950 et seq.) of this chapter.

2. An assisted living facility that cares for adults with serious cognitive impairments shall also comply with Part X (22VAC40-73-1000 et seq.) of this chapter.

22VAC40-73-30. Program of care.

There shall be a program of care that:

1. Meets the [~~resident population's~~ resident's] physical, mental, emotional, [~~and~~] psychosocial [, and spiritual] needs;

2. [Promotes the resident's highest level of functioning;

3.] Provides protection, guidance, and supervision;

[~~3. 4.] Promotes a sense of security, self-worth, and independence; and~~

[~~4. 5.] Promotes the resident's involvement with appropriate [programs and] community resources [based on the resident's needs and interests] .~~

Part II
Administration and Administrative Services

22VAC40-73-40. Licensee.

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

B. The licensee shall:

1. Give evidence of financial responsibility and solvency.
2. Be of good character and reputation in accordance with § 63.2-1702 of the Code of Virginia. Character and reputation investigation includes [,but is not limited to,] background checks as required by § 63.2-1721 of the Code of Virginia.
3. Meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22VAC40-90).
4. Act in accordance with General Procedures and Information for Licensure (22VAC40-80).
5. Protect the physical and mental well-being of residents.
6. Exercise general supervision over the affairs of the licensed facility and establish policies and procedures concerning its operation in conformance with applicable law, this chapter, and the welfare of the residents.
7. Ensure that he [~~or his relatives~~], his agents [~~or agents' relatives~~], the facility administrator [~~or administrator's relatives~~], or facility staff [~~or the relatives of any of these persons~~] shall not act as, seek to become, or become the conservator or guardian of any resident unless specifically so appointed by a court of competent jurisdiction pursuant to Article 1 (§ 64.2-2000 et seq.) of Chapter 20 of Title 64.2 of the Code of Virginia.
8. Ensure that the current license is posted in the facility in a place conspicuous to the residents and the public.
9. Ensure that the facility keeps and maintains at the facility records, reports, plans, schedules, and other information as required by this chapter for licensed assisted living facilities.
10. Ensure that any document required by this chapter to be posted shall be in at least 12-point type or equivalent size [, unless otherwise specified].
11. Make certain that when it is time to discard records, they are disposed of in a manner that ensures confidentiality.
12. Ensure that at all times the department's representative is afforded reasonable opportunity to inspect all of the facility's buildings, books, and records and to interview

agents, employees, residents, and any person under its custody, control, direction, or supervision [as specified in § 63.2-1706 of the Code of Virginia].

C. Upon initial application for an assisted living facility license, any person applying to operate such a facility who has not previously owned or managed or does not currently own or manage a licensed assisted living facility shall be required to undergo training by the commissioner. [~~Such training shall be required of those~~ Training for such] owners and currently employed administrators [~~of an assisted living facility shall be required~~] at the time of initial application for [~~a license~~ licensure. In all cases, such training shall be completed prior to the granting of any initial license].

1. The commissioner may also approve training programs provided by other entities and allow owners or administrators to attend such approved training programs in lieu of training by the commissioner.

2. The commissioner may at his discretion also approve for licensure applicants who meet requisite experience criteria as established by the board.

3. The training programs shall focus on the health and safety regulations and resident rights as they pertain to assisted living facilities and shall be completed by the owner or administrator prior to the granting of an initial license.

4. The commissioner may, at his discretion, issue a license conditioned upon the completion by the owner or administrator of the required training.

D. The licensee shall notify in writing the regional licensing office of intent to sell or voluntarily close the facility [~~no less than 60 days prior to the sale date or closure~~]. The following shall apply:

1. No less than 60 days prior to the planned sale date or closure, the licensee shall notify the [regional licensing office,] residents, and as relevant, legal representatives, case managers, [assessors,] eligibility workers, and designated contact persons of the intended sale or closure of the facility and the date for such.

[~~2. Exception:~~] If plans are made at such time that 60-day notice is not possible, the licensee shall notify the regional licensing office, the residents, legal representatives, case managers, [assessors,] eligibility workers, and designated contact persons as soon as the intent to sell or close the facility is known.

[~~3. 2.~~] If the facility is to be sold, at the time of notification specified in subdivision 1 of this subsection, the licensee shall explain to each resident, his legal representative, case manager, [assessor,] and at least one designated contact person that the resident can choose whether to stay or relocate, unless the new licensee specifies relocation. If a resident chooses to stay, there

Regulations

must be a new resident agreement between the resident and the new licensee that meets the specifications of 22VAC40-73-390.

[4. 3.] The licensee shall provide updates regarding the closure or sale of the facility to the regional licensing office, as requested.

22VAC40-73-50. Disclosure.

A. The assisted living facility shall prepare and provide a statement to the prospective resident and his legal representative, if any, that discloses information about the facility. The statement shall be on a form developed by the department and shall:

1. Disclose information fully and accurately in plain language;
2. Be provided in advance of admission and prior to signing an admission agreement or contract;
3. Be provided upon request; and
4. Disclose the following information, which shall be kept current:
 - a. Name of the facility;
 - b. Name of the licensee;
 - c. Ownership structure of the facility (e.g., individual, partnership, corporation, limited liability company, unincorporated association, or public agency);
 - d. Description of all accommodations, services, and care that the facility offers;
 - e. Fees charged for accommodations, services, and care, including clear information about what is included in the base fee and all fees for additional accommodations, services, and care;
 - f. Criteria for admission to the facility and restrictions on admission;
 - g. Criteria for transfer to a different living area within the same facility, including transfer to another level or type of care within the same facility or complex;
 - h. Criteria for discharge;
 - i. Categories, frequency, and number of activities provided for residents;
 - j. General number, position types, and qualifications of staff on each shift;
 - k. Notation that additional information about the facility that is included in the resident agreement is available upon request; and
 - l. The department's website address, with a note that additional information about the facility may be obtained from the website [~~including type of license, capacity,~~

~~special services, and most recent years' compliance history].~~

B. Written acknowledgment of the receipt of the disclosure by the resident or his legal representative shall be retained in the resident's record.

C. The disclosure statement shall also be available to the general public, upon request.

22VAC40-73-60. Electronic records and signatures.

A. Use of electronic records or signatures shall comply with the provisions of the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code of Virginia).

B. In addition to the requirements of the Uniform Electronic Transactions Act, the use of electronic signatures shall be deemed to constitute a signature and have the same effect as a written signature on a document as long as the licensee:

1. Develops, implements, and maintains specific policies and procedures for the use of electronic signatures;
2. Ensures that each electronic signature identifies the individual signing the document by name and title;
3. Ensures that the document cannot be altered after the signature has been affixed;
4. Ensures that access to the code or key sequence is limited;
5. Ensures that all users have signed statements that they alone have access to and use the key or computer password for their signature and will not share their key or password with others; and
6. Ensures that strong and substantial evidence exists that would make it difficult for the signer or the receiving party to claim the electronic representation is not valid.

C. A back-up and security system shall be utilized for all electronic documents.

22VAC40-73-70. Incident reports.

A. Each facility shall report to the regional licensing office within 24 hours any major incident that has negatively affected or that threatens the life, health, safety, or welfare of any resident.

B. The report required in subsection A of this section shall include (i) the name of the facility, (ii) the name or names of the resident or residents involved in the incident, (iii) the name of the person making the report, (iv) the date of the incident, (v) a description of the incident, and (vi) the actions taken in response to the incident.

C. The facility shall submit a written report of each incident specified in subsection A of this section to the regional licensing office within seven days from the date of the

incident. The report shall be signed and dated by the administrator and include the following information:

1. Name and address of the facility;
2. Name of the resident or residents involved in the incident;
3. Date and time of the incident;
4. Description of the incident, the circumstances under which it happened, and [] when applicable, extent of injury or damage;
5. Location of the incident;
6. Actions taken in response to the incident;
7. Actions to prevent recurrence of the incident, if applicable;
8. Name of staff person in charge at the time of the incident;
9. Names, telephone numbers, and addresses of witnesses to the incident, if any; and
10. Name, title, and signature of the person making the report, if other than the administrator, and date of the completion of the report.

D. The facility shall submit to the regional licensing office amendments to the written report when circumstances require, such as when substantial additional actions are taken, when significant new information becomes available, or there is resolution of the incident after submission of the report.

E. A copy of the written report of each incident shall be maintained by the facility for at least two years [from the date of the incident].

F. If applicable, the facility shall ensure that there is documentation in the resident's record as required by 22VAC40-73-470 F.

22VAC40-73-80. Management and control of resident funds.

Pursuant to § 63.2-1808 A 3 of the Code of Virginia, the resident shall be free to manage his personal finances and funds regardless of source, unless a committee, conservator, or guardian has been appointed for a resident. However [] the resident may request that the facility assist with the management of personal funds, and the facility may assist the resident in such management under the following conditions:

1. There shall be documentation of this request and delegation, signed and dated by the resident and the administrator. The documentation shall be maintained in the resident's record.
2. [~~Residents'~~ All resident funds] shall be held separately from any other moneys of the facility. [~~Residents'~~ No resident] funds shall [~~not~~] be borrowed, used as assets of

the facility, or used for purposes of personal interest by the licensee, operator, administrator, or facility staff.

3. The resident shall be given a choice of whether he wishes his funds to be maintained in an individual resident account [~~, which may be interest bearing,~~] or in a single account for the accumulated funds of multiple residents [~~, which shall not be interest bearing~~]. [Either type of account may be interest-bearing. If the account is interest-bearing, the resident must be provided his appropriate portion of the interest.]

4. [~~For residents who are not recipients of an auxiliary grant, the~~ The] facility may charge a reasonable amount for administration of the account [~~, except for residents who are recipients of an auxiliary grant as account administration is covered by the grant~~].

5. The facility shall maintain a written accounting of money received and disbursed by the facility that shows a current balance. The written accounting of the funds shall be made available to the resident at least quarterly and upon request, and a copy shall also be placed in the resident's record.

6. The resident's funds shall be made available to the resident upon request.

22VAC40-73-90. Safeguarding residents' funds.

No [licensee,] facility administrator [] or staff person shall act as either attorney-in-fact or trustee unless the resident has no other preferred designee and the resident himself expressly requests such service by or through facility personnel. When the [licensee,] facility administrator [] or staff person acts as attorney-in-fact or trustee, the following applies:

1. There shall be documentation that the resident has requested such service and from whom, signed and dated by the resident, [the licensee,] the facility administrator, and if a staff person is to provide the service, the staff person. The documentation shall be maintained in the resident's record.

2. The [licensee,] facility administrator [] or staff person so named attorney-in-fact or trustee shall be accountable at all times in the proper discharge of such fiduciary responsibility as provided under Virginia law.

3. The facility shall maintain a written accounting of money received and disbursed by the [licensee,] facility administrator [] or staff person that shows a current balance. The written accounting of the funds shall be made available to the resident at least quarterly and upon request, and a copy shall also be placed in the resident's record.

4. The resident's funds shall be made available to the resident upon request.

Regulations

5. Upon termination of the power of attorney or trust for any reason, the [licensee,] facility administrator [,] or staff person so named attorney-in-fact or trustee shall return all funds and assets, with full accounting, to the resident or to another responsible party expressly designated by the resident.

22VAC40-73-100. Infection control program.

A. The assisted living facility shall develop, in writing, and implement an infection control program addressing the surveillance, prevention, and control of disease and infection that is consistent with the federal Centers for Disease Control and Prevention (CDC) guidelines and the federal Occupational Safety and Health Administration (OSHA) bloodborne pathogens regulations.

1. A licensed health care professional, practicing within the scope of his profession and with training in infection prevention, shall participate in the development of infection prevention policies and procedures and shall [assure ensure] compliance with applicable guidelines and regulations.

2. The administrator shall ensure at least an annual review of infection prevention policies and procedures for any necessary updates. A licensed health care professional, practicing within the scope of his profession and with training in infection prevention, shall be included in the review to [assure ensure] compliance with applicable guidelines and regulations. Documentation of the review shall be maintained at the facility.

3. A staff person who has been trained in basic infection prevention shall participate in the annual review and serve as point of contact for the program. This person shall be responsible for on-going monitoring of the implementation of the infection control program.

B. The infection control program shall be applicable to all staff and volunteers and encompass all services as well as the entire [physical plant and grounds premises].

C. The infection control program shall include:

1. Procedures for the implementation of infection prevention measures by staff and volunteers to include:

- a. Use of standard precautions;
- b. Use of personal protective equipment; and
- c. Means to [assure ensure] hand hygiene [;]

2. Procedures for other infection prevention measures related to job duties [to] include [,but not be limited to]:

- a. Determination of whether prospective or returning residents have acute infectious disease and use of appropriate measures to prevent disease transmission;

b. Use of safe injection practices and other procedures where the potential for exposure to blood or body fluids exists;

c. Blood glucose monitoring practices that are consistent with CDC [guidelines recommendations]. When [providing] assisted blood glucose monitoring [is required], [~~only single use auto retractable disposable lancets may be used~~ fingerstick devices shall not be used for more than one person];

d. The handling, storing, processing, and transporting of linens, supplies, and equipment in a manner that prevents the spread of infection;

e. The sanitation of rooms, including cleaning and disinfecting procedures, agents, and schedules;

f. The sanitation of equipment, including medical equipment that may be used on more than one resident (e.g., blood glucose meters and blood pressure cuffs, including cleaning and disinfecting procedures, agents, and schedules);

g. The handling, storing, processing, and transporting of medical waste in accordance with applicable regulations; and

h. Maintenance of an effective pest control program [;]

3. Readily accessible handwashing equipment and necessary personal protective equipment for staff and volunteers (e.g., soap, alcohol-based hand rubs, disposable towels or hot air dryers, and gloves) [;]

4. Product specific instructions for use of cleaning and disinfecting agents (e.g., dilution, contact time, and management of accidental exposures) [; and]

5. Initial training as specified in 22VAC40-73-120 C 4 and annual retraining of staff and volunteers in infection prevention methods, as applicable to job responsibilities [and as required by 22VAC40-73-210 F].

D. The facility shall have a staff health program that includes:

1. Provision of information on recommended vaccinations, per guidelines from the CDC Advisory Committee on Immunization Practices (ACIP), to facility staff and volunteers who have any potential exposure to residents or to infectious materials, including body substances, contaminated medical supplies and equipment, contaminated environmental surfaces, or contaminated air;

2. Assurance that employees with communicable diseases are identified and prevented from work activities that could result in transmission to other personnel or residents;

3. An exposure control plan for bloodborne pathogens;

4. Documentation of screening and immunizations offered to, received by, or declined by employees in accordance with law, regulation, or recommendations of public health authorities, including access to hepatitis B vaccine; [and]

5. Compliance with requirements of the OSHA for reporting of workplace associated injuries or exposure to infection.

E. The facility administrator shall immediately make or cause to be made a report of an outbreak of disease as defined by the State Board of Health. Such report shall be made by rapid means to the local health director or to the Commissioner of the Virginia Department of Health and to the licensing representative of the Department of Social Services in the regional licensing office.

F. When recommendations are made by the Virginia Department of Health to prevent or control transmission of an infectious agent in the facility, the recommendations must be followed.

Part III
Personnel

22VAC40-73-110. Staff general qualifications.

All staff shall:

1. Be considerate and respectful of the rights, dignity, and sensitivities of persons who are aged, infirm, or disabled;

2. Be able to speak, read, [understand,] and write in English as necessary to carry out their job responsibilities; and

3. Meet the requirements specified in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22VAC40-90).

22VAC40-73-120. Staff orientation and initial training.

A. The orientation and training required in subsections B and C of this section shall occur within the first seven working days of employment. Until this orientation and training is completed, the staff person may only assume job responsibilities if under the sight supervision of a trained direct care staff person or administrator.

B. All staff shall be oriented to:

1. The purpose of the facility;

2. The facility's organizational structure;

3. The services provided;

4. The daily routines;

5. The facility's policies and procedures;

6. Specific duties and responsibilities of their positions; and

7. Required compliance with regulations for assisted living facilities as it relates to their duties and responsibilities.

C. All staff shall be trained in the relevant laws, regulations, and the facility's policies and procedures sufficiently to implement:

1. Emergency and disaster plans for the facility;

2. Procedures for the handling of resident emergencies;

3. Use of the first aid kit and knowledge of its location;

4. Handwashing techniques, standard precautions, infection risk-reduction behavior, and other infection control measures specified in 22VAC40-73-100;

5. Confidential treatment of personal information;

6. Requirements regarding the rights and responsibilities of residents;

7. Requirements and procedures for detecting and reporting suspected abuse, neglect, or exploitation of residents and for mandated reporters, the consequences for failing to make a required report, as set out in § 63.2-1606 of the Code of Virginia;

8. Procedures for reporting and documenting incidents as required in 22VAC40-73-70;

9. Methods of alleviating common adjustment problems that may occur when a resident moves from one residential environment to another; and

10. For direct care staff, the needs, preferences, and routines of the residents for whom they will provide care.

[D. Staff orientation and initial training specified in this section may count toward the required annual training hours for the first year.]

22VAC40-73-130. Reports of abuse, neglect, or exploitation.

[A.] All staff who are mandated reporters under § 63.2-1606 of the Code of Virginia shall report suspected abuse, neglect, or exploitation of residents in accordance with that section.

[B. The facility shall notify the resident's contact person or legal representative when a report is made relating to the resident as referenced in subsection A of this section, without identifying any confidential information.]

22VAC40-73-140. Administrator qualifications.

A. The administrator shall be at least 21 years of age.

B. The administrator shall be able to read and write, and understand this chapter.

C. The administrator shall be able to perform the duties and carry out the responsibilities required by this chapter.

Regulations

D. For a facility licensed only for residential living care that does not employ an administrator licensed by the Virginia Board of Long-Term Care Administrators, the administrator shall:

1. Be a high school graduate or shall have a General Education Development (GED) Certificate;
2. (i) Have successfully completed at least 30 credit hours of postsecondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education and at least 15 of the 30 credit hours shall be in business or human services or a combination thereof; (ii) have successfully completed a course of study approved by the department that is specific to the administration of an assisted living facility; (iii) have a bachelor's degree from a college or university accredited by an association recognized by the U.S. Secretary of Education; or (iv) be a licensed nurse; and
3. Have at least one year of administrative or supervisory experience in caring for adults in a residential group care facility.

The requirements of this subsection shall not apply to an administrator of an assisted living facility employed prior to [~~the effective date of February 1, 2018~~], who met the requirements in effect when employed and who has been continuously employed as an assisted living facility administrator.

E. For a facility licensed for both residential and assisted living care, the administrator shall be licensed [as an assisted living facility administrator or nursing home administrator] by the Virginia Board of Long-Term Care Administrators [~~as required by § 63.2-1803~~ pursuant to Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1] of the Code of Virginia.

22VAC40-73-150. Administrator provisions and responsibilities.

A. Each facility shall have an administrator of record.

B. If an administrator dies, resigns, is discharged, or becomes unable to perform his duties, the facility shall immediately employ a new administrator or appoint a qualified acting administrator [so that no lapse in administrator coverage occurs].

1. The facility shall notify the department's regional licensing office in writing within 14 days of a change in a facility's administrator, including [~~but not limited to~~] the resignation of an administrator, appointment of an acting administrator, and appointment of a new administrator, except that the time period for notification may differ as specified in subdivision 2 of this subsection.

2. [~~A For a~~] facility licensed for both residential and assisted living care [~~shall comply with the notice requirements set out in § 63.2-1803 B of the Code of~~

~~Virginia~~, the facility shall immediately notify the Virginia Board of Long-Term Care Administrators and the department's regional licensing office that a new licensed administrator has been employed or that the facility is operating without an administrator licensed by the Virginia Board of Long-Term Administrators, whichever is the case, and provide the last date of employment of the previous licensed administrator].

3. For a facility licensed for both residential and assisted living care, when an acting administrator is named, he shall [~~meet the qualifications and notice requirements set out in § 63.2-1803 B of the Code of Virginia~~ notify the department's regional licensing office of his employment, and if he is intending to assume the position permanently, submit a completed application for an approved administrator-in-training program to the Virginia Board of Long-Term Care Administrators within 10 days of employment].

4. [~~For a facility licensed for both residential and assisted living care, the acting administrator shall be qualified by education for an approved administrator-in-training program and have a minimum of one year of administrative or supervisory experience in a health care or long-term care facility or have completed such a program and be awaiting licensure.~~

5.] A facility licensed only for residential living care may be operated by an acting administrator for no more than 90 days from the last date of employment of the administrator.

[~~5. A facility licensed for both residential and assisted living care may be operated by an acting administrator in accordance with the time frames set out in § 63.2-1803 B and C of the Code of Virginia.~~

6. A facility licensed for both residential and assisted living care may be operated by an acting administrator for no more than 150 days, or not more than 90 days if the acting administrator has not applied for licensure, from the last date of employment of the licensed administrator.

Exception: An acting administrator may be granted one extension of up to 30 days in addition to the 150 days, as specified in this subdivision, upon written request to the department's regional licensing office. An extension may only be granted if the acting administrator (i) has applied for licensure as a long-term care administrator pursuant to Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1 of the Code of Virginia, (ii) has completed the administrator-in-training program, and (iii) is awaiting the results of the national examination. If a 30-day extension is granted, the acting administrator shall immediately submit written notice of such to the Virginia Board of Long-Term Care Administrators.]

[~~6. 7.] A person may not become an acting administrator at any assisted living facility if the Virginia Board of Long-~~

Term Care Administrators has refused to issue or renew, suspended, or revoked his assisted living facility or nursing home administrator license.

[7. 8.] No assisted living facility shall operate under the supervision of an acting administrator pursuant to §§ 54.1-3103.1 and 63.2-1803 of the Code of Virginia more than one time during any two-year period unless authorized to do so by the department.

C. The administrator shall be responsible for the general administration and management of the facility and shall oversee the day-to-day operation of the facility. This shall include [~~but shall not be limited to~~] responsibility for:

1. Ensuring that care is provided to residents in a manner that protects their health, safety, and well-being;
2. Maintaining compliance with applicable laws and regulations;
3. Developing and implementing all policies, procedures, and services as required by this chapter;
4. Ensuring staff and volunteers comply with residents' rights;
5. Maintaining buildings and grounds;
6. Recruiting, hiring, training, and supervising staff; and
7. Ensuring the development, implementation, and monitoring of an individualized service plan for each resident, except that a plan is not required for a resident with independent living status.

D. The administrator shall report to the Director of the Department of Health Professions information required by and in accordance with § 54.1-2400.6 of the Code of Virginia regarding any person (i) licensed, certified, or registered by a health regulatory board or (ii) holding a multistate licensure privilege to practice nursing or an applicant for licensure, certification, or registration. Information required to be reported, under specified circumstances includes [~~but shall not be limited to~~] substance abuse and unethical or fraudulent conduct.

E. For a facility licensed only for residential living care, either the administrator or a designated assistant who meets the qualifications of the administrator shall be awake and on duty on the premises at least 40 hours per week with no fewer than 24 of those hours being during the day shift on weekdays.

Exceptions:

1. 22VAC40-73-170 allows a shared administrator for smaller facilities.
2. If the administrator is licensed as an assisted living facility administrator or nursing home administrator by the Virginia Board of Long-Term Care Administrators, the

provisions regarding the administrator in subsection F of this section apply. When such is the case, there is no requirement for a designated assistant.

F. For a facility licensed for both residential and assisted living care, the administrator shall serve on a full-time basis as the on-site agent of the licensee and shall be responsible for the day-to-day administration and management of the facility, except as provided in 22VAC40-73-170.

G. The administrator, acting administrator, or as allowed in subsection E of this section, designated assistant administrator, shall not be a resident of the facility.

22VAC40-73-160. Administrator training.

A. For a facility licensed only for residential living care that does not employ a licensed administrator, the administrator shall attend at least 20 hours of training related to management or operation of a residential facility for adults or relevant to the population in care within 12 months from the [starting] date of employment and annually thereafter from that date. At least two of the required 20 hours of training shall focus on infection control and prevention, and when adults with mental impairments reside in the facility, at least six of the required 20 hours shall focus on topics related to residents' mental impairments. Documentation of attendance shall be retained at the facility and shall include type of training, name of the entity that provided the training, and date and number of hours of training.

B. All licensed administrators shall meet the continuing education requirements for continued licensure.

C. Any administrator who has not previously undergone the training specified in 22VAC40-73-40 C shall be required to complete that training within two months of employment as administrator of the facility. The training may be counted toward the annual training requirement for the first year, except that for licensed administrators, whether the training counts toward continuing education and for what period of time depends upon the administrator licensure requirements. [~~Administrators employed prior to December 28, 2006, are not required to complete this training.~~]

D. Administrators who supervise medication aides, [as allowed by 22VAC40-73-670 3 b,] but are not registered medication aides themselves, shall successfully complete a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for such administrators must include a minimum of 68 hours of student instruction and training, but need not include the prerequisite for the program or the written examination for registration. The training shall be completed prior to supervising medication aides and may be counted toward the annual training requirement in subsection A of this section, except that for licensed administrators, whether the training counts toward continuing education and for what period of

Regulations

time depends upon the administrator licensure requirements. The following exceptions apply:

1. The administrator is licensed by the Commonwealth of Virginia to administer medications; or
2. Medication aides are supervised by an individual employed full time at the facility who is licensed by the Commonwealth of Virginia to administer medications.

E. Administrators who have completed the training program specified in subsection D of this section and who supervise medication aides shall be required to annually have (i) four hours of training in medication administration specific to the facility population or (ii) a refresher course in medication administration offered by a Virginia Board of Nursing approved program. Administrators are exempt from this annual medication training or refresher course during the first year after completion of the training program noted in subsection D of this section. [~~This~~ For unlicensed administrators of a facility licensed only for residential living care this] annual medication administration training or course may [~~not~~] be counted toward the annual training requirement specified in subsection A of this section. For licensed administrators, whether the training counts toward continuing education and for what period of time depends upon the administrator licensure requirements.

F. If a designated assistant administrator, as allowed in 22VAC40-73-150 E supervises medication aides, the requirements of subsections D and E of this section apply to the designated assistant administrator.

22VAC40-73-170. Shared administrator for smaller facilities.

A. An administrator [of a facility licensed only for residential living care,] who is not licensed as an assisted living facility administrator or nursing home administrator by the Virginia Board of Long-Term Care Administrators [,] is allowed to be present at a facility for fewer than the required minimum 40 hours per week in order to serve multiple facilities, without a designated assistant, under the following conditions:

1. The administrator shall serve no more than four facilities.
2. The combined total licensed capacity of the facilities served by the administrator shall be 40 or fewer residents.
3. The administrator shall be awake and on duty on the premises of each facility served for at least 10 hours a week [, six of which must be during the day shift].
4. The administrator shall serve as a full-time administrator (i.e., shall be awake and on duty on the premises of all facilities served for a combined total of at least 40 hours a week).

5. Each of the facilities served shall be within a 30-minute average one-way travel time of the other facilities.

6. When not present at a facility, the administrator shall be on call to that facility during the hours he is working as an administrator and shall maintain such accessibility through suitable communication devices.

7. A designated assistant may act in place of the administrator during the required minimum of 40 hours only if the administrator is ill or on vacation and for a period of time that shall not exceed four consecutive weeks. The designated assistant shall meet the qualifications of the administrator.

8. Each of the facilities served shall have a manager, designated and supervised by the administrator. The manager shall be awake and on duty on the premises of the facility for the remaining part of the 40 required hours per week when the administrator or designated assistant is not present at the facility. The manager shall meet the following qualifications and requirements:

- a. The manager shall be at least 21 years of age.
- b. The manager shall be able to read and write, and understand this chapter.
- c. The manager shall be able to perform the duties and to carry out the responsibilities of his position.
- d. The manager shall:
 - (1) Be a high school graduate or have a General Education Development (GED) Certificate;
 - (2) (i) Have successfully completed at least 30 credit hours of postsecondary education from a college or university accredited by an association recognized by the U.S. Secretary of Education and at least 15 of the 30 credit hours shall be in business or human services or a combination thereof; (ii) have successfully completed a course of study of 40 or more hours approved by the department that is specific to the management of an assisted living facility; (iii) have a bachelor's degree from a college or university accredited by an association recognized by the U.S. Secretary of Education; or (iv) be a licensed nurse; and
 - (3) Have at least one year of administrative or supervisory experience in caring for adults in a residential group care facility.
- e. Subdivision 8 d of this subsection does not apply to a manager of an assisted living facility employed prior to [~~the effective date of this chapter~~ February 1, 2018,] who met the requirements in effect when employed and who has been continuously employed as an assisted living facility manager.
- f. The manager shall not be a resident of the facility.

g. The manager shall complete the training specified in 22VAC40-73-40 C within two months of employment as manager. The training may be counted toward the annual training requirement for the first year.

Exception: A manager employed prior to December 28, 2006, who met the requirements in effect when employed and who has been continuously employed as a manager.

h. The manager shall attend at least 20 hours of training related to management or operation of a residential facility for adults or relevant to the population in care within each 12-month period. When adults with mental impairments reside in the facility, at least six of the required 20 hours of training shall focus on topics related to residents' mental impairments and at least two of the required 20 hours on infection control and prevention. Documentation of attendance shall be retained at the facility and shall include title of course, name of the entity that provided the training, and date and number of hours of training.

9. There shall be a written management plan for each facility that describes how the administrator will oversee the care and supervision of the residents and the day-to-day operation of the facility.

10. The minimum of 40 hours per week required for the administrator or manager to be awake and on duty on the premises of a facility shall include at least 24 hours during the day shift on weekdays.

B. An administrator, who is licensed as an assisted living facility administrator or nursing home administrator by the Virginia Board of Long-Term Care Administrators, may be responsible for the day-to-day administration and management of multiple facilities under the following conditions:

1. The administrator shall serve no more than four facilities.
2. The combined total licensed capacity of the facilities served by the administrator shall be 40 or fewer residents.
3. The administrator shall serve on a full-time basis as the on-site agent of the licensee or licensees, proportioning his time among all the facilities served in order to ensure that he provides sufficient administrative and management functions to each facility.
4. Each of the facilities served shall be within a 30-minute average one-way travel time of the other facilities.
5. When not present at a facility, the administrator shall be on call to that facility during the hours he is working as an administrator and shall maintain such accessibility through suitable communication devices.
6. Each of the facilities served shall have a manager, designated and supervised by the administrator, to assist

the administrator in overseeing the care and supervision of the residents and the day-to-day operation of the facility. The majority of the time, the administrator and the manager shall be present at a facility at different times to ensure appropriate oversight of the facility. The manager shall meet the qualifications and requirements specified in subdivision A 8 of this section.

Exception: In regard to subdivision A 8 of this section, the reference to 40 hours is not relevant to a facility to which this subsection applies (i.e., a facility with a licensed administrator).

7. There shall be a written management plan for each facility that includes written policies and procedures that describe how the administrator shall oversee the care and supervision of the residents and the day-to-day operation of the facility.

C. This section shall not apply to an administrator who serves both an assisted living facility and a nursing home as provided for in 22VAC40-73-180.

22VAC40-73-180. Administrator of both assisted living facility and nursing home.

A. Any person meeting the qualifications for a licensed nursing home administrator pursuant to § 54.1-3103 of the Code of Virginia may serve as the administrator of both an assisted living facility and a licensed nursing home, provided the assisted living facility and licensed nursing home are part of the same building.

B. Whenever an assisted living facility and a licensed nursing home have a single administrator, there shall be a written management plan that addresses the care and supervision of the assisted living facility residents. The management plan shall include [~~but not be limited to,~~] the following:

1. Written policies and procedures that describe how the administrator will oversee the care and supervision of the residents and the day-to-day operation of the facility.
2. If the administrator does not provide the direct management of the assisted living facility or only provides a portion thereof, the plan shall specify a designated individual who shall serve as manager and who shall be supervised by the administrator.
3. The manager referred to in subdivision 2 of this subsection shall be on site and meet the qualifications and requirements of 22VAC40-73-170 A 8, A 9, and A 10.

22VAC40-73-190. Designated direct care staff person in charge.

A. When the administrator, the designated assistant, or the manager is not awake and on duty on the premises, there shall be a designated direct care staff member in charge on the premises. However, when no residents are present at the

Regulations

facility, the designated staff person in charge does not have to be on the premises.

B. The specific duties and responsibilities of the designated direct care staff member in charge shall be determined by the administrator.

C. Prior to being placed in charge, the staff member shall be informed of and receive training on his duties and responsibilities and provided written documentation of such duties and responsibilities.

D. The staff member shall be awake and on duty on the premises while in charge.

E. The staff member in charge shall be capable of protecting the physical and mental well-being of the residents.

F. The administrator shall ensure that the staff member in charge is prepared to carry out his duties and responsibilities and respond appropriately in case of an emergency.

G. The staff member in charge shall not be a resident of the facility.

22VAC40-73-200. Direct care staff qualifications.

A. Direct care staff shall be at least 18 years of age unless certified in Virginia as a nurse aide.

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

C. Direct care staff shall meet one of the requirements in this subsection. If the staff does not meet the requirement at the time of employment, he shall successfully meet one of the requirements in this subsection within two months of employment. Licensed health care professionals practicing within the scope of their profession are not required to complete the training in this subsection.

1. Certification as a nurse aide issued by the Virginia Board of Nursing.

2. Successful completion of a Virginia Board of Nursing-approved nurse aide education program.

3. Successful completion of a nursing education program preparing for registered nurse licensure or practical nurse licensure.

4. Current enrollment in a nursing education program preparing for registered nurse or practical nurse licensure and completion of at least one clinical course in the nursing program that includes at least 40 hours of direct client care clinical experience.

5. Successful completion of a personal care aide training program approved by the Virginia Department of Medical Assistance Services.

6. Successful completion of an educational program for geriatric assistant or home health aide or for nurse aide that is not covered under subdivision 2 of this subsection. The program shall be provided by a hospital, nursing facility, or educational institution and may include out-of-state training. The program must be approved by the department. To obtain department approval:

a. The facility shall provide to the department's representative an outline of course content, dates and hours of instruction received, the name of the entity that provided the training, and other pertinent information.

b. The department will make a determination based on the information in subdivision 6 a of this subsection and provide written confirmation to the facility when the educational program meets department requirements.

7. Successful completion of the department-approved 40-hour direct care staff training provided by a registered nurse or licensed practical nurse.

8. Direct care staff employed prior to [~~the effective date of this chapter~~ February 1, 2018,] who [~~did not care only~~ cared] for residents meeting the criteria for [~~assisted living care~~ residential living], and who were therefore not required to meet this subsection [~~at that time~~ prior to February 1, 2018], shall successfully complete a training program consistent with [~~department requirements~~ this subsection] no later than [~~one year after the effective date of this chapter, except that direct care staff of the facility employed prior to February 1, 1996, shall not be required to complete the training in this subsection if they (i) have been continuously employed as direct care staff in the facility since then and (ii) have demonstrated competency on a skills checklist dated and signed no later than February 1, 1997, by a licensed health care professional practicing within the scope of his profession~~ January 31, 2019].

D. The facility shall obtain a copy of the certificate issued or other documentation indicating that the person has met one of the requirements of subsection C of this section, which shall be part of the staff member's record in accordance with 22VAC40-73-250.

E. The administrator shall develop and implement a written plan for supervision of direct care staff who have not yet met the requirements as allowed for in subsection C of this section.

22VAC40-73-210. Direct care staff training.

A. In a facility licensed only for residential living care, all direct care staff shall attend at least 14 hours of training annually.

B. In a facility licensed for both residential and assisted living care, all direct care staff shall attend at least 18 hours of training annually.

C. Training for the first year shall commence no later than 60 days after employment.

D. The training shall be in addition to (i) required first aid training; (ii) CPR training, if taken; and (iii) for medication aides, continuing education required by the Virginia Board of Nursing.

E. The training shall be relevant to the population in care and shall be provided by a qualified individual through in-service training programs or institutes, workshops, classes, or conferences.

F. At least two of the required hours of training shall focus on infection control and prevention. When adults with mental impairments reside in the facility, at least four of the required hours shall focus on topics related to residents' mental impairments.

G. Documentation of the type of training received, the entity that provided the training, number of hours of training, and dates of the training shall be kept by the facility in a manner that allows for identification by individual staff person and is considered part of the staff member's record.

Exception: Direct care staff who are licensed health care professionals or certified nurse aides shall attend at least 12 hours of annual training.

22VAC40-73-220. Private duty personnel.

A. When private duty personnel from licensed home care organizations provide direct care or companion services to residents in an assisted living facility, the following applies:

1. Before direct care or companion services are initiated, the facility shall obtain, in writing, information on the type and frequency of the services to be delivered to the resident by private duty personnel, review the information to determine if it is acceptable, and provide notification to the home care organization regarding any needed changes.

2. The direct care or companion services provided by private duty personnel to meet identified needs shall be reflected on the resident's individualized service plan.

3. The facility shall ensure that the requirements of 22VAC40-73-250 D 1 through D 4 regarding tuberculosis are applied to private duty personnel and that the required reports are maintained by the facility or the licensed home care organization [~~based on written agreement between the two~~].

4. The facility shall provide orientation and training to private duty personnel regarding the facility's policies and procedures related to the duties of private duty personnel.

5. The facility shall ensure that documentation of resident care required by this chapter is maintained.

6. The facility shall monitor the delivery of direct care and companion services to the resident by private duty personnel.

B. When private duty personnel who are not employees of a licensed home care organization provide direct care or companion services to residents in an assisted living facility, the requirements listed under subdivisions [A] 2 through [A] 6 [~~in subsection A~~] of this section apply. In addition, before direct care or companion services are initiated, the facility shall:

1. Obtain, in writing, information on the type and frequency of the services to be delivered to the resident by private duty personnel, review the information to determine if it is acceptable, and provide notification to whomever has hired the private duty personnel regarding any needed changes.

2. Ensure that private duty personnel are qualified for the types of direct care or companion services they are responsible for providing to residents and maintain documentation of the qualifications.

[3. Review an original criminal history record report issued by the Virginia Department of State Police, Central Criminal Records Exchange, for each private duty personnel.

a. The report must be reviewed prior to initiation of services.

b. The date of the report must be no more than 90 days prior to the date of initiation of services, except that if private duty personnel change clients in the same facility with a lapse in service of not more than 60 days, a new criminal history record report shall not be required.

c. The administrator shall determine conformance to facility policy regarding private duty personnel and criminal history to protect the welfare of residents. The policy must be in writing. If private duty personnel are denied the ability to provide direct care or companion services due to convictions appearing on their criminal history record report, a copy of the report shall be provided to the private duty personnel.

d. The report and documentation that it was reviewed shall be maintained at the facility while the private duty person is at the facility and for one year after the last date of work.

e. Criminal history reports shall be maintained in locked files accessible only to the licensee, administrator, board president, or the respective designee.

f. Further dissemination of the criminal history record report information is prohibited other than to the commissioner's representative or a federal or state authority or court as may be required to comply with an

Regulations

express requirement of law for such further dissemination.]

C. The requirements of subsections A and B of this section shall not apply to private duty personnel who only provide skilled nursing treatments as specified in 22VAC40-73-470

B. [~~However, depending upon the circumstances, there may be other sections of this chapter that apply in such cases (e.g., inclusion on the resident's individualized service plan).~~]

22VAC40-73-230. Staff duties performed by residents.

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

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

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

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

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

22VAC40-73-240. Volunteers.

A. Any volunteers used shall:

1. Have qualifications appropriate to the services they render; and

2. Be subject to laws and regulations governing confidential treatment of personal information.

B. No volunteer shall be permitted to serve in an assisted living facility without the permission of or unless under the supervision of a person who has received a criminal record clearance pursuant to § 63.2-1720 of the Code of Virginia.

C. The facility shall maintain the following documentation on volunteers:

1. Name.

2. Address.

3. Telephone number.

4. Emergency contact information.

5. Information on any qualifications, orientation, training, and education required by this chapter, including any specified relevant information.

D. Duties and responsibilities of all volunteers shall be clearly differentiated from those of persons regularly filling staff positions.

E. At least one staff person shall be assigned responsibility for coordinating volunteer services, including overall selection, supervision, and orientation of volunteers.

F. Prior to beginning volunteer service, all volunteers shall attend an orientation including information on their duties and responsibilities, resident rights, confidentiality, emergency procedures, infection control, the name of their supervisor, and reporting requirements [~~and~~. Volunteers shall] sign and date a statement that they have received and [understood understand] this information.

G. All volunteers shall be under the supervision of a designated staff person when residents are present.

22VAC40-73-250. Staff records and health requirements.

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

B. All staff records shall be retained at the facility, treated confidentially, and kept in a locked area.

Exception: Emergency contact information required by subdivision C 9 of this section shall also be kept in an easily accessible place.

C. Personal and social data to be maintained on staff and included in the staff record are as follows:

1. Name;

2. Birth date;

3. Current address and telephone number;

4. Position title and date employed;

5. Verification that the staff person has received a copy of his current job description;

6. An original criminal record report and a sworn disclosure statement;

7. Documentation of qualifications for employment related to the staff person's position, including any specified relevant information;

8. Verification of current professional license, certification, registration, medication aide provisional authorization, or completion of a required approved training course;

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

10. Documentation of orientation, training, and education required by this chapter, including any specified relevant information [, with annual training requirements determined by starting date of employment]; and

11. Date of termination of employment.

D. Health information required by these standards shall be maintained at the facility and be included in the staff record for each staff person, and also shall be maintained at the facility for each household member who comes in contact with residents.

1. Initial tuberculosis examination and report.

a. Each staff person on or within seven days prior to the first day of work at the facility and each household member prior to coming in contact with residents shall submit the results of a risk assessment, documenting the absence of tuberculosis in a communicable form as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it.

b. The risk assessment shall be no older than 30 days.

2. Subsequent tuberculosis evaluations and reports.

a. Any staff person or household member required to be evaluated who comes in contact with a known case of infectious tuberculosis shall be screened as determined appropriate based on consultation with the local health department.

b. Any staff person or household member required to be evaluated who develops chronic respiratory symptoms of three weeks duration shall be evaluated immediately for the presence of infectious tuberculosis.

c. Each staff person or household member required to be evaluated shall annually submit the results of a risk assessment, documenting that the individual is free of tuberculosis in a communicable form as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it.

3. Any individual suspected to have infectious tuberculosis shall not be allowed to return to work or have any contact with the residents and personnel of the facility until a physician has determined that the individual is free of infectious tuberculosis.

4. The facility shall report any active case of tuberculosis developed by a staff person or household member required to be evaluated to the local health department.

E. Record of any vaccinations and immunizations received as noted in 22VAC40-73-100 D.

~~[F. At the request of the administrator of the facility or the department, a report of examination by a licensed physician shall be obtained when there are indications that the safety of residents in care may be jeopardized by the physical or mental health of a staff person or household member.~~

~~G. Any staff person or household member who, upon examination or as a result of tests, shows indication of a physical or mental condition that may jeopardize the safety of residents in care or that would prevent performance of duties:~~

~~1. Shall be removed immediately from contact with residents; and~~

~~2. Shall not be allowed contact with residents until the condition is cleared to the satisfaction of the examining physician as evidenced by a signed statement from the physician.]~~

22VAC40-73-260. First aid and CPR certification.

A. First aid.

1. Each direct care staff member [who does not have current certification in first aid as specified in subdivision 2 of this subsection shall receive certification in first aid within 60 days of employment shall maintain current certification in first aid] from the American Red Cross, American Heart Association, National Safety Council, American Safety and Health Institute, community college, hospital, volunteer rescue squad, or fire department. The certification must either be in adult first aid or include adult first aid. [To be considered current, first aid certification from community colleges, hospitals, volunteer rescue squads, or fire departments shall have been issued within the past three years.]

2. Each direct care staff member [shall maintain current certification in first aid from an organization listed in subdivision 1 of this subsection. To be considered current, first aid certification from community colleges, hospitals, volunteer rescue squads, or fire departments shall have been issued within the past three years. The certification must either be in adult first aid or include adult first aid who does not have current certification in first aid as specified in subdivision 1 of this subsection shall receive certification in first aid within 60 days of employment].

3. A direct care staff member who is a registered nurse [or,] licensed practical nurse [, or currently certified emergency medical technician, first responder, or paramedic] does not have to meet the requirements of subdivisions 1 and 2 of this subsection.

4. [There In each building, there] shall [either] be (i) at least one staff person [on the premises] at all times who has current certification in first aid that meets the specifications of this section [unless the facility has; or (ii)] an on-duty registered nurse [or,] licensed practical nurse [, or currently certified emergency medical technician, first responder, or paramedic].

B. Cardiopulmonary resuscitation (CPR).

1. There shall be at least one staff person [on the premises in each building] at all times who has current certification in CPR from the American Red Cross, American Heart Association, National Safety Council, or American Safety and Health Institute, or who has current CPR certification issued within the past two years by a community college, hospital, volunteer rescue squad, or fire department [.] The certification must either be in adult CPR or include adult CPR.

Regulations

2. In facilities licensed for over [50 100] residents, at least one additional staff person who meets the requirements of subdivision 1 of this subsection shall be available for every [50 100] residents, or portion thereof. More staff persons who meet the requirements in subdivision 1 of this subsection shall be available if necessary to [assure ensure] quick access to residents in the event of the need for CPR.

C. A listing of all staff who have current certification in first aid or CPR, in conformance with subsections A and B of this section, shall be posted in the facility so that the information is readily available to all staff at all times. The listing must indicate by staff person whether the certification is in first aid or CPR or both and must be kept up to date.

D. A staff person with current certification in first aid and CPR shall be present for the duration of facility-sponsored activities off the facility premises, when facility staff are responsible for oversight of one or more residents during the activity.

22VAC40-73-270. Direct care staff training when aggressive or restrained residents are in care.

The following training is required for staff in assisted living facilities that accept, or have in care, residents who are or who may be aggressive or restrained:

1. Aggressive residents.

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

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

2. Restrained residents.

a. Prior to being involved in the care of residents in restraints, direct care staff shall be appropriately trained in caring for the health needs of such residents.

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

(1) The proper techniques for applying and monitoring restraints;

(2) Skin care appropriate to prevent redness, breakdown, and decubiti;

(3) Active and active assisted range of motion to prevent contractures;

(4) [~~Assessment~~ Observing and reporting signs and symptoms that may be indicative of obstruction] of blood [~~circulation to prevent obstruction of blood~~] flow

[~~and promote adequate blood circulation to all in~~] extremities;

(5) Turning and positioning to prevent skin breakdown and keep the lungs clear;

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

(7) Provision of additional attention to meet the physical, mental, emotional, and social needs of the restrained resident; and

(8) Awareness of possible risks associated with restraint use and methods of reducing or eliminating such risks.

3. The training described in subdivisions 1 and 2 of this section shall meet the following criteria:

a. Training shall be provided by a qualified health professional.

b. A written description of the content of this training, a notation of the entity providing the training, and the names of direct care staff receiving the training shall be maintained by the facility except that, if the training is provided by the department, only a listing of direct care staff trained and the date of training are required.

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

a. The refresher training shall encompass the techniques described in subdivision 1 or 2 of this section, or both.

b. [~~A record of the~~ The] refresher training [~~and a description of the content of the training shall be maintained by the facility~~ shall meet the requirements of subdivision 3 of this section].

Part IV Staffing and Supervision

22VAC40-73-280. Staffing.

A. The assisted living facility shall have staff adequate in knowledge, skills, and abilities and sufficient in numbers to provide services to attain and maintain the physical, mental, and psychosocial well-being of each resident as determined by resident assessments and individualized service plans, and to [assure ensure] compliance with this chapter.

B. The assisted living facility shall maintain a written plan that specifies the number and type of direct care staff required to meet the day-to-day, routine direct care needs and any identified special needs for the residents in care. This plan shall be directly related to actual resident acuity levels and individualized care needs.

C. An adequate number of staff persons shall be on the premises at all times to implement the approved fire and emergency evacuation plan.

D. At least one direct care staff member shall be awake and on duty at all times in each building when at least one resident is present.

Exception: For a facility licensed for residential living care only, in buildings that house 19 or fewer residents, the staff member on duty does not have to be awake during the night if (i) none of the residents have care needs that require a staff member awake at night and (ii) the facility ensures compliance with the requirements of 22VAC40-73-930 C.

[E. No employee shall be permitted to work in a position that involves direct contact with a resident until a background check has been received as required in the Regulation for Background Checks for Assisted Living Facilities and Adult Day Care Centers (22VAC40-90), unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of the background check regulation (22VAC40-90).]

22VAC40-73-290. Work schedule and posting.

A. The facility shall maintain a written work schedule that includes the names and job classifications of all staff working each shift, with an indication of whomever is in charge at any given time.

1. Any absences, substitutions, or other changes shall be noted on the schedule.
2. The facility shall maintain a copy of the schedule for two years.

B. The facility shall develop and implement a procedure for posting the name of the current on-site person in charge, as provided for in this chapter, in a place in the facility that is conspicuous to the residents and the public.

22VAC40-73-300. Communication among staff.

A. Procedures shall be established and reviewed with staff for communication among administrators, designated assistant administrators, managers, and designated staff persons in charge, as applicable to a facility, to ensure stable operations and sound transitions.

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

1. A record shall be kept of the written communication for at least the past two years.
2. The information shall be included in the records of the involved residents.

Part V

Admission, Retention, and Discharge of Residents

22VAC40-73-310. Admission and retention of residents.

A. No resident shall be admitted or retained:

1. For whom the facility cannot provide or secure appropriate care;
2. Who requires a level of care or service or type of service for which the facility is not licensed or which the facility does not provide; or
3. If the facility does not have staff appropriate in numbers and with appropriate skill to provide the care and services needed by the resident.

B. Assisted living facilities shall not admit an individual before a determination has been made that the facility can meet the needs of the [~~resident~~ individual]. The facility shall make the determination based upon the following information at a minimum:

1. The completed UAI.
2. The physical examination report.
3. A documented interview between the administrator or a designee responsible for admission and retention decisions, the [~~resident~~ individual], and his legal representative, if any. In some cases, [~~medical~~] conditions may create special circumstances that make it necessary to hold the interview on the date of admission.
4. A mental health screening in accordance with 22VAC40-73-330 A.

C. An assisted living facility shall only admit or retain [~~residents~~ individuals] as permitted by its use and occupancy classification and certificate of occupancy. The ambulatory or nonambulatory status, as defined in 22VAC40-73-10, of an individual is based upon:

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

D. Based upon review of the UAI prior to admission of a resident, the assisted living facility administrator shall provide written assurance to the resident that the facility has the appropriate license to meet his care needs at the time of admission. Copies of the written assurance shall be given to the legal representative and case manager, if any, and a copy signed by the resident or his legal representative shall be kept in the resident's record.

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

F. No person shall be admitted without his consent and agreement, or that of his legal representative with

Regulations

demonstrated legal authority to give such consent on his behalf.

G. The facility shall not require a person to relinquish the rights specified in § 63.2-1808 of the Code of Virginia as a condition of admission or retention.

H. In accordance with § 63.2-1805 D of the Code of Virginia, assisted living facilities shall not admit or retain individuals with any of the following conditions or care needs:

1. Ventilator dependency;
2. Dermal ulcers III and IV except those stage III ulcers that are determined by an independent physician to be healing;
3. Intravenous therapy or injections directly into the vein, except for intermittent intravenous therapy managed by a health care professional licensed in Virginia except as permitted in subsection K of this section;
4. Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold;
5. Psychotropic medications without appropriate diagnosis and treatment plans;
6. Nasogastric tubes;
7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection K of this section;
8. Individuals presenting an imminent physical threat or danger to self or others;
9. Individuals requiring continuous licensed nursing care;
10. Individuals whose physician certifies that placement is no longer appropriate;
11. Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the UAI and meet Medicaid nursing facility level of care criteria as defined in the State Plan for Medical Assistance Program (12VAC30-10); or
12. Individuals whose physical or mental health care needs cannot be met in the specific assisted living facility as determined by the facility.

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

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

K. At the request of the resident in an assisted living facility and when his independent physician determines that it is appropriate, care for the conditions or care needs (i) specified in subdivisions [G H] 3 and [G H] 7 of this section may be provided to the resident by a physician licensed in Virginia, a nurse licensed in Virginia or a nurse holding a multistate licensure privilege under a physician's treatment plan, or a home care organization licensed in Virginia or (ii) specified in subdivision [G H] 7 of this section may also be provided to the resident by facility staff if the care is delivered in accordance with the regulations of the Board of Nursing for delegation by a registered nurse, [18VAC90-20-420 through 18VAC90-20-460 18VAC90-19-240 through 18VAC90-19-280], and 22VAC40-73-470 E. This standard does not apply to recipients of auxiliary grants.

L. When care for a resident's special medical needs is provided by licensed staff of a home care agency, the assisted living facility direct care staff may receive training from the home care agency staff in appropriate treatment monitoring techniques regarding safety precautions and actions to take in case of emergency. This training is required prior to direct care staff assuming such duties. Updated training shall be provided as needed. The training shall include content based on the resident's specific needs. [The training shall be documented and maintained in the staff record.]

M. Notwithstanding § 63.2-1805 of the Code of Virginia, at the request of the resident, hospice care may be provided in an assisted living facility under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia if the hospice program determines that such program is appropriate for the resident. If hospice care is provided, there shall be a written agreement between the assisted living facility and any hospice program that provides care in the facility. The agreement shall include:

1. Policies and procedures to ensure appropriate communication and coordination between the facility and the hospice program;
2. Specification of the roles and responsibilities of each entity, including listing of the services that will generally be provided by the facility and the services that will generally be provided by the hospice program;
3. Acknowledgment that the services provided to each resident shall be reflected on the individualized service plan as required in 22VAC40-73-450 D; and

4. Signatures of an authorized representative of the facility and an authorized representative of the hospice program.

22VAC40-73-320. Physical examination and report.

A. Within the 30 days preceding admission, a person shall have a physical examination by an independent physician. The report of such examination shall be on file at the assisted living facility and shall contain the following:

- 1. [The person's name, address, and telephone number;
- 2.] The date of the physical examination;
- ~~3.~~ 3.] Height, weight, and blood pressure;
- ~~4.~~ 4.] Significant medical history;
- ~~5.~~ 5.] General physical condition, including a systems review as is medically indicated;
- ~~6.~~ 6.] Any diagnosis or significant problems;
- ~~7.~~ 7.] Any known allergies and description of the person's reactions;
- ~~8.~~ 8.] Any recommendations for care including medication, diet, and therapy;
- ~~9.~~ 9.] Results of a risk assessment documenting the absence of tuberculosis in a communicable form as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it;
- ~~10.~~ 10.] A statement that the individual does not have any of the conditions or care needs prohibited by 22VAC40-73-310 H;
- ~~11.~~ 11.] A statement that specifies whether the individual is considered to be ambulatory or nonambulatory [as defined in this chapter];
- ~~12.~~ 12.] A statement that specifies whether the individual is or is not capable of self-administering medication; and
- ~~13.~~ 13.] The signature of the examining physician or his designee.

B. Subsequent tuberculosis evaluations.

- 1. A risk assessment for tuberculosis shall be completed annually on each resident as evidenced by the completion of the current screening form published by the Virginia Department of Health or a form consistent with it.
- 2. Any resident who comes in contact with a known case of infectious tuberculosis shall be screened as deemed appropriate in consultation with the local health department.
- 3. Any resident who develops respiratory symptoms of three or more weeks duration with no medical explanation shall be referred for evaluation for the presence of infectious tuberculosis.

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

C. As necessary to determine whether a resident's needs can continue to be met in the assisted living facility, the department may request a current physical examination [by an independent physician] or psychiatric evaluation [by an independent physician], including diagnosis and assessments.

22VAC40-73-325. Fall risk [assessment rating].

A. For residents who meet the criteria for assisted living care, by the time the comprehensive ISP is completed, a [written] fall risk [assessment rating] shall be [conducted completed].

B. The fall risk [assessment rating] shall be reviewed and updated [under each of the following circumstances]:

- 1. At least annually;
- 2. When the condition of the resident changes; and
- 3. After a fall.

C. Should a resident [who meets the criteria for assisted living care] fall, the facility must show documentation of an analysis of the circumstances of the fall and interventions that were initiated to prevent or reduce [additional risk of subsequent] falls.

22VAC40-73-330. Mental health screening.

A. A mental health screening shall be conducted prior to admission if behaviors or patterns of behavior occurred within the previous six months that were indicative of mental illness, intellectual disability, substance abuse, or behavioral disorders and that caused, or continue to cause, concern for the health, safety, or welfare either of that individual or others who could be placed at risk of harm by that individual.

Exceptions:

- 1. If it is not possible for the screening to be conducted prior to admission, the individual may be admitted if all other admission requirements are met. The reason for the delay shall be documented and the screening shall be conducted as soon as possible, but no later than 30 days after admission.
- 2. The screening shall not be required for individuals under the care of a qualified mental health professional immediately prior to admission, as long as there is documentation of the person's psychosocial and behavioral functioning as specified in 22VAC40-73-340 A 1.

B. A mental health screening shall be conducted when a resident displays behaviors or patterns of behavior indicative of mental illness, intellectual disability, substance abuse, or behavioral disorders that cause concern for the health, safety,

Regulations

or welfare of either that [individual resident] or others who could be placed at risk of harm by the [individual resident].

C. The mental health screening shall be conducted by a qualified mental health professional having no financial interest in the assisted living facility, directly or indirectly as an owner, officer, employee, or as an independent contractor with the facility.

D. A copy of the screening shall be filed in the resident's record.

E. If the screening indicates a need for mental health, intellectual disability, substance abuse, or behavioral disorder services for the resident, the facility shall provide:

1. Notification of the resident's need for such services to the community services board, behavioral health authority, or other appropriate licensed provider identified by the resident or his legal representative; and

2. Notification to the resident, authorized contact person of record, and physician of record that mental health services have been recommended for the resident.

22VAC40-73-340. Psychosocial and behavioral history.

A. When determining appropriateness of admission for an individual with mental illness, intellectual disability, substance abuse, or behavioral disorders, the following information shall be obtained by the facility:

1. If the prospective resident is referred by a state or private hospital, community services board, behavioral health authority, or long-term care facility, documentation of the individual's psychosocial and behavioral functioning shall be acquired [prior to admission];

2. If the prospective resident is coming from a private residence, information about the individual's psychosocial and behavioral functioning shall be gathered from primary sources, such as family members [~~or~~] friends [, or physician]. Although there is no requirement for written information from primary sources, the facility must document the source and content of the information that was obtained.

B. The administrator or his designee shall document that the individual's psychosocial and behavioral history were reviewed and used to help determine the appropriateness of the admission.

C. If the individual is admitted, the psychosocial and behavioral history shall be used in the development of the person's individualized service plan and documentation of the history shall be filed in the [resident's] record.

22VAC40-73-350. Sex offender information.

A. The assisted living facility shall register with the Department of State Police to receive notice of the registration or reregistration of any sex offender within the

same or a contiguous zip code area in which the facility is located, pursuant to § 9.1-914 of the Code of Virginia.

B. The assisted living facility shall ascertain, prior to admission, whether a potential resident is a registered sex offender if the facility anticipates the potential resident will have a length of stay greater than three days or in fact stays longer than three days and shall document in the resident's record that this was ascertained and the date the information was obtained.

C. The assisted living facility shall ensure that each resident or his legal representative is fully informed, prior to or at the time of admission and annually, that he should exercise whatever due diligence he deems necessary with respect to information on any sex offenders registered pursuant to Chapter 9 (§ 9.1-900 et. seq.) of Title 9.1 of the Code of Virginia, including how to obtain such information. Written acknowledgment of having been so informed shall be provided by the resident or his legal representative and shall be maintained in the resident's record.

D. At the same time that the person is informed as required in subsection C of this section, the assisted living facility shall provide notification that, upon request, the facility shall:

1. Assist the resident, prospective resident, or his legal representative in accessing the information on registered sex offenders; and

2. Provide the resident, prospective resident, or his legal representative with printed copies of the information on registered sex offenders.

22VAC40-73-360. Emergency placement.

A. An emergency placement shall occur only when the emergency is documented and approved by (i) an adult protective services worker for public pay individuals or (ii) an independent physician or an adult protective services worker for private pay individuals.

B. When an emergency placement occurs, the person shall remain in the assisted living facility no longer than seven days unless all the requirements for admission have been met and the person has been admitted.

C. The facility shall obtain sufficient information on the person to protect the health, safety, and welfare of the [individual person] while he remains at the facility as allowed by subsection B of this section.

22VAC40-73-370. Respite care.

If an assisted living facility provides respite care as defined in 22VAC40-73-10, the requirements of this chapter apply to the respite care, except as follows:

1. For individuals in respite care, the ISP shall be completed prior to the person participating in respite care and need not include expected outcome.

2. ~~[Each~~ At the] time an individual returns for respite care, the facility shall reevaluate the person's condition [and care needs,] and as needed, ensure that the uniform assessment instrument ~~[and,]~~ the individualized service plan [, and medication orders] are updated. The reevaluation shall include ~~[, but not be limited to,]~~ observation of the person; interviews with the individual and his legal representative, if any; and consultation with others knowledgeable about the person, as appropriate. [The reevaluation shall indicate in writing whether or not the person's condition or care needs have changed and specify any changes. The reevaluation shall be signed and dated by the staff person completing the reevaluation and by the individual in respite care or his legal representative and shall be retained in the individual's record.]

3. If the period of time between respite care stays is six months or longer, a new physical examination report shall be required prior to the individual returning for respite care [, except that a new tuberculosis screening would only be required one time per year]. The examination shall take place within 30 days prior to the person's return for respite care.

4. The record for the individual in respite care shall include the dates of respite care.

5. The medication review required by 22VAC40-73-690 does not apply to individuals in respite care.

22VAC40-73-380. Resident personal and social information.

A. Prior to or at the time of admission to an assisted living facility, the following personal and social information on a person shall be obtained:

1. Name;
2. Last home address, and address from which resident was received, if different;
3. Date of admission;
4. Birth date or if unknown, estimated age;
5. Birthplace, if known;
6. Marital status, if known;
7. Name, address, and telephone number of all legal representatives, if any;
8. If there is a legal representative, copies of current legal documents that show proof of each legal representative's authority to act on behalf of the resident and that specify the scope of the representative's authority to make decisions and to perform other functions;
9. Name, address, and telephone number of next of kin, if known (two preferred);

10. Name, address, and telephone number of designated contact person authorized by the resident or legal representative, if appropriate, for notification purposes, including emergency notification and notification of the need for mental health, intellectual disability, substance abuse, or behavioral disorder services - if the resident or legal representative is willing to designate an authorized contact person. There may be more than one designated contact person. The designated contact person may also be listed under another category, such as next of kin or legal representative;

11. Name, address, and telephone number of the responsible individual stipulated in 22VAC40-73-550 H, if needed;

12. Name, address, and telephone number of personal physician, if known;

13. Name, address, and telephone number of personal dentist, if known;

14. Name, address, and telephone number of clergyman and place of worship, if applicable;

15. Name, address, and telephone number of local department of social services or any other agency, if applicable, and the name of the assigned case manager or caseworker;

16. Service in the armed forces, if applicable;

17. Lifetime vocation, career, or primary role;

18. Special interests and hobbies;

19. Known allergies, if any;

20. Information concerning advance directives, Do Not Resuscitate (DNR) Orders, or organ donation, if applicable; [and

~~21. For residents who meet the criteria for assisted living care, the additional information in subdivisions a, b, and c of this subdivision 21:~~

~~a. 21.]~~ Previous mental health or intellectual disability services history, if any, and if applicable for care or services;

[~~b. 22.]~~ Current behavioral and social functioning including strengths and problems; and

[~~c. 23.]~~ Any substance abuse history if applicable for care or services.

B. The personal and social information required in subsection A of this section shall be placed in the [individual's person's record and kept current].

22VAC40-73-390. Resident agreement with facility.

A. At or prior to the time of admission, there shall be a written [agreement or written acknowledgment

Regulations

agreement/acknowledgment] of notification dated and signed by the resident or applicant for admission or the appropriate legal representative, and by the licensee or administrator. This document shall include the following:

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

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

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

c. For an auxiliary grant recipient, a list of services included under the auxiliary grant rate;

d. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment, except that recipients of auxiliary grants may not be charged an advance payment or deposit payment;

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

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

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

2. Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions.

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

4. [~~Signed Specific~~] acknowledgments that:

a. Requirements or rules regarding resident conduct, other restrictions, or special conditions have been reviewed by the resident or his legal representative;

b. The resident or his legal representative has been informed of the policy regarding the amount of notice required when a resident wishes to move from the facility;

c. The resident has been informed of the policy required by 22VAC40-73-840 regarding pets living in the facility;

d. The resident has been informed of the policy required by 22VAC40-73-860 K regarding weapons;

e. The resident or his legal representative or responsible individual as stipulated in 22VAC40-73-550 H has

reviewed § 63.2-1808 of the Code of Virginia, Rights and Responsibilities of Residents of Assisted Living Facilities, and that the provisions of this statute have been explained to him;

f. The resident or his legal representative or responsible individual as stipulated in 22VAC40-73-550 H has reviewed and had explained to him the facility's policies and procedures for implementing § 63.2-1808 of the Code of Virginia [~~including the grievance policy and the transfer or discharge policy~~];

g. [The resident has been informed and had explained to him that he may refuse release of information regarding his personal affairs and records to any individual outside the facility, except as otherwise provided in law and except in case of his transfer to another caregiving facility, notwithstanding any requirements of this chapter;

h.] The resident has been informed that interested residents may establish and maintain a resident council, that the facility is responsible for providing assistance with the formation and maintenance of the council, whether or not such a council currently exists in the facility, and the general purpose of a resident council (See 22VAC40-73-830);

[~~h. i.~~] The resident has been informed of the bed hold policy in case of temporary transfer or movement from the facility, if the facility has such a policy (See 22VAC40-73-420 B);

[~~h. j.~~] The resident has been informed of the policy or guidelines regarding visiting in the facility, if the facility has such a policy or guidelines (See 22VAC40-73-540 C);

[~~j. k.~~] The resident has been informed of the rules and restrictions regarding smoking on the premises of the facility, including [~~but not limited to~~] that which is required by 22VAC40-73-820;

[~~k. l.~~] The resident has been informed of the policy regarding the administration and storage of medications and dietary supplements; and

[~~j. m.~~] The resident has received written assurance that the facility has the appropriate license to meet his care needs at the time of admission, as required by 22VAC40-73-310 D.

B. Copies of the signed [~~agreement or acknowledgment of notification~~ agreement/acknowledgment and any updates as noted in subsection C of this section] shall be provided to the resident and, as appropriate, his legal representative and shall be retained in the resident's record.

C. The original [~~agreement~~ agreement/acknowledgment] shall be updated whenever there are changes [~~in financial~~

arrangements, accommodations, services, care provided by the facility, requirements governing the resident's conduct, other restrictions, or special conditions, to any of the policies or information referenced or identified in the agreement/acknowledgment and dated] and signed by the licensee or administrator and the resident or his legal representative. [~~If the original agreement provides for specific changes in any of these items, this standard does not apply to those changes.~~]

22VAC40-73-400. Monthly statement of charges and payments.

The facility shall provide to each resident or the resident's legal representative, if one has been appointed, a monthly statement that itemizes any charges made by the facility and any payments received from the resident or on behalf of the resident during the previous calendar month and shall show the balance due or any credits for overpayment. The facility shall also place a copy of the monthly statement in the resident's record.

22VAC40-73-410. Orientation and related information for residents.

A. Upon admission, the assisted living facility shall provide an orientation for new residents and their legal representatives, including [~~but not limited to,~~] emergency response procedures, mealtimes, and use of the call system. If needed, the orientation shall be modified as appropriate for residents with cognitive impairments. Acknowledgment of having received the orientation shall be signed and dated by the resident and, as appropriate, his legal representative, and such documentation shall be kept in the resident's record.

B. Upon admission and upon request, the assisted living facility shall provide to the resident and, if appropriate, his legal representative, a written description of the types of staff persons working in the facility and the services provided, including the hours such services are available.

22VAC40-73-420. Acceptance back in facility.

A. An assisted living facility shall establish procedures to ensure that any resident detained by a temporary detention order pursuant to §§ 37.2-809 through 37.2-813 of the Code of Virginia is accepted back in the assisted living facility if the resident is not involuntarily committed pursuant to §§ 37.2-814 through 37.2-819 of the Code of Virginia. The procedures shall include [~~but not be limited to~~]:

1. Obtaining written recommendations from a qualified mental health professional regarding supportive services necessary to address the mental health needs of the resident returning to the facility;
2. Documenting whether the recommendations specified in subdivision 1 of this subsection can be implemented based on facility or community resources and whether the

resident can be retained at the facility or would need to be discharged;

3. Updating the resident's individualized service plan, as needed; and

4. Ensuring that direct care staff involved in the care and supervision of the resident receive clear and timely communication regarding their responsibilities in respect to the mental health needs of the resident and behavioral or emotional indicators of possible crisis situations.

B. If an assisted living facility allows for temporary movement of a resident with agreement to hold a bed, it shall develop and follow a written bed hold policy, which includes [~~but is not limited to,~~] the conditions for which a bed will be held, any time frames, terms of payment, and circumstances under which the bed will no longer be held. [For recipients of an auxiliary grant, the bed hold policy must be consistent with auxiliary grant program policy and guidance.]

22VAC40-73-430. Discharge of residents.

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

B. As soon as discharge planning begins, the assisted living facility shall notify the resident, the resident's legal representative and designated contact person if any, of the planned discharge, the reason for the discharge, and that the resident will be moved within 30 days unless there are extenuating circumstances relating to inability to place the resident in another setting within the time frame referenced in subsection A of this section. Written notification of the actual discharge date and place of discharge shall be given to the resident, the resident's legal representative and contact person, if any, and additionally for public pay residents, the eligibility worker and assessor, at least 14 days prior to the date that the resident will be discharged.

C. The assisted living facility shall adopt and conform to a written policy regarding the number of days notice that is required when a resident wishes to move from the facility. Any required notice of intent to move shall not exceed 30 days.

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

Regulations

E. When a resident's condition presents an immediate and serious risk to the health, safety, or welfare of the resident or others and emergency discharge is necessary, [the] 14-day [advance] notification of planned discharge does not apply, although the reason for the relocation shall be discussed with the resident and, when possible, his legal representative prior to the move.

F. Under emergency conditions, the resident's legal representative, designated contact person, family, caseworker, social worker, or any other persons, as appropriate, shall be informed as rapidly as possible, but [~~by~~ no later than] the close of the day following discharge, of the reasons for the move. For public pay residents, the eligibility worker and assessor shall also be [so] informed [of the emergency discharge] within the same time frame. No later than five days after discharge, the information shall be provided in writing to all those notified.

G. For public pay residents, in the event of a resident's death, the assisted living facility shall provide written notification to the eligibility worker and assessor within five days after the resident's death.

H. Discharge statement.

1. At the time of discharge, the assisted living facility shall provide to the resident and, as appropriate, his legal representative and designated contact person a dated statement signed by the licensee or administrator that contains the following information:

- a. The date on which the resident, his legal representative, or designated contact person was notified of the planned discharge and the name of the legal representative or designated contact person who was notified;
- b. The reason or reasons for the discharge;
- c. The actions taken by the facility to assist the resident in the discharge and relocation process; and
- d. The date of the actual discharge from the facility and the resident's destination.

2. [~~When the termination of care is due to emergency conditions, the dated statement shall contain the information in subdivisions 1 a through 1 d of this subsection as appropriate and shall be provided or mailed to the resident, his legal representative, or designated contact person within 48 hours from the time of the decision to discharge.~~ 3. A copy of the written statement shall be retained in the resident's record.

I. When the resident is discharged and moves to another caregiving facility, the assisted living facility shall provide to the receiving facility such information related to the resident as is necessary to ensure continuity of care and services. Original information pertaining to the resident shall be

maintained by the assisted living facility from which the resident was discharged. The assisted living facility shall maintain a listing of all information shared with the receiving facility.

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

Part VI

Resident Care and Related Services

22VAC40-73-440. Uniform assessment instrument (UAI).

A. All residents of and applicants to assisted living facilities shall be assessed face to face using the uniform assessment instrument in accordance with Assessment in Assisted Living Facilities (22VAC30-110). The UAI shall be completed prior to admission, at least annually, and whenever there is a significant change in the resident's condition.

B. [For private pay individuals, the UAI shall be completed by one of the following qualified assessors:

1. An assisted living facility staff person who has successfully completed state-approved training on the uniform assessment instrument and level of care criteria for either public or private pay assessments, provided the administrator or the administrator's designated representative has successfully completed such training and approves and then signs the completed UAI, and the facility maintains documentation of completed training;
2. An independent physician; or
3. A qualified public human services agency assessor.

C. For a private pay individual, if the UAI is completed by an independent physician or a qualified human services agency assessor, the assisted living facility shall be responsible for coordinating with the physician or the agency assessor to ensure that the UAI is completed as required.

D. For private pay individuals, the assisted living facility shall ensure that the uniform assessment instrument is completed as required by 22VAC30-110.

E. For public pay individuals, the UAI shall be completed by a case manager or qualified assessor as specified in 22VAC30-110.

F.] The UAI shall be completed within 90 days prior to admission to the assisted living facility, except that if there has been a change in the resident's condition since the completion of the UAI that would affect the admission, a new UAI shall be completed.

[~~C. G.~~] When a resident moves to an assisted living facility from another assisted living facility or other long-term care setting that uses the UAI, if there is a completed UAI on

record, another UAI does not have to be completed except that a new UAI shall be completed whenever:

1. There is a significant change in the resident's condition;
or
2. The previous assessment is more than 12 months old.

~~[D. H.]~~ Annual reassessments and reassessments due to a significant change in the resident's condition, using the UAI, shall be utilized to determine whether a resident's needs can continue to be met by the facility and whether continued placement in the facility is in the best interest of the resident.

~~[E. I.]~~ During an inspection or review, staff from the department, the Department of Medical Assistance Services, or the local department of social services may initiate a change in level of care for any assisted living facility resident for whom it is determined that the resident's UAI is not reflective of the resident's current status.

~~[F. J.]~~ At the request of the assisted living facility, the resident's legal representative, the resident's physician, the department, or the local department of social services an independent assessment using the UAI shall be completed to determine whether the resident's care needs are being met in the assisted living facility. The assisted living facility shall assist in obtaining the independent assessment as requested. An independent assessment is one that is completed by a qualified entity other than the original assessor.

~~[G. For private pay individuals, the assisted living facility shall ensure that the uniform assessment instrument is completed as required by 22VAC30-110.~~

~~H. For a private pay resident, if the UAI is completed by an independent physician or a qualified human services agency assessor, the assisted living facility shall be responsible for coordinating with the physician or the agency assessor to ensure that the UAI is completed as required.~~

~~[I. K.]~~ The assisted living facility shall be in compliance with the requirements set forth in 22VAC30-110.

~~[J. L.]~~ The facility shall maintain the completed UAI in the resident's record.

22VAC40-73-450. Individualized service plans.

A. On [or within seven days prior to] the day of admission, [~~unless a comprehensive individualized service plan is completed during that time,~~] a preliminary plan of care shall be developed to address the basic needs of the resident [~~z~~ which that] adequately protects his health, safety, and welfare. The preliminary plan shall be developed by a staff person with the qualifications specified in subsection B of this section and in conjunction with the resident, and, as appropriate, other individuals noted in subdivision B 1 of this section. [The preliminary plan shall be identified as such and be signed and dated by the licensee, administrator, or his

designee (i.e., the person who has developed the plan), and by the resident or his legal representative.

Exception: A preliminary plan of care is not necessary if a comprehensive individualized service plan is developed, in conformance with this section, on the day of admission.]

B. The licensee, administrator, or his designee who has successfully completed the department-approved individualized service plan (ISP) training, provided by a licensed health care professional practicing within the scope of his profession, shall develop a comprehensive ISP to meet the resident's service needs. [State approved private pay UAI training must be completed as a prerequisite to ISP training.] An individualized service plan is not required for those residents who are assessed as capable of maintaining themselves in an independent living status.

1. The licensee, administrator, or designee shall develop the ISP in conjunction with the resident and, as appropriate, with the resident's family, legal representative, direct care staff members, case manager, health care providers, qualified mental health professionals, or other persons.

2. The plan shall [~~reflect the resident's assessed needs and~~] support the principles of individuality, personal dignity, freedom of choice, and home-like environment and shall include other formal and informal supports [in addition to those included in subdivision C 2 of this section] that may participate in the delivery of services. Whenever possible, residents shall be given a choice of options regarding the type and delivery of services.

3. The plan shall be designed to maximize the resident's level of functional ability.

C. The comprehensive individualized service plan shall be completed within 30 days after admission and shall include the following:

1. Description of identified needs and date identified based upon the (i) UAI; (ii) admission physical examination; (iii) interview with resident; (iv) fall risk assessment, if appropriate; (v) assessment of psychological, behavioral, and emotional functioning, if appropriate; and (vi) other sources;

2. A written description of what services will be provided to address identified needs, and if applicable, other services, and who will provide them;

3. When and where the services will be provided;

4. The expected outcome and time frame for expected outcome;

5. Date outcome achieved; and

6. For a facility licensed for residential living care only, if a resident lives in a building housing 19 or fewer residents,

Regulations

a statement that specifies whether the [~~person~~ resident] does [~~need~~] or does not need to have a staff member awake and on duty at night.

D. When hospice care is provided to a resident, the assisted living facility and the licensed hospice organization shall communicate and establish [~~and agree~~ an agreed] upon [~~a~~] coordinated plan of care for the resident. The services provided by each shall be included on the individualized service plan.

E. The individualized service plan shall be signed and dated by the licensee, administrator, or his designee, (i.e., the person who has developed the plan), and by the resident or his legal representative. The plan shall also indicate any other individuals who contributed to the development of the plan, with a notation of the date of contribution. The title or relationship to the resident of each person who was involved in the development of the plan shall be [~~so noted~~ included]. These requirements shall also apply to reviews and updates of the plan.

F. Individualized service plans shall be reviewed and updated at least once every 12 months and as needed as the condition of the resident changes. The review and update shall be performed by a staff person with the qualifications specified in subsection B of this section and in conjunction with the resident and, as appropriate, with the resident's family, legal representative, direct care staff, case manager, health care providers, qualified mental health professionals, or other persons.

G. The master service plan shall be filed in the resident's record. A current copy shall be provided to the resident and shall also be maintained in a location accessible at all times to direct care staff, but that protects the confidentiality of the contents of the service plan. Extracts from the plan may be filed in locations specifically identified for their retention.

H. The facility shall ensure that the care and services specified in the individualized service plan are provided to each resident, except that:

1. There may be a deviation from the plan when mutually agreed upon between the facility and the resident or the resident's legal representative at the time the care or services are scheduled or when there is an emergency that prevents the care or services from being provided.

2. Deviation from the plan shall be documented in writing, including a description of the circumstances, the date it occurred, and the signatures of the parties involved, and the documentation shall be retained in the resident's record.

3. The facility may not start, change, or discontinue medications, dietary supplements, diets, medical procedures, or treatments without an order from a physician or other prescriber.

22VAC40-73-460. Personal care services and general supervision and care.

A. The facility shall assume general responsibility for the health, safety, and well-being of the residents.

B. Care provision and service delivery shall be resident-centered to the maximum extent possible and include:

1. Resident participation in decisions regarding the care and services provided to him;

2. Personalization of care and services tailored to the resident's circumstances and preferences; and

3. Prompt response by staff to resident needs as reasonable to the circumstances.

C. Care shall be furnished in a way that fosters the independence of each resident and enables him to fulfill his potential.

D. The facility shall provide supervision of resident schedules, care, and activities, including attention to specialized needs, such as prevention of falls and wandering from the premises.

E. The facility shall regularly observe each resident for changes in physical, mental, emotional, and social functioning.

1. Any notable change in a resident's condition or functioning, including illness, injury, or altered behavior, and [any corresponding] action taken shall be documented in the resident's record.

2. The facility shall provide appropriate assistance when observation reveals unmet needs.

F. The facility shall notify the next of kin, legal representative, designated contact person, or, if applicable, any responsible social agency of any incident of a resident falling or wandering from the premises, whether or not it results in injury. This notification shall occur as soon as possible but [~~at least within~~ no later than] 24 hours from the time of initial discovery or knowledge of the incident. The resident's record shall include documentation of the notification, including date, time, caller, and person or agency notified.

Exception: If the whereabouts of a resident are unknown and there is reason to be concerned about his safety, the facility shall immediately notify the appropriate law-enforcement agency. The facility shall also immediately notify the resident's next of kin, legal representative, designated contact person, or, if applicable, any responsible social agency.

G. The facility shall provide care and services to each resident by staff who are able to communicate with the resident in a language the resident understands or shall make provisions for communications between staff and residents to ensure an accurate exchange of information.

H. The facility shall ensure that personal assistance and care are provided to each resident as necessary so that the needs of the resident are met, including [~~but not limited to~~] assistance or care with:

1. The activities of daily living:

- a. Bathing - at least twice a week, but more often if needed or desired;
- b. Dressing;
- c. Toileting;
- d. Transferring;
- e. Bowel control;
- f. Bladder control; and
- g. [~~Eating or feeding~~ Eating/feeding];

2. The instrumental activities of daily living:

- a. Meal preparation;
- b. Housekeeping;
- c. Laundry; and
- d. Managing money;

3. Ambulation;

4. Hygiene and grooming:

- a. Shampooing, combing, and brushing hair;
- b. Shaving;
- c. Trimming fingernails and toenails (certain medical conditions necessitate that this be done by a licensed health care professional);
- d. Daily tooth brushing and denture care; and
- e. Skin care at least twice daily for those with limited mobility; and

5. Functions and tasks:

- a. Arrangements for transportation;
- b. Arrangements for shopping;
- c. Use of the telephone; and
- d. Correspondence.

I. Each resident shall be dressed in clean clothing and be free of odors related to hygiene. Each resident shall be encouraged to wear day clothing when out of bed.

J. Residents who are incontinent shall have a full or partial bath and clean clothing and linens each time their clothing or bed linen is soiled or wet.

K. The facility shall ensure each resident is able to obtain individually preferred personal care items when:

1. The preferred personal care items are reasonably available; and

2. The resident is willing and able to pay for the preferred items.

22VAC40-73-470. Health care services.

A. The facility shall ensure, either directly or indirectly, that the health care service needs of residents are met. The ways in which the needs may be met include [~~but are not limited to~~]:

1. Staff of the facility providing health care services;

2. Persons employed by a resident providing health care services; or

3. The facility assisting residents in making appropriate arrangements for health care services.

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

b. When mental health care is needed or desired by a resident, this assistance shall include securing the services of the local community services board, [behavioral health authority,] state or federal mental health clinic, or similar facility or agent in the private sector.

B. A resident's need for skilled nursing treatments within the facility shall be met by the facility's employment of a licensed nurse or contractual agreement with a licensed nurse, or by a home health agency or by a private duty licensed nurse.

C. Services shall be provided to prevent clinically avoidable complications, including [~~but not limited to~~]:

1. Pressure ulcer development or worsening of an ulcer;

2. Contracture;

3. Loss of continence;

4. Dehydration; and

5. Malnutrition.

D. The facility shall develop and implement a written policy to ensure that staff are made aware of [allergies and allergic reactions and] any life-threatening conditions of residents, [~~including but not limited to allergic reactions,~~] and actions that staff may need to take.

E. When care for gastric tubes is provided to a resident by unlicensed direct care facility staff as allowed in clause (ii) of 22VAC40-73-310 K, the following criteria shall be met:

1. Prior to the care being provided, the facility shall obtain an informed consent, signed by the resident or his legal

Regulations

representative, that includes at a minimum acknowledgment that:

a. An unlicensed person will routinely be providing the gastric tube care and feedings under the delegation of a registered nurse (RN) who has assessed the resident's care needs and the unlicensed person's ability to safely and adequately meet those needs;

b. Delegation means the RN need not be present in the facility during routine gastric tube care and feedings;

c. Registered medication aides are prohibited from administering medications via gastric tubes and medications may only be administered by licensed personnel (e.g., a licensed practical nurse (LPN) or RN);

d. The tube care and feedings provided to the resident and the supervisory oversight provided by the delegating RN will be reflected on the individualized service plan as required in 22VAC40-73-450; and

e. The signed consent shall be maintained in the resident's record.

2. Only those direct care staff with written approval from the delegating [~~nurse~~ RN] may provide the tube care and feedings. In addition to the approval, the RN shall document:

a. The general and resident-specific instructions he provided to the staff person; and

b. The staff person's successful demonstration of competency in tube care,

3. The delegating RN shall be employed by or under contract with the licensed assisted living facility and shall have supervisory authority over the direct care staff being approved to provide gastric tube care and feedings.

4. The supervisory responsibilities of the delegating [~~nurse~~ RN] include [~~but are not limited to~~]:

a. Monitoring the direct care staff performance related to the delegated tasks;

b. Evaluating the outcomes for the resident;

c. Ensuring appropriate documentation; and

d. Documenting relevant findings and recommendations.

5. The delegating RN shall schedule supervisory oversight based upon the following criteria:

a. The stability and condition of the resident;

b. The experience and competency of the unlicensed direct care staff person;

c. The nature of the tasks or procedures being delegated; and

d. The proximity and availability of the delegating [~~nurse~~ RN] to the unlicensed direct care staff person when the nursing tasks will be performed.

6. Prior to allowing direct care staff to independently perform care for gastric tubes as provided for in this subsection, [~~each person~~ such staff] must be able to successfully demonstrate performance of the entire procedure correctly while under direct observation of the delegating RN. Subsequently, each [~~person~~ direct care staff] shall be directly observed no less than monthly for at least three consecutive months, after which direct observation shall be conducted no less than every six months or more often if indicated. The delegating RN shall retain documentation at the facility of all supervisory activities and direct observations of staff.

7. Contact information for the delegating RN shall be readily available to all staff responsible for tube feedings when an RN or LPN is not present in the facility.

8. Written protocols that encompass the basic policies and procedures for the performance of gastric tube feedings, as well as any resident-specific instructions, shall be available to any direct care staff member responsible for tube feedings.

9. The facility shall have a written back-up plan to ensure that [~~a~~ an RN, LPN, or] person who is qualified as specified in this subsection is available if the direct care staff member who usually provides the care is absent.

F. When the resident suffers serious accident, injury, illness, or medical condition, or there is reason to suspect that such has occurred, medical attention from a licensed health care professional shall be secured immediately. The circumstances involved and the medical attention received or refused shall be documented in the resident's record. The date and time of occurrence, as well as the personnel involved shall be included in the documentation.

1. The resident's physician, if not already involved, next of kin, legal representative, designated contact person, case manager, and any responsible social agency, as appropriate, shall be notified as soon as possible but [~~at least within~~ no later than] 24 hours [~~of from~~] the situation and action taken, or if applicable, the resident's refusal of medical attention. If a resident refuses medical attention, the resident's physician shall be notified immediately.

2. A notation shall be made in the resident's record of such notice, including the date, time, caller, and person notified.

G. If a resident refuses medical attention, the facility shall assess whether it can continue to meet the resident's needs.

22VAC40-73-480. Restorative, habilitative, and rehabilitative services.

A. Facilities shall ~~[assure ensure]~~ that all restorative care and habilitative service needs of the residents are met. Facilities shall coordinate with appropriate professional service providers and ensure that any facility staff who assist with support for these service needs are trained by and receive direction from qualified professionals. Restorative and habilitative care includes ~~[,but is not limited to,]~~ range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

B. In the provision of restorative and habilitative care, staff shall emphasize services such as the following:

1. Making every effort to keep residents active, within the limitations set by physicians' or other prescribers' orders;
2. Encouraging residents to achieve independence in the activities of daily living;
3. Assisting residents to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if they are no longer able to maintain past involvement in particular activities;
4. Assisting residents to carry out prescribed physical therapy exercises between appointments with the physical therapist; and
5. Maintaining a bowel and bladder training program.

C. Facilities shall arrange for specialized rehabilitative services by qualified personnel as needed by the resident. Rehabilitative services include physical therapy, occupational therapy, and speech-language pathology services. Rehabilitative services may be indicated when the resident has lost or has shown a change in his ability to respond to or perform a given task and requires professional rehabilitative services in an effort to regain lost function. Rehabilitative services may also be indicated to evaluate the appropriateness and individual response to the use of assistive technology.

D. All rehabilitative services rendered by a rehabilitative professional shall be performed only upon written medical referral by a physician or other qualified health care professional.

E. The physician's or other prescriber's orders, services provided, evaluations of progress, and other pertinent information regarding the rehabilitative services shall be recorded in the resident's record.

F. Direct care staff who are involved in the care of residents using assistive devices shall know how to operate and utilize the devices.

22VAC40-73-490. Health care oversight.

A. Each assisted living facility shall retain a licensed health care professional who has at least two years of experience as a health care professional in an adult residential facility, adult day care center, acute care facility, nursing home, or licensed home care or hospice organization, either by direct employment or on a contractual basis, to provide on-site health care oversight.

1. For residents who meet the criteria for residential living care:

- a. The licensed health care professional, practicing within the scope of his profession, shall provide ~~[the]~~ health care oversight at least every six months, or more often if indicated, based on his professional judgment of the seriousness of a resident's needs or the stability of a resident's condition; or
- b. If the facility employs a licensed health care professional who is on site on a full-time basis, ~~[the a]~~ licensed health care professional, practicing within the scope of his profession, shall provide ~~[the]~~ health care oversight at least annually, or more often if indicated, based on his professional judgment of the seriousness of a resident's needs or stability of a resident's condition.

2. For residents who meet the criteria for assisted living care:

- a. The licensed health care professional, practicing within the scope of his profession, shall provide ~~[the]~~ health care oversight at least every three months, or more often if indicated, based on his professional judgment of the seriousness of a resident's needs or stability of a resident's condition; or
- b. If the facility employs a licensed health care professional who is on site on a full-time basis, ~~[the a]~~ licensed health care professional, practicing within the scope of his profession, shall provide ~~[the]~~ health care oversight at least every six months, or more often if indicated, based on his professional judgment of the seriousness of a resident's needs or stability of a resident's condition.

3. All residents shall be included at least annually in ~~[the]~~ health care oversight.

B. While on site, as specified in subsection A of this section, the licensed health care professional shall provide health care oversight of the following and make recommendations for change as needed:

1. Ascertain whether a resident's service plan appropriately addresses the current health care needs of the resident.
2. Monitor direct care staff performance of health-related activities.

Regulations

3. Evaluate the need for staff training.
4. Provide consultation and technical assistance to staff as needed.
5. Review documentation regarding health care services, including medication and treatment records, to assess that services are being provided in accordance with physicians' or other prescribers' orders.
6. Monitor conformance to the facility's medication management plan and the maintenance of required medication reference materials.
7. [Evaluate the ability of residents who self-administer medications to continue to safely do so.
- ~~7. 8.] Observe infection control measures and consistency with the infection control program of the facility.~~

~~[8. Review the current condition and the records of restrained residents to assess the appropriateness of the restraint and progress toward its reduction or elimination.~~

C. For all restrained residents, onsite health care oversight shall be provided by a licensed health care professional at least every three months and include the following:]

~~[a. 1.] The licensed health care professional shall be at a minimum a registered nurse [who meets the experience requirements in subdivision A of this section].~~

[2. The licensed health care professional shall review the current condition and the records of restrained residents to assess the appropriateness of the restraint and progress toward its reduction or elimination.]

~~[b. 3.] The licensed health care professional providing the oversight for this subdivision shall also provide the oversight for subdivisions [B] 1 through [7 B 8] of this [subsection section] for restrained residents.~~

~~[c. The health care oversight for all restrained residents shall be provided at least every three months.~~

~~d. 4.] The oversight provided shall be a holistic review of the physical, emotional, and mental health of the resident and identification of any unmet needs.~~

~~[e. 5.] The oversight shall include review of physician's orders for restraints to determine whether orders are no older than three months, as required by 22VAC40-73-710 [E] 2.~~

~~[f. 6.] The oversight shall include an evaluation of whether direct care staff have received the restraint training required by 22VAC40-73-270 and whether the facility is meeting the requirements of 22VAC40-73-710 regarding the use of restraints.~~

[7. The licensed health care professional shall make recommendations for change as needed.]

~~[9. Certify D. The licensed health care professional who provided the health care oversight shall certify] that the requirements of [subdivisions 1 through 8 of this] subsection [B and, if applicable, C of this section] were met, including the dates of the health care oversight. The specific residents for whom the oversight was provided must be identified. The administrator shall be advised of the findings of the health care oversight and any recommendations. All of the requirements of this [subdivision subsection] shall be (i) in writing, (ii) signed and dated by the health care professional, (iii) provided to the administrator within 10 days of the completion of the oversight, and (iv) maintained in the facility files for at least two years, with any specific recommendations regarding a particular resident also maintained in the resident's record.~~

~~[10. E.] Action taken in response to the recommendations noted in [subdivision 9 of this] subsection [D of this section] shall be documented in the resident's record if resident specific, and if otherwise, in the facility files.~~

22VAC40-73-500. Access by community services boards, certain local government departments, and behavioral health authorities.

All assisted living facilities shall provide reasonable access to staff or contractual agents of community services boards, local government departments with policy-advisory community services boards, or behavioral health authorities as defined in § 37.2-100 of the Code of Virginia for the purposes of:

1. Assessing or evaluating clients residing in the facility;
2. Providing case management or other services or assistance to clients residing in the facility; or
3. Monitoring the care of clients residing in the facility.

Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services.

22VAC40-73-510. Mental health services coordination and support.

A. For each resident requiring mental health services, the services of the local community services board, [behavioral health authority,] or a public or private mental health clinic, rehabilitative services agency, treatment facility or agent, or qualified health care professional shall be secured as appropriate based on the resident's current evaluation and to the extent possible, the resident's preference for service provider. The assisted living facility shall assist the resident in obtaining the services. If the services are not able to be secured, the facility shall document the reason for such and the efforts made to obtain the services. If the resident has a legal representative, the representative shall be notified of failure to obtain services and the notification shall be documented.

B. Written procedures to ensure communication and coordination between the assisted living facility and the mental health service provider shall be established to [assure ensure] that the mental health needs of the resident are addressed.

C. Efforts, which must be documented, shall be made by the assisted living facility to assist in ensuring that prescribed interventions are implemented, monitored, and evaluated for their effectiveness in addressing the resident's mental health needs.

D. If efforts to obtain the recommended services are unsuccessful, the facility must document:

1. Whether it can continue to meet all other needs of the resident.
2. How it plans to ensure that the failure to obtain the recommended services will not compromise the health, safety, or rights of the resident and others who come in contact with the resident.
3. Details of additional steps the facility will take to find alternative providers to meet the resident's needs.

[E. Any contracts for mental health services between the facility and the mental health services provider:

1. Shall not contain terms that conflict with the regulations; and
2. Shall be provided to the regional licensing office within 10 days of entering into the contract.]

22VAC40-73-520. Activity and recreational requirements.

A. Activities for residents shall:

1. Support the skills and abilities of residents in order to promote or maintain their highest level of independence or functioning;
2. Accommodate individual differences by providing a variety of types of activities and levels of involvement; and
3. Offer residents a varied mix of [weekly] activities [weekly] including [, but not limited to,] those that are physical; social; cognitive, intellectual, or creative; productive; sensory; reflective or contemplative; [involve] nature or the natural world; and weather permitting, outdoor [activity]. Any given activity may involve more than one of these. Community resources as well as facility resources may be used to provide activities.

B. Resident participation in activities.

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

2. During an activity, each resident shall be encouraged but not coerced to join in at his level of functioning, to include observing.

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

C. Activities shall be planned under the supervision of the administrator or other qualified staff person who shall encourage involvement of residents and staff in the planning.

D. In a facility licensed for residential living care only, there shall be at least 11 hours of scheduled activities available to the residents each week for no less than one hour each day.

E. In a facility licensed for both residential and assisted living care, there shall be at least 14 hours of scheduled activities available to the residents each week for no less than one hour each day.

F. During an activity, when needed to ensure that each of the following is adequately accomplished, there shall be staff persons or volunteers to:

1. Lead the activity;
2. Assist the residents with the activity;
3. Supervise the general area;
4. Redirect any [individuals residents] who require different activities; and
5. Protect the health, safety, and welfare of the residents participating in the activity.

G. The staff person or volunteer leading the activity shall have a general understanding of the following:

1. Attention spans and functional levels of the residents [in the group];
2. Methods to adapt the activity to meet the needs and abilities of the residents;
3. Various methods of engaging and motivating [individuals residents] to participate; and
4. The importance of providing appropriate instruction, education, and guidance throughout the activity.

H. Adequate supplies and equipment appropriate for the program activities shall be available in the facility.

I. There shall be a written schedule of activities that meets the following criteria:

1. The schedule of activities shall be developed at least monthly.
2. The schedule shall include:
 - a. Group activities for all residents or small groups of residents; and

Regulations

b. The name, if any, and the type, date, and hour of the activity.

3. If one activity is substituted for another, the change shall be noted on the schedule.

4. The current month's schedule shall be posted in a conspicuous location in the facility or otherwise be made available to residents and their families.

5. The schedule of activities for the past two years shall be kept at the facility.

6. If a resident requires an individual schedule of activities, that schedule shall be a part of the individualized service plan.

J. The facility shall promote access to the outdoors.

K. In addition to the required scheduled activities, there shall be unscheduled staff and resident interaction throughout the day that fosters an environment that promotes socialization opportunities for residents.

22VAC40-73-530. Freedom of movement.

A. Any resident who does not have a serious cognitive impairment shall be allowed to freely leave the facility. A resident who has a serious cognitive impairment shall be subject to the provisions set forth in 22VAC40-73-1040 A or 22VAC40-73-1150 A.

B. Doors leading to the outside shall not be locked from the inside or secured from the inside in any manner that amounts to a lock, except that doors may be locked or secured in a manner that amounts to a lock in special care units as provided in 22VAC40-73-1150 A. Any devices used to lock or secure doors in any manner must be in accordance with applicable building and fire codes.

C. The facility shall provide freedom of movement for the residents to common areas and to their personal spaces. The facility shall not lock residents out of or inside their rooms.

22VAC40-73-540. Visiting in the facility.

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

B. Visiting hours shall not be restricted, except by a resident when it is the resident's choice.

C. The facility may establish a policy or guidelines so that visiting is not disruptive to other residents and facility security is not compromised. However, daily visits and visiting hours shall not be restricted as provided in subsections A and B of this section.

D. The facility shall encourage regular family involvement with the resident and shall provide ample opportunities for family participation in activities at the facility.

22VAC40-73-550. Resident rights.

A. The resident shall be encouraged and informed of appropriate means as necessary to exercise his rights as a resident and a citizen throughout the period of his stay at the facility.

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

C. Any resident of an assisted living facility has the rights and responsibilities as provided in § 63.2-1808 of the Code of Virginia and this chapter.

D. The operator or administrator of an assisted living facility shall establish written policies and procedures for implementing § 63.2-1808 of the Code of Virginia.

E. The facility shall make its policies and procedures for implementing § 63.2-1808 of the Code of Virginia available and accessible to residents, relatives, agencies, and the general public.

F. The rights and responsibilities of residents shall be printed in at least [~~12-point~~ 14-point] type and posted conspicuously in a public place in all assisted living facilities. The facility shall also post the name and telephone number of the appropriate regional licensing supervisor of the department, the Adult Protective Services' toll-free telephone number, the toll-free telephone number of the Virginia Long-Term Care Ombudsman Program and any substate (i.e., local) ombudsman program serving the area, and the toll-free telephone number of the [~~Virginia Office for Protection and Advocacy~~ disAbility Law Center of Virginia].

G. The rights and responsibilities of residents in assisted living facilities shall be reviewed annually with each resident or his legal representative or responsible individual as stipulated in subsection H of this section and each staff person. Evidence of this review shall be the resident's, his legal representative's or responsible individual's, or staff person's written acknowledgment of having been so informed, which shall include the date of the review and shall be filed in the resident's or staff person's record.

H. If a resident is unable to fully understand and exercise the rights and responsibilities contained in § 63.2-1808 of the Code of Virginia [and does not have a legal representative], the facility shall require that a responsible individual, of the resident's choice when possible, designated in writing in the resident's record annually be made aware of each item in § 63.2-1808 and the decisions that affect the resident or relate to specific items in § 63.2-1808. [The responsible individual shall not be the facility licensee, administrator, or staff person

or family members of the licensee, administrator, or staff person.]

1. A resident shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the resident's record.

2. The facility shall seek a determination and reasons for the determination from a resident's physician regarding the resident's capability to understand and exercise these rights when there is reason to believe that the resident may not be capable of such.

22VAC40-73-560. Resident records.

A. The facility shall establish written policy and procedures for documentation and recordkeeping to ensure that the information in resident records is accurate and clear and that the records are well-organized.

B. Resident records shall be identified and easily located by resident name, including when a resident's record is kept in more than one place. This shall apply to both electronic and hard copy material.

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

D. Copies of all agreements between the facility and the resident and official acknowledgment of required notifications, signed by all parties involved, shall be retained in the resident's record. Copies shall be provided to the resident and to persons whose signatures appear on the document.

E. All resident records shall be kept current, retained at the facility, and kept in a locked area, except that information shall be made available as noted in subsection F of this section.

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

G. Residents shall be allowed access to their own records. A legal representative of a resident shall be provided access to the resident's record or part of the record as allowed by the scope of his legal authority.

H. The complete resident record shall be retained for at least two years after the resident leaves the facility.

1. For at least the first year, the record shall be retained at the facility.

2. After the first year, the record may be retained off site in a safe, secure area. The record must be available at the facility within 48 hours.

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

22VAC40-73-570. Release of information [~~from resident's record regarding resident's personal affairs and records~~].

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

B. The licensee is responsible for making available to residents and legal representatives a form which they may use to grant their written permission for the facility to release information to persons or agencies outside the facility. The facility shall retain a copy of any signed release of information form in the resident's record.

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

1. When records have been properly subpoenaed;

2. When the resident is in need of emergency medical care and is unable or unwilling to grant permission to release information or his legal representative is not available to grant permission;

3. When the resident moves to another caregiving facility;

4. To representatives of the department; or

5. As otherwise required by law.

D. When a resident is hospitalized or transported by emergency medical personnel, information necessary to the care of the resident shall be furnished by the facility to the hospital or emergency medical personnel. Examples of such information include [~~medications~~ a copy of the current medication administration record (MAR)], a Do Not Resuscitate (DNR) Order, advance directives, and organ donation information. The facility shall also provide the name, address, and telephone number of the resident's designated contact person to the hospital or emergency medical personnel.

22VAC40-73-580. Food service and nutrition.

A. When any portion of an assisted living facility is subject to inspection by the Virginia Department of Health, the facility shall be in compliance with those regulations, as evidenced by an initial and subsequent annual reports from the Virginia Department of Health. The report shall be retained at the facility for a period of at least two years.

B. All meals shall be served in the dining area as designated by the facility, except that:

Regulations

1. If the facility, through its policies and procedures, offers routine or regular room service, residents shall be given the option of having meals in the dining area or in their rooms, provided that:

a. There is a written agreement to this effect, signed and dated by both the resident and the licensee or administrator and filed in the resident's record.

b. If a resident's individualized service plan, physical examination report, mental health status report, or any other document indicates that the resident has a psychiatric condition that contributes to self-isolation, a qualified mental health professional shall make a determination in writing whether the [~~person~~ resident] should have the option of having meals in his room. If the determination is made that the resident should not have this option, then the resident shall have his meals in the dining area.

2. Under special circumstances, such as temporary illness, temporary incapacity, temporary agitation of a resident with cognitive impairment, or occasional, infrequent requests due to a resident's personal preference, meals may be served in a resident's room.

3. When meals are served in a resident's room, a sturdy table must be used.

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

D. A minimum of 45 minutes shall be allowed for each resident to complete a meal. If a resident has been assessed on the UAI as dependent in [~~eating or feeding~~ eating/feeding], his individualized service plan shall indicate an approximate amount of time needed for meals to ensure needs are met.

E. Facilities shall develop and implement a policy to monitor each resident for:

1. Warning signs of changes in physical or mental status related to nutrition; and

2. Compliance with any needs determined by the resident's individualized service plan or prescribed by a physician or other prescriber, nutritionist, or health care professional.

F. Facilities shall implement interventions as soon as a nutritional problem is suspected. These interventions shall include [~~but are not limited to~~] the following:

1. Weighing residents at least monthly to determine whether the resident has significant weight loss (i.e., 5.0% weight loss in one month, 7.5% in three months, or 10% in six months); and

2. Notifying the attending physician if a significant weight loss is identified in any resident who is not on a physician-approved weight reduction program and obtaining,

documenting, and following the physician's instructions regarding nutritional care.

G. Residents with independent living status who have kitchens equipped with stove, refrigerator, and sink within their individual apartments may have the option of obtaining meals from the facility or from another source. If meals are obtained from another source, the facility must ensure availability of meals when the resident is sick or temporarily unable to prepare meals for himself.

22VAC40-73-590. Number of meals and availability of snacks.

A. At least three well-balanced meals, served at regular intervals, shall be provided daily to each resident, unless contraindicated as documented by the attending physician in the resident's record or as provided for in 22VAC40-73-580 G.

B. [~~Bedtime and between meal snacks~~ Snacks] shall be made available [at all times] for all residents [~~desiring them~~] or in accordance with their physician's or other prescriber's orders.

1. Appropriate adjustments in the provision of snacks to a resident shall be made when orders from the resident's physician or other prescriber in the resident's record limits the receipt or type of snacks.

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

22VAC40-73-600. Time interval between meals.

A. Time between the [scheduled] evening meal and [scheduled] breakfast the following morning shall not exceed 15 hours.

B. There shall be at least four hours between [scheduled] breakfast and lunch and at least four hours between [scheduled] lunch and supper.

C. When multiple seatings are required due to limited dining space, scheduling shall ensure that these time intervals are met for all residents. Schedules shall be made available to residents, legal representatives, staff, volunteers, and any other persons responsible for assisting residents in the dining process.

22VAC40-73-610. Menus for meals and snacks.

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

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

1. Any menu substitutions or additions shall be recorded on the posted menu.

2. A record shall be kept of the menus served for two years.

C. Minimum daily menu.

1. Unless otherwise ordered in writing by the resident's physician or other prescriber, the daily menu, including snacks, for each resident shall meet the current guidelines of the U.S. Department of Agriculture's food guidance system or the dietary allowances of the Food and Nutritional Board of the National Academy of Sciences, taking into consideration the age, sex, and activity of the resident.

2. Other foods may be added.

3. Second servings and snacks shall be available at no additional charge.

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

D. When a diet is prescribed for a resident by his physician or other prescriber, it shall be prepared and served according to the physician's or other prescriber's orders.

E. A copy of a diet manual containing acceptable practices and standards for nutrition shall be kept current and ~~[on file in the dietary department]~~ readily available to personnel responsible for food preparation].

F. The facility shall make drinking water readily available to all residents. Direct care staff shall know which residents need help getting water or other fluids and drinking from a cup or glass. Direct care staff shall encourage and assist residents who do not have medical conditions with physician or other prescriber ordered fluid restrictions to drink water or other beverages frequently.

22VAC40-73-620. Oversight of special diets.

A. There shall be oversight at least every six months of special diets by a dietitian or nutritionist for each resident who has such a diet. Special diets may also be referred to using terms such as medical nutrition therapy or diet therapy. The dietitian or nutritionist must meet the requirements of § 54.1-2731 of the Code of Virginia ~~[and 18VAC75-30, Regulations Governing Standards for Dietitians and Nutritionists]~~.

B. The oversight specified in subsection A of this section shall be on site and include the following:

1. A review of the physician's or other prescriber's order and the preparation and delivery of the special diet.

2. An evaluation of the adequacy of the resident's special diet and the resident's acceptance of the diet.

3. Certification that the requirements of this subsection were met, including the date of the oversight and identification of the residents for whom the oversight was provided. The administrator shall be advised of the findings of the oversight and any recommendations. All of the requirements of this subdivision shall be (i) in writing, (ii) signed and dated by the dietitian or nutritionist, (iii)

provided to the administrator within 10 days of the completion of the oversight, and (iv) maintained in the files at the facility for at least two years, with any specific recommendations regarding a particular resident also maintained in the resident's record.

4. Upon receipt of recommendations noted in subdivision 3 of this subsection, the administrator ~~[or the]~~ dietitian, or nutritionist shall report them to the resident's physician. Documentation of the report shall be maintained in the resident's record.

5. Action taken in response to the recommendations noted in subdivision 3 of this subsection shall be documented in the resident's record.

22VAC40-73-630. Observance of religious dietary practices.

A. The resident's religious dietary practices shall be respected.

B. Religious dietary practices of the administrator or licensee shall not be imposed upon residents unless ~~[mutually]~~ specifically agreed upon in the admission ~~[agreement]~~ agreement/acknowledgment] between administrator or licensee and resident.

22VAC40-73-640. Medication management plan and reference materials.

A. The facility shall have, keep current, and implement a written plan for medication management. The facility's medication plan shall address procedures for administering medication and shall include:

1. Methods to ensure an understanding of the responsibilities associated with medication management;

2. Standard operating procedures, including ~~[but not limited to]~~ the facility's standard dosing schedule and any general restrictions specific to the facility;

3. Methods to prevent the use of outdated, damaged, or contaminated medications;

4. Methods to ensure that each resident's prescription medications and any over-the-counter drugs and supplements ordered for the resident are filled and refilled in a timely manner to avoid missed dosages;

5. Methods for verifying that medication orders have been accurately transcribed to medication administration records (MARs) ~~[including]~~ within 24 hours of receipt of a new order or change in an order;

6. Methods for monitoring medication administration and the effective use of the MARs for documentation;

7. ~~[Methods]~~ to ensure that MARs are maintained as part of the resident's record;]

Regulations

8.] Methods to ensure accurate counts of all controlled substances whenever assigned medication administration staff changes;

[~~8.~~ 9.] Methods to ensure that staff who are responsible for administering medications meet the qualification requirements of 22VAC40-73-670;

[~~9.~~ 10.] Methods to ensure that staff who are responsible for administering medications are adequately supervised, including periodic direct observation of medication administration;

[~~10.~~ 11.] A plan for proper disposal of medication;

[~~11.~~ 12.] Methods to ensure that residents do not receive medications or dietary supplements to which they have known allergies;

[~~12.~~ 13.] Identification of the medication aide or the person licensed to administer drugs responsible for routinely communicating issues or observations related to medication administration to the prescribing physician or other prescriber;

[~~13.~~ 14.] Methods to ensure that staff who are responsible for administering medications are trained on the facility's medication management plan; and

[~~14.~~ 15.] Procedures for internal monitoring of the facility's conformance to the medication management plan.

B. The facility's written medication management plan requires approval by the department.

C. Subsequent changes shall be reviewed as part of the department's regular inspection process.

D. In addition to the facility's written medication management plan, the facility shall [~~maintain, as reference materials for medication aides,~~ have readily accessible] at least one pharmacy reference book, drug guide, or medication handbook for nurses that is no more than two years old [as reference materials for staff who administer medications].

22VAC40-73-650. Physician's or other prescriber's order.

A. No medication, dietary supplement, diet, medical procedure, or treatment shall be started, changed, or discontinued by the facility without a valid order from a physician or other prescriber. Medications include prescription, over-the-counter, and sample medications.

B. Physician or other prescriber orders, both written and oral, for administration of all prescription and over-the-counter medications and dietary supplements shall include the name of the resident, the date of the order, the name of the drug, route, dosage, strength, how often medication is to be given, and identify the diagnosis, condition, or specific indications for administering each drug.

C. Physician's or other prescriber's oral orders shall:

1. Be charted by the individual who takes the order. That individual must be one of the following:

a. A licensed health care professional practicing within the scope of his profession; or

b. A medication aide.

2. Be reviewed and signed by a physician or other prescriber within 14 days.

D. Medication aides may not transmit an oral order to a pharmacy.

E. The resident's record shall contain the physician's or other prescriber's signed written order or a dated notation of the physician's or other prescriber's oral order. Orders shall be organized chronologically in the resident's record.

F. Whenever a resident is admitted to a hospital for treatment of any condition, the facility shall obtain new orders for all medications and treatments prior to or at the time of the resident's return to the facility. The facility shall ensure that the primary physician is aware of all medication orders and has documented any contact with the physician regarding the new orders.

22VAC40-73-660. Storage of medications.

A. A medicine cabinet, container, or compartment shall be used for storage of medications and dietary supplements prescribed for residents when such medications and dietary supplements are administered by the facility. Medications shall be stored in a manner consistent with current standards of practice.

1. The storage area shall be locked.

2. Schedule II drugs and any other drugs subject to abuse must be kept in a separate locked storage compartment (e.g., a locked cabinet within a locked storage area or a locked container within a locked cabinet or cart).

3. The individual responsible for medication administration shall keep the keys to the storage area on his person.

4. When in use, the storage area shall have adequate illumination in order to read container labels.

5. The storage area shall not be located in the kitchen or bathroom, but in an area free of dampness or abnormal temperatures unless the medication requires refrigeration.

6. When required, medications shall be refrigerated.

a. It is permissible to store dietary supplements and foods and liquids used for medication administration in a refrigerator that is dedicated to medication storage if the refrigerator is in a locked storage area.

b. When it is necessary to store medications in a refrigerator that is routinely used for food storage, the

medications shall be stored together in a locked container in a clearly defined area.

7. Single-use and dedicated medical supplies and equipment shall be appropriately labeled and stored. Medical equipment suitable for multi-use shall be stored to prevent cross-contamination.

B. A resident may be permitted to keep his own medication in an out-of-sight place in his room if the UAI has indicated that the resident is capable of self-administering medication. The medication and any dietary supplements shall be stored so that they are not accessible to other residents. This does not prohibit the facility from storing or administering all medication and dietary supplements.

Exception: If the facility has no [residents resident] with [a] serious cognitive [impairments impairment or substance abuse problem], the facility may determine that the out-of-sight and inaccessibility safeguards specified in this subsection do not apply. [If the facility determines that these safeguards do not apply, the facility shall maintain documentation of such, including the date and the names of residents at the time the determination is made. No such determination shall be valid for longer than six months. Such determinations may be renewed under the same conditions and with the same documentation requirements.]

22VAC40-73-670. Qualifications and supervision of staff administering medications.

When staff administers medications to residents, the following standards shall apply:

1. Each staff person who administers medication shall be authorized by § 54.1-3408 of the Virginia Drug Control Act. All staff responsible for medication administration shall:

- a. Be licensed by the Commonwealth of Virginia to administer medications; or
- b. Be registered with the Virginia Board of Nursing as a medication aide, except as specified in subdivision 2 of this section.

2. Any applicant for registration as a medication aide who has provided to the Virginia Board of Nursing evidence of successful completion of the education or training course required for registration may act as a medication aide on a provisional basis for no more than 120 days before successfully completing any required competency evaluation. However, upon notification of failure to successfully complete the written examination after three attempts, an applicant shall immediately cease acting as a medication aide.

3. Medication aides shall be supervised by one of the following:

a. An individual employed full time at the facility who is licensed by the Commonwealth of Virginia to administer medications;

b. The administrator who is licensed by the Commonwealth of Virginia to administer medications or who has successfully completed a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for administrators who supervise medication aides, but are not registered medication aides themselves, must include a minimum of 68 hours of student instruction and training but need not include the prerequisite for the program or the written examination for registration. The administrator must also meet the requirements of 22VAC40-73-160 E; or

c. For a facility licensed for residential living care only, the designated assistant administrator, as specified in 22VAC40-73-150 E, who is licensed by the Commonwealth of Virginia to administer medications or who has successfully completed a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for designated assistant administrators who supervise medication aides, but are not registered medication aides themselves, must include a minimum of 68 hours of student instruction and training but need not include the prerequisite for the program or the written examination for registration. The designated assistant administrator must also meet the requirements of 22VAC40-73-160 E.

22VAC40-73-680. Administration of medications and related provisions.

A. Staff who are licensed, registered, or acting as medication aides on a provisional basis as specified in 22VAC40-73-670 shall administer drugs to those residents who are dependent on medication administration as documented on the UAI.

B. Medications shall be removed from the pharmacy container, or the container shall be opened, by a staff person licensed, registered, or acting as a medication aide on a provisional basis as specified in 22VAC40-73-670 and administered to the resident by the same staff person. Medications shall remain in the pharmacy issued container, with the prescription label or direction label attached, until administered to the resident.

C. Medications shall be administered not earlier than one hour before and not later than one hour after the facility's standard dosing schedule, except those drugs that are ordered for specific times, such as before, after, or with meals.

D. Medications shall be administered in accordance with the physician's or other prescriber's instructions and consistent

Regulations

with the standards of practice outlined in the current registered medication aide curriculum approved by the Virginia Board of Nursing.

E. Medical procedures or treatments ordered by a physician or other prescriber shall be provided according to his instructions [and documented. The documentation shall be maintained in the resident's record].

F. Sample medications shall remain in the original packaging, labeled by a physician or other prescriber or pharmacist with the resident's name, the name of the medication, the strength, dosage, and route and frequency of administration, until administered.

G. Over-the-counter medication shall remain in the original container, labeled with the resident's name, or in a pharmacy-issued container, until administered.

H. At the time the medication is administered, the facility shall document on a medication administration record (MAR) all medications administered to residents, including over-the-counter medications and dietary supplements.

I. The MAR shall include:

1. Name of the resident;
2. Date prescribed;
3. Drug product name;
4. Strength of the drug;
5. Dosage;
6. Diagnosis, condition, or specific indications for administering the drug or supplement;
7. Route (e.g., by mouth);
8. How often medication is to be taken;
9. Date and time given and initials of direct care staff administering the medication;
10. Dates the medication is discontinued or changed;
11. Any medication errors or omissions;
12. Description of significant adverse effects suffered by the resident;
13. For "as needed" (PRN) medications:
 - a. Symptoms for which medication was given;
 - b. Exact dosage given; and
 - c. Effectiveness; and
14. The name, signature, and initials of all staff administering medications. [A master list may be used in lieu of this documentation on individual MARs.]

J. In the event of an adverse drug reaction or a medication error, the following applies:

1. Action shall be taken as directed by a physician, pharmacist, or a poison control center;

2. The resident's physician of record and family member or other responsible person shall be notified as soon as possible; and

3. Medication administration staff shall document actions taken in the resident's record.

~~[K. The performance of all medical procedures and treatments ordered by a physician or other prescriber shall be documented, and the documentation shall be retained in the resident's record.~~

~~L. K.]~~ The use of PRN medications is prohibited, unless one or more of the following conditions exist:

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

2. Licensed health care professionals administer the PRN medication; or

3. Medication aides administer the PRN medication when the facility has obtained from the resident's physician or other prescriber a detailed medication order. The order shall include symptoms that indicate the use of the medication, exact dosage, the exact time frames the medication is to be given in a 24-hour period, and directions as to what to do if symptoms persist.

~~M. L.]~~ In order for drugs in a hospice comfort kit to be administered, the requirements specified in subsection [~~L. K.]~~ of this section must be met, and each medication in the kit must have a prescription label attached by the pharmacy.

~~N. M.]~~ Medications ordered for PRN administration shall be available, properly labeled for the specific resident, and properly stored at the facility.

~~O. N.]~~ Stat-drug boxes may only be used when the following conditions are met:

1. There is an order from the prescriber for any drug removed from the stat-drug box; and

2. The drug is removed from the stat-drug box and administered by a nurse, pharmacist, or prescriber licensed to administer medications. [~~3.]~~ Registered medication aides are not permitted to either remove or administer medications from the stat-drug box.

22VAC40-73-690. Medication review.

A. For each resident assessed for residential living care, except for those who self-administer all of their medications, a licensed health care professional, practicing within the scope of his profession, shall perform an annual review of all the medications of the resident.

B. For each resident assessed for assisted living care, except for those who self-administer all of their medications, a

licensed health care professional, practicing within the scope of his profession, shall perform a review every six months of all the medications of the resident.

C. The medication review shall include prescription drugs, over-the-counter medications, and dietary supplements ordered for the resident.

D. If deemed appropriate by the licensed health care professional, the review shall include observation of the resident or interview with the resident or staff.

E. The review shall include [~~, but not be limited to,~~] the following:

1. All medications that the resident is taking and medications that he could be taking if needed (PRNs).

2. An examination of the dosage, strength, route, how often, prescribed duration, and when the medication is taken.

3. Documentation of actual and consideration of potential interactions of drugs with one another.

4. Documentation of actual and consideration of potential interactions of drugs with foods or drinks.

5. Documentation of actual and consideration of potential negative effects of drugs resulting from a resident's medical condition other than the one the drug is treating.

6. Consideration of whether PRNs, if any, are still needed and if clarification regarding use is necessary.

7. [Consideration of a gradual dose reduction of antipsychotic medications for those residents with a diagnosis of dementia and no diagnoses of a primary psychiatric disorder.

8.] Consideration of whether the resident needs additional monitoring or testing.

[~~8- 9.] Documentation of actual and consideration of potential adverse effects or unwanted side effects of specific medications.~~

[~~9- 10.] Identification of that which may be questionable, such as (i) similar medications being taken, (ii) different medications being used to treat the same condition, (iii) what seems an excessive number of medications, and (iv) what seems an exceptionally high drug dosage.~~

[~~10- 11.] The health care professional shall notify the resident's attending physician of any concerns or problems and document the notification.~~

F. The licensed health care professional shall certify that the requirements of subdivisions E 1 through E [~~10 11] of this section were met, including the dates of the medication review. The administrator shall be advised of the findings of the medication review and any recommendations. All of the requirements of this subdivision shall be (i) in writing, (ii)~~

signed and dated by the health care professional, (iii) provided to the administrator within 10 days of the completion of the review, and (iv) maintained in the facility files for at least two years, with any specific recommendations regarding a particular resident also maintained in the resident's record.

G. Action taken in response to the recommendations noted in subsection F of this section shall be documented in the resident's record.

22VAC40-73-700. Oxygen therapy.

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

1. The facility shall have a valid physician's or other prescriber's order that includes the following:

a. The oxygen source, such as compressed gas or concentrators;

b. The delivery device, such as nasal cannula, reservoir nasal cannulas, or masks; and

c. The flow rate deemed therapeutic for the resident.

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

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

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

5. The facility shall demonstrate that all direct care staff responsible for assisting residents who use oxygen supplies have had training or instruction in the use and maintenance of resident-specific equipment.

6. The facility shall include in its disaster preparedness plan a checklist of information required to meet the identified needs of those [~~individuals~~ residents] who require oxygen therapy including [~~, but not limited to,~~] the following:

a. Whether the facility has on-site, emergency generator capacity sufficient to safely operate oxygen concentrators efficiently.

b. Whether in the absence of on-site generators the facility has agreements with vendors to provide emergency generators, including whether those generators will support oxygen concentrators.

c. Where the facility maintains chart copies of each resident's agreement, including emergency preparedness

Regulations

and back-up plans, with his oxygen equipment and supply vendor for ready access in any emergency situation.

d. How equipment and supplies will be transported in the event that residents must be evacuated to another location.

22VAC40-73-710. Restraints.

A. ~~The use of chemical restraints is prohibited. [The use of prone or supine restraints is prohibited. The use of any restraint or restraint technique that restricts a resident's breathing, interferes with a resident's ability to communicate, or applies pressure on a resident's torso is prohibited.]~~

B. Physical restraints shall not be used for purposes of discipline or convenience. ~~[Restraints Physical restraints] may only be used [to treat a resident's medical symptoms or symptoms from mental illness or intellectual disability (i) as a medical/orthopedic restraint for support, according to a physician's written order and with the written consent of the resident or his legal representative or (ii) in an emergency situation after less intrusive interventions have proven insufficient to prevent imminent threat of death or serious physical injury to the resident or others.]~~

C. ~~[The facility may only impose physical restraints when the resident's medical symptoms or symptoms from mental illness or intellectual disability warrant the use of restraints. The restraint must If a restraint is used, it must]:~~

~~[1. Be necessary to ensure the physical safety of the resident or others;~~

~~2. 1.] Be imposed in accordance with a physician's written order [, which must be no older than three months,] that specifies the condition, circumstances, and duration under which the restraint is to be used, [except in emergency circumstances until such an order can reasonably be obtained];~~ and

~~[3. 2.] Not be ordered on a standing, blanket, or "as needed" (PRN) basis.~~

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

1. A restraint shall be used only to the minimum extent necessary to protect the resident or others;

2. Restraints shall only be applied by direct care staff who have received training in their use as specified by subdivision 2 of 22VAC40-73-270;

3. The facility shall closely monitor the ~~[resident's]~~ condition ~~[of a resident with a restraint],~~ which includes checking on the resident at least every 30 minutes;

4. The facility shall assist the resident ~~[with a restraint]~~ as often as necessary, but no less than 10 minutes every hour,

for his hydration, safety, comfort, range of motion, exercise, elimination, and other needs;

5. The facility shall release the resident from the restraint as quickly as possible; ~~[and]~~

6. Direct care staff shall keep a record of restraint usage, outcomes, checks, and any assistance required in subdivision 4 of this subsection and shall note any unusual occurrences or problems;

~~[7.]~~ E. When restraints are used in ~~[]~~ nonemergencies, as defined in 22VAC40-73-10, ~~[the following conditions shall be met]:~~

~~[a. 1.]~~ Restraints shall be used as a last resort and only if the facility, after completing, implementing, and evaluating the resident's comprehensive assessment and service plan, determines and documents that less restrictive means have failed;

~~[2.]~~ Physician orders for medical/orthopedic restraints must be reviewed by the physician at least every three months and renewed if the circumstances warranting the use of the restraint continue to exist; ~~[]~~

~~[b. 3.]~~ Restraints shall be used in accordance with the resident's service plan, which documents the need for the restraint and includes a schedule or plan of rehabilitation training enabling the progressive removal or the progressive use of less restrictive restraints when appropriate;

~~[c.]~~ 4. Before the initial administration of a restraint, the ~~[]~~ facility shall explain the use of the restraint and potential negative outcomes to the resident or his legal representative and the resident's right to refuse the restraint and shall obtain the written consent of the resident or his legal representative;

~~[d.]~~ 5. Restraints shall be applied so as to cause no physical injury and the least possible discomfort; and

~~[e.]~~ 6. The facility shall notify the resident's legal representative or designated contact person as soon as practicable, but no later than 24 hours after the initial administration of a nonemergency restraint. The facility shall keep the ~~[resident and his]~~ legal representative or designated contact person informed about any changes in restraint usage. A notation shall be made in the resident's record of such notice, including the date, time, ~~[caller, and]~~ person notified ~~[, method of notification, and staff providing notification]~~;

~~[8.]~~ F. When restraints are used in ~~[]~~ emergencies, as defined in 22VAC40-73-10 ~~[the following conditions shall be met]:~~

~~[a. 1.]~~ Restraints ~~[shall not be used unless they are necessary to alleviate an unanticipated immediate and serious danger to the resident or other individuals in the~~

facility may only be used as an emergency intervention of last resort to prevent imminent threat of death or serious physical injury to the resident or others];

[~~b.~~ 2.] An oral or written order shall be obtained from a physician within one hour of administration of the emergency restraint and the order shall be documented;

[~~e.~~ 3.] In the case of an oral order, a written order shall be obtained from the physician as soon as possible;

[~~f.~~ 4.] The resident shall be within sight and sound of direct care staff at all times;

[~~e.~~ 5.] If the emergency restraint is necessary for longer than two hours, the resident shall be transferred to a medical or psychiatric inpatient facility or monitored in the facility by a mental health crisis team until his condition has stabilized to the point that the attending physician documents that restraints are not necessary; [~~and~~

~~f.~~ 6.] The facility shall notify the resident's legal representative or designated contact person as soon as practicable, but no later than 12 hours after administration of an emergency restraint. A notation shall be made in the resident's record of such notice, including the date, time, caller and person notified [; and

7. The facility shall review the resident's individualized service plan within one week of the application of an emergency restraint and document additional interventions to prevent the future use of emergency restraints.]

22VAC40-73-720. Do Not Resuscitate Orders.

A. Do Not Resuscitate (DNR) Orders for withholding cardiopulmonary resuscitation from [~~an individual~~ a resident] in the event of cardiac or respiratory arrest may only be carried out in a licensed assisted living facility when:

1. A valid written order has been issued by the resident's attending physician; and

2. The written order is included in the individualized service plan;

B. The facility shall have a system to ensure that all staff are aware of residents who have a valid DNR Order.

C. The DNR Order shall be readily available to other authorized persons, such as emergency medical technicians (EMTs), when necessary.

D. Durable DNR Orders shall not authorize the assisted living facility or its staff to withhold other medical interventions, such as intravenous fluids, oxygen, or other therapies deemed necessary to provide comfort care or to alleviate pain.

E. Section 63.2-1807 of the Code of Virginia states that the owners or operators of any assisted living facility may provide that their staff who are certified in CPR shall not be

required to resuscitate any resident for whom a valid written order not to resuscitate in the event of cardiac or respiratory arrest has been issued by the resident's attending physician and has been included in the resident's individualized service plan.

F. If the owner or operator of a facility has determined that DNR Orders will not be honored, the facility shall have a policy specifying this and, prior to admission, the resident or his legal guardian shall be notified of the policy and sign an acknowledgment of the notification.

22VAC40-73-730. Advance directives.

A. Upon admission or while residing in the facility, whenever the resident has established advance directives, such as a living will or a durable power of attorney for health care, to the extent available, the facility shall obtain the following:

1. The name of and contact information for the individual or individuals who has the document or documents;

2. The location of the documents;

3. Either the advance directives or the content of the advance directives; and

4. The name of and contact information for any designated agent, as related to the development and modification of the individualized service plan.

B. If the facility is unable to obtain any of the information or documents as noted in subdivisions 1 through 4 of subsection A of this section, the efforts made to do so shall be documented in the resident's record.

C. The information regarding advance directives shall be readily available to other authorized persons, such as emergency medical technicians (EMTs), when necessary.

D. A resident requesting assistance with establishing advance directives shall be referred to his primary health care provider or attorney.

Part VII

Resident Accommodations and Related Provisions

22VAC40-73-740. Personal possessions.

A. Each resident shall be permitted to keep reasonable personal property in his possession at a facility in order to maintain individuality and personal dignity.

B. A facility shall ensure that each resident has his own clothing.

1. The use of a common clothing pool is prohibited.

2. If necessary, resident's clothing shall be inconspicuously marked with his name to avoid getting mixed with others.

Regulations

3. Residents shall be allowed and encouraged to select their daily clothing and wear clothing to suit their activities and appropriate to weather conditions.

C. Each resident shall have his own personal care items.

D. Each facility shall develop and implement a written policy regarding procedures to be followed when a resident's clothing or other personal possessions, such as jewelry, television, radio, or other durable property, are reported missing. Attempts shall be made to determine the reason for the loss and any reasonable actions shall be taken to recover the item and to prevent or discourage future losses. The results of the investigation shall be reported in writing to the resident. Documentation shall be maintained for at least two years regarding items that were reported missing and resulting actions that were taken.

22VAC40-73-750. Resident rooms.

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

B. Bedrooms shall contain the following items, except as provided for in subsection C of this section:

1. A separate bed with comfortable mattress, springs, and pillow for each resident. Provisions for a double bed for a married couple shall be optional;

2. A table or its equivalent accessible to each bed;

3. An operable bed lamp or bedside light accessible to each resident;

4. A sturdy chair for each resident;

5. Drawer space for clothing and other personal items. If more than one resident occupies a room, ample drawer space shall be assigned to each [~~individual~~ resident];

6. At least one mirror - if the resident has an individual adjoining bathroom, the mirror may be in the bathroom; and

7. Window coverings for privacy.

C. If a resident specifies in writing that he does not wish to have an item or items listed in subsection B of this section and understands that he may decide otherwise at any time, the resident's bedroom is not required to contain those specified items. The written specification shall be maintained in the resident's record.

D. Adequate and accessible closet or wardrobe space shall be provided for each resident. As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, the closet or wardrobe space shall be in the resident's bedroom.

E. The facility shall have sufficient bed and bath linens in good repair so that residents always have clean:

1. Sheets;

2. Pillowcases;

3. Blankets;

4. Bedspreads;

5. Towels;

6. Washcloths; and

7. Waterproof mattress covers when needed.

22VAC40-73-760. Living room or multipurpose room.

A. Sitting rooms or recreation areas or both shall be equipped with:

1. Comfortable chairs (e.g., overstuffed, straight-backed, and rockers);

2. Tables;

3. Lamps;

4. Television, if not available in other [common] areas of the facility;

5. Radio, if not available in other [common] areas of the facility; and

6. Current newspaper [, if not available in other common areas of the facility].

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

22VAC40-73-770. Dining areas.

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

22VAC40-73-780. Laundry and linens.

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

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

C. When the facility provides laundry service for residents' clothing or personal linens, the clean items shall be sorted by individual resident.

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

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

F. When bed, bath, table, and kitchen linens are washed, the water shall be above 140°F or the dryer shall heat the linens above 140°F as verified by the manufacturer or a sanitizing

agent shall be used according to the manufacturer's instructions.

22VAC40-73-790. Transportation.

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

22VAC40-73-800. Incoming and outgoing mail.

A. Incoming and outgoing mail shall not be censored.

B. Incoming mail shall be delivered promptly.

C. Mail shall not be opened by staff or volunteers except upon request of the resident and in his presence or written request of the legal representative.

22VAC40-73-810. Telephones.

A. Each building shall have at least one operable, nonpay telephone easily accessible to staff. There shall be additional telephones or extensions as may be needed to summon help in an emergency.

B. The resident shall have reasonable access to a nonpay telephone on the premises.

C. Privacy shall be provided for residents to use a telephone.

22VAC40-73-820. Smoking.

A. Smoking by residents, staff, volunteers, and visitors shall be done only in areas designated by the facility and approved by the State Fire Marshal or local fire official. Smoking shall not be allowed in a kitchen or food preparation areas. A facility may prohibit smoking on its premises.

B. All designated smoking areas shall be provided with suitable ashtrays.

C. Residents shall not be permitted to smoke in or on their beds.

D. All common areas shall have smoke-free areas designated for nonsmokers.

22VAC40-73-830. Resident councils.

A. The facility shall permit and encourage the formation of a resident council by residents and shall assist the residents in its establishment.

B. The purposes of the resident council shall be to:

1. Work with the administration in improving the quality of life for all residents;
2. Discuss the services offered by the facility and make recommendations for resolution of identified problems or concerns; and
3. Perform other functions as determined by the council.

C. The resident council shall be composed of residents of the facility and the council may extend membership to family

members, advocates, friends, and others. Residents shall be encouraged but shall not be compelled to attend meetings.

D. The facility shall assist residents in maintaining the resident council, including [~~but not limited to~~]:

1. Scheduling regular meetings;

2. Providing space for meetings;

3. Posting notice for meetings;

4. Providing assistance in attending meetings for those residents who request it; and

5. Preparing written reports of meetings as requested by the council for dissemination to all residents.

E. The facility shall provide a written response to the council prior to the next meeting regarding any recommendations made by the council for resolution of problems or concerns.

F. In order to promote a free exchange of ideas, [at least part of each meeting shall be allowed to be conducted without] the presence of any facility personnel [~~shall be only at the request of the council~~].

G. If there is no council, the facility shall annually remind residents that they may establish a resident council and that the facility would assist in its formation and maintenance. The general purpose of the council shall also be explained at this time.

22VAC40-73-840. Pets living in the assisted living facility.

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

B. If a facility allows pets to live on the premises, the following applies:

1. The policy specified in subsection A of this section shall include:

- a. The types of pets that are permitted in the assisted living facility; and
- b. The conditions under which pets may be in the assisted living facility.

2. Before being allowed to live on the premises, pets shall have had all recommended or required immunizations and shall be certified by a licensed veterinarian to be free of diseases transmittable to humans.

3. Pets living on the assisted living facility premises:

- a. Shall have regular examinations and immunizations, appropriate for the species, by a licensed veterinarian; and
- b. Shall be restricted from central food preparation areas.

Regulations

4. Documentation of examinations and immunizations shall be maintained at the facility.

5. Pets shall be well-treated and cared for in compliance with state regulations and local ordinances.

6. Any resident's rights, preferences, and medical needs shall not be compromised by the presence of a pet.

7. Any pet living on the premises shall have a suitable temperament, be healthy, and otherwise pose no significant health or safety risks to residents, staff, volunteers, or visitors.

22VAC40-73-850. Pets visiting the assisted living facility.

If an assisted living facility allows pets to visit the premises, the following shall apply:

1. [The facility shall have a written policy regarding such pets;

1- 2.] Any pet present at the facility shall be in good health and show no evidence of carrying any disease;

[2- 3.] Any resident's rights, preferences, and medical needs shall not be compromised by the presence of a pet; and

[3- 4.] Any pet shall be well-treated while visiting on the premises, have a suitable temperament, and otherwise pose no significant health or safety risks to residents, staff, volunteers, or visitors.

Part VIII Buildings and Grounds

22VAC40-73-860. General requirements.

A. Buildings licensed for ambulatory residents or nonambulatory residents shall be classified by and meet the specifications for the proper use and occupancy classification as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

B. Documentation completed and signed by the building official shall be obtained as evidence of compliance with the applicable edition of the Virginia Uniform Statewide Building Code.

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

D. Doors and windows.

1. All doors shall open and close readily and effectively.

2. Any doorway that is used for ventilation shall be effectively screened.

3. Any operable window (i.e., a window that may be opened) shall be effectively screened.

E. There shall be enclosed walkways between residents' rooms and dining and sitting areas that are adequately lighted, heated, and ventilated.

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

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

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

I. Each facility shall store cleaning supplies and other hazardous materials in a locked area, except as noted in subsection J of this section.

J. A resident may be permitted to keep his own cleaning supplies or other hazardous materials in an out-of-sight place in his room if the resident does not have a serious cognitive impairment. The cleaning supplies or other hazardous materials shall be stored so that they are not accessible to other residents.

Exception: When a resident keeps his own cleaning supplies or other hazardous materials in his room, [and] if the facility has no residents with serious cognitive impairments, the facility may determine that the out-of-sight and inaccessibility safeguards specified in this subsection do not apply, unless mandated by the Virginia Uniform Statewide Building Code or Virginia Statewide Fire Prevention Code (13VAC5-51).

K. Each facility shall develop and implement a written policy regarding weapons on the premises of the facility that will ensure the safety and well-being of all residents and staff. [Any facility permitting any type of firearm on the premises must include procedures to ensure that ammunitions and firearms are stored separately and in locked locations.]

22VAC40-73-870. Maintenance of buildings and grounds.

A. The interior and exterior of all buildings shall be maintained in good repair and kept clean and free of rubbish.

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

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

D. Buildings shall be kept free of infestations of insects and vermin. The grounds shall be kept free of their breeding places.

E. All furnishings, fixtures, and equipment, including [~~but not limited to,~~] furniture, window coverings, sinks, toilets, bathtubs, and showers, shall be kept clean and in good repair and condition, except that furnishings and equipment owned

by a resident shall be, at a minimum, in safe condition and not soiled in a manner that presents a health hazard.

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

G. Grounds shall be properly maintained to include mowing of grass and removal of snow and ice.

H. Handrails shall be provided on all stairways, ramps, elevators, and at changes of floor level.

I. Elevators, where used, shall be kept in good running condition and shall be inspected at least annually. Elevators shall be inspected in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63). The signed and dated certificate of inspection issued by the local authority shall be evidence of such inspection.

22VAC40-73-880. Heating, ventilation, and cooling.

A. At least one movable thermometer shall be available in each building for measuring temperatures in individual rooms that do not have a fixed thermostat that shows the temperature in the room.

B. Heating.

1. Heat shall be supplied from a central heating plant or an electrical heating system in accordance with the Virginia Uniform Statewide Building Code (13VAC5-63).

2. Provided their installation or operation has been approved by the state or local building or fire authorities, space heaters, such as but not limited to, wood burning stoves, coal burning stoves, and oil heaters, or portable heating units either vented or unvented, may be used only to provide or supplement heat in the event of a power failure or similar emergency. These appliances shall be used in accordance with the manufacturer's instructions.

3. A temperature of at least 72°F shall be maintained in all areas used by residents during hours when residents are normally awake. During night hours, when residents are asleep, a temperature of at least 68°F shall be maintained. This standard applies unless otherwise mandated by federal or state authorities.

Exception: The facility may allow the temperature in a bedroom in which only one resident resides, which has a thermostat in the room, to be controlled by the resident as long as the temperature does not endanger the health, safety, or welfare of the resident.

C. Cooling.

1. The facility shall provide in all buildings an air conditioning system for all areas used by residents, including residents' bedrooms and common areas. Temperatures in all areas used by residents shall not exceed 80°F.

Exception: The facility may allow the temperature in a bedroom in which only one resident resides, which has a thermostat in the room, to be controlled by the resident as long as the temperature does not endanger the health, safety, or welfare of the resident.

2. Any electric fans shall be screened and placed for the protection of the residents.

D. The facility shall develop and implement a plan to protect residents from heat-related and cold-related illnesses in the event of loss of air-conditioning or heat due to emergency situations or malfunctioning or broken equipment.

22VAC40-73-890. Lighting and lighting fixtures.

A. Artificial lighting shall be by electricity.

B. All interior and exterior areas shall be adequately lighted for the safety and comfort of residents and staff.

C. Glare shall be kept at a minimum in rooms used by residents. When necessary to reduce glare, coverings shall be used for windows and lights.

D. If used, fluorescent lights shall be replaced if they flicker or make noise.

22VAC40-73-900. Sleeping areas.

Resident sleeping quarters shall provide:

1. For not less than 450 cubic feet of air space per resident;

2. For square footage as provided in this subdivision:

a. As of February 1, 1996, all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code (13VAC5-63), shall have not less than 100 square feet of floor area in bedrooms accommodating one resident; otherwise not less than 80 square feet of floor area in bedrooms accommodating one resident shall be required.

b. As of February 1, 1996, all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code, shall have not less than 80 square feet of floor area per person in bedrooms accommodating two or more residents; otherwise not less than 60 square feet of floor area per person in bedrooms accommodating two or more persons shall be required;

3. For ceilings at least 7-1/2 feet in height;

4. For window areas as provided in this subdivision:

a. There shall be at least eight square feet of glazed window area in a room housing one person; and

b. There shall be at least six square feet of glazed window area per person in rooms occupied by two or more persons;

Regulations

5. For occupancy as provided in this subdivision:
- a. As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code (13VAC5-63), there shall be no more than two residents residing in a bedroom.
 - b. [As of February 1, 2018, when there is a new facility licensee, there shall be no more than two residents residing in a bedroom.
 - ~~b. c.] Unless the provisions of [subdivision subdivisions] 5 a [and 5 b] of this [subsection section] apply, there shall be no more than four residents residing in a bedroom;~~
6. For at least three feet of space between sides and ends of beds that are placed in the same room;
7. That no bedroom shall be used as a corridor to any other room;
8. That all beds shall be placed only in bedrooms; and
9. That household members and staff shall not share bedrooms with residents.

22VAC40-73-910. Common rooms.

As of October 9, 2001, buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code (13VAC5-63), shall have a glazed window area above ground level in at least one of the common rooms (e.g., living room, multipurpose room, or dining room). The square footage of the glazed window area shall be at least 8.0% of the square footage of the floor area of the common room.

22VAC40-73-920. Toilet, face/hand washing, and bathing facilities.

A. In determining the number of toilets, face/hand washing sinks, bathtubs, or showers required, the total number of persons residing on the premises shall be considered. Unless there are separate facilities for household members or staff, they shall be counted in determining the required number of fixtures, except that for bathtubs or showers, the staff count shall include only live-in staff.

1. As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code (13VAC5-63), on each floor where there are residents' bedrooms, there shall be:
- a. At least one toilet for each four persons, or portion thereof;
 - b. At least one face/hand washing sink for each four persons, or portion thereof;

c. At least one bathtub or shower for each seven persons, or portion thereof; [and]

d. Toilets, face/hand washing sinks and bathtubs or showers in separate rooms for men and women where more than four persons live on a floor. Bathrooms equipped to accommodate more than one person at a time shall be labeled by gender. Gender designation of bathrooms shall remain constant during the course of a day.

2. Unless the provisions of subdivision 1 of this subsection apply, on each floor where there are residents' bedrooms, there shall be:

a. At least one toilet for each seven persons, or portion thereof;

b. At least one face/hand washing sink for each seven persons, or portion thereof;

c. At least one bathtub or shower for each 10 persons, or portion thereof; [and]

d. Toilets, face/hand washing sinks and bathtubs or showers in separate rooms for men and women where more than seven persons live on a floor. Bathrooms equipped to accommodate more than one person at a time shall be labeled by gender. Gender designation of bathrooms shall remain constant during the course of a day.

3. As of December 28, 2006, in all buildings approved for construction or change in use and occupancy classification, as referenced in the Virginia Uniform Statewide Building Code, when residents' rooms are located on the same floor as the main living or dining area, in addition to the requirements of subdivision 1 of this subsection, there shall be at least one more toilet and face/hand washing sink, which is available for common use. The provisions of subdivision 4 c of this subsection shall also apply.

4. On floors used by residents where there are no residents' bedrooms, there shall be:

a. At least one toilet;

b. At least one face/hand washing sink; [and]

c. Toilets and face/hand washing sinks in separate rooms for men and women in facilities where there are 10 or more residents. Bathrooms equipped to accommodate more than one person at a time shall be designated by gender. Gender designation of bathrooms must remain constant during the course of a day.

B. Bathrooms shall provide for privacy for such activities as bathing, toileting, and dressing.

C. There shall be ventilation to the outside in order to eliminate foul odors.

D. The following sturdy safeguards shall be provided, with installation in compliance with the Virginia Uniform Statewide Building Code:

1. Handrails by bathtubs;
2. Grab bars by toilets; and
3. Handrails inside and stools available to stall showers.

Exception: These safeguards shall be optional for [~~individuals~~ residents] with independent living status.

E. Bathtubs and showers shall have nonskid surfacing or strips.

F. The face/hand washing sink shall be in the same room as the toilet or in an adjacent private area that is not part of a common use area of the assisted living facility.

G. The assisted living facility shall provide private or common use toilet, face/hand washing, and bathing facilities to meet the needs of each resident.

22VAC40-73-925. Toilet, face/hand washing, and bathing supplies.

A. The facility shall have an adequate supply of toilet tissue and soap. Toilet tissue shall be accessible to each commode and soap shall be accessible to each face/hand washing sink and each bathtub or shower.

B. Common face/hand washing sinks shall have paper towels or an air dryer and liquid soap for hand washing.

C. Residents may not share bar soap.

D. The facility may not charge an additional amount for toilet paper, soap, paper towels, or use of an air dryer at common sinks and commodes.

22VAC40-73-930. Provisions for signaling and call systems.

A. All assisted living facilities shall have a signaling device that is easily accessible to the resident in his bedroom or in a connecting bathroom that alerts the direct care staff that the resident needs assistance.

B. In buildings licensed to care for 20 or more residents under one roof, there shall be a signaling device that terminates at a central location that is continuously staffed and permits staff to determine the origin of the signal or is audible and visible in a manner that permits staff to determine the origin of the signal.

C. In buildings licensed to care for 19 or fewer residents under one roof, if the signaling device does not permit staff to determine the origin of the signal as specified in subsection B of this section, direct care staff shall make rounds at least once each hour to monitor for emergencies or other unanticipated resident needs. These rounds shall begin when the majority of the residents have gone to bed each evening

and shall terminate when the majority of the residents have arisen each morning, and shall be documented as follows:

1. A written log shall be maintained showing the date and time rounds were made and the signature of the direct care staff member who made rounds.

2. Logs for the past two years shall be retained.

[Exception: Rounds may be made on a different frequency if requested by the resident and agreed to by the facility. Any agreement for a different frequency must be in writing, specify the frequency, be signed and dated by the resident and the facility, and be retained in the resident's record. The written log required in subdivision 1 of the subsection shall indicate the name of such resident. If there is a change in the resident's condition or care needs, the agreement shall be reviewed and if necessary, the frequency of rounds shall be adjusted. If an adjustment is made, the former agreement shall be replaced with a new agreement or with compliance with the frequency specified in this subsection.]

D. For each resident with an inability to use the signaling device, [~~this~~ in addition to any other services, the following shall be met:

1. This] inability shall be included in the resident's individualized service plan [~~, indicating the need for monitoring for emergencies and other unanticipated needs. In addition to any other services, the~~

2. The] plan shall specify a minimal frequency of [daily] rounds to be made by direct care staff [~~and the method used to document that such rounds were made. Documentation of rounds to monitor for emergencies or other unanticipated resident needs.~~

3. Unless subsection C of this section is applicable, once the resident has gone to bed each evening until the resident has arisen each morning, at a minimum, direct care staff shall make rounds no less often than every two hours, except that rounds may be made on a different frequency if requested by the resident and agreed to by the facility. Any agreement for a different frequency must be in writing, specify the frequency, be signed and dated by the resident and the facility, and be retained in the resident's record. If there is a change in the resident's condition or care needs, the agreement shall be reviewed and if necessary, the frequency of rounds shall be adjusted. If an adjustment is made, the former agreement shall be replaced with a new agreement or with compliance with the frequency specified in this subdivision.

4. The facility shall document the rounds that were made, which shall include the name of the resident, the date and time of the rounds, and the staff member who made the rounds. The documentation] shall be retained for two years.

Regulations

22VAC40-73-940. Fire safety: compliance with state regulations and local fire ordinances.

A. An assisted living facility shall comply with the Virginia Statewide Fire Prevention Code (13VAC5-51) as determined by at least an annual inspection by the appropriate fire official. Reports of the inspections shall be retained at the facility for at least two years.

B. An assisted living facility shall comply with any local fire ordinance.

Part IX Emergency Preparedness

22VAC40-73-950. Emergency preparedness and response plan.

A. The facility shall develop a written emergency preparedness and response plan that shall address:

1. Documentation of initial and annual contact with the local emergency coordinator to determine (i) local disaster risks, (ii) communitywide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency.

2. Analysis of the facility's potential hazards, including severe weather, [biohazard events,] fire, loss of utilities, flooding, work place violence or terrorism, severe injuries, or other emergencies that would disrupt normal operation of the facility.

3. Written emergency management policies and procedures for provision of:

- a. Administrative direction and management of response activities;
- b. Coordination of logistics during the emergency;
- c. Communications;
- d. Life safety of residents, staff, volunteers, and visitors;
- e. Property protection;
- f. Continued services to residents;
- g. Community resource accessibility; and
- h. Recovery and restoration.

4. Written emergency response procedures for assessing the situation; protecting residents, staff, volunteers, visitors, equipment, medications, and vital records; and restoring services. Emergency procedures shall address:

- a. Alerting emergency personnel and facility staff;
- b. Warning and notification of residents, including sounding of alarms when appropriate;

c. Providing emergency access to secure areas and opening locked doors;

d. Conducting evacuations and sheltering in place, as appropriate, and accounting for all residents;

e. Locating and shutting off utilities when necessary;

f. Maintaining and operating emergency equipment effectively and safely;

g. Communicating with staff and community emergency responders during the emergency; and

h. Conducting relocations to emergency shelters or alternative sites when necessary and accounting for all residents.

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, memoranda of understanding with relocation sites, and list of major resources such as suppliers of emergency equipment.

B. Staff and volunteers shall be knowledgeable in and prepared to implement the emergency preparedness plan in the event of an emergency.

C. The facility shall develop and implement an orientation and [~~quarterly~~ semi-annual] review on the emergency preparedness and response plan for all staff, residents, and volunteers, with emphasis placed on an individual's respective responsibilities. [The review shall be documented by signing and dating.] The orientation and review shall cover responsibilities for:

- 1. Alerting emergency personnel and sounding alarms;
- 2. Implementing evacuation, shelter in place, and relocation procedures;
- 3. Using, maintaining, and operating emergency equipment;
- 4. Accessing emergency medical information, equipment, and medications for residents;
- 5. Locating and shutting off utilities; and
- 6. Utilizing community support services.

D. The facility shall review the emergency preparedness plan annually or more often as needed [, document the review by signing and dating the plan.] and make necessary [plan] revisions. Such revisions shall be communicated to staff, residents, and volunteers and incorporated into the orientation and [~~quarterly~~ semi-annual] review for staff, residents, and volunteers.

E. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of residents, the facility shall take appropriate action to protect the health, safety, and welfare of the residents and

take appropriate actions to remedy the conditions as soon as possible.

F. After the disaster or emergency is stabilized, the facility shall:

1. Notify family members and legal representatives; and
2. Report the disaster or emergency to the regional licensing office by the next day as specified in 22VAC40-73-70.

22VAC40-73-960. Fire and emergency evacuation plan.

A. Assisted living facilities shall have a written plan for fire and emergency evacuation that is to be followed in the event of a fire or other emergency. The plan shall be approved by the appropriate fire official.

B. A fire and emergency evacuation drawing shall be posted in a conspicuous place on each floor of each building used by residents. The drawing shall show primary and secondary escape routes, areas of refuge, assembly areas, telephones, fire alarm boxes, and fire extinguishers, as appropriate.

C. The telephone numbers for the fire department, rescue squad or ambulance, police, and Poison Control Center shall be posted by each telephone shown on the fire and emergency evacuation plan.

D. In assisted living facilities where all outgoing telephone calls must be placed through a central switchboard located on the premises, the information required in subsection C of this section may be posted by the switchboard rather than by each telephone, provided this switchboard is [~~manned~~ staffed] 24 hours each day.

E. Staff and volunteers shall be fully informed of the approved fire and emergency evacuation plan, including their duties, and the location and operation of fire extinguishers, fire alarm boxes, and any other available emergency equipment.

22VAC40-73-970. Fire and emergency evacuation drills.

A. Fire and emergency evacuation drill frequency and participation shall be in accordance with the current edition of the Virginia Statewide Fire Prevention Code (13VAC5-51). The drills required for each shift in a quarter shall not be conducted in the same month.

B. Additional fire and emergency evacuation drills may be held at the discretion of the administrator or licensing inspector and must be held when there is any reason to question whether the requirements of the approved fire and emergency evacuation plan can be met.

C. Each required fire and emergency evacuation drill shall be unannounced.

D. Immediately following each required fire and emergency evacuation drill, there shall be an evaluation of the drill by the

staff in order to determine the effectiveness of the drill. The licensee or administrator shall immediately correct any problems identified in the evaluation and document the corrective action taken.

E. A record of the required fire and emergency evacuation drills shall be kept in the facility for two years. Such record shall include:

1. Identity of the person conducting the drill;
2. The date and time of the drill;
3. The method used for notification of the drill;
4. The number of staff participating;
5. The number of residents participating;
6. Any special conditions simulated;
7. The time it took to complete the drill;
8. Weather conditions; and
9. Problems encountered, if any.

22VAC40-73-980. Emergency equipment and supplies.

A. A complete first aid kit shall be on hand [in each building] at the facility, located in a designated place that is easily accessible to staff but not to residents. Items with expiration dates must not have dates that have already passed. The kit shall include [~~but not be limited to,~~] the following items:

1. Adhesive tape;
- [~~2. Antibiotic cream or ointment packets;~~
- ~~3. 2.] Antiseptic wipes or ointment;~~
- [~~4. 3.] Band-aids, in assorted sizes;~~
- [~~5. 4.] Blankets, either disposable or other;~~
- [~~6. 5.] Disposable single-use breathing barriers or shields for use with rescue breathing or CPR (e.g., CPR mask or other type);~~
- [~~7. 6.] Cold pack;~~
- [~~8. 7.] Disposable single-use waterproof gloves;~~
- [~~9. 8.] Gauze pads and roller gauze, in assorted sizes;~~
- [~~10. 9.] Hand cleaner (e.g., waterless hand sanitizer or antiseptic towelettes);~~
- [~~11. 10.] Plastic bags;~~
- [~~12. 11.] Scissors;~~
- [~~13. 12.] Small flashlight and extra batteries;~~
- [~~14. 13.] Thermometer;~~
- [~~15. 14.] Triangular bandages;~~

Regulations

~~[16. 15.] Tweezers; [and]~~

~~[17. 81 milligram aspirin in single packets or small bottle; and~~

~~18. 16.] The first aid instructional manual.~~

B. In facilities that have a motor vehicle that is used to transport residents and in a motor vehicle used for a field trip, there shall be a first aid kit on the vehicle, located in a designated place that is accessible to staff but not residents that includes items as specified in subsection A of this section.

C. First aid kits shall be checked at least monthly to [assure ensure] that all items are present and items with expiration dates are not past their expiration date.

D. Each facility with six or more residents shall be equipped with a permanent connection able to connect to a temporary emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. The connection shall be of the size that is capable of providing power to required circuits when connected and that is sufficient to implement the emergency preparedness and response plan. The installation of a connection for temporary electric power shall be in compliance with the Virginia Uniform Statewide Building Code (13VAC5-63) and approved by the local building official. Permanent installations of emergency power systems shall be acceptable when installed in accordance with the Uniform Statewide Building Code and approved by the local building official.

E. The following emergency lighting shall be available:

1. Flashlights or battery lanterns for general use.

2. One flashlight or battery lantern for each employee directly responsible for resident care [who is on duty between 5 p.m. and 7 a.m].

3. One flashlight or battery lantern for each bedroom used by residents and for the living and dining area unless there is a provision for emergency lighting in the adjoining hallways.

4. The use of open flame lighting is prohibited.

F. There shall be two forms of communication for use in an emergency.

G. The facility shall ensure the availability of a 96-hour supply of emergency food and drinking water. At least 48 hours of the supply must be on site at any given time [, of which the facility's rotating stock may be used].

22VAC40-73-990. Plan for resident emergencies and practice exercise.

A. Assisted living facilities shall have a written plan for resident emergencies that includes:

1. Procedures for handling medical emergencies, including identifying the staff person responsible for (i) calling the rescue squad, ambulance service, resident's physician, or Poison Control Center; and (ii) providing first aid and CPR, when indicated.

2. Procedures for handling mental health emergencies such as, but not limited to, catastrophic reaction or the need for a temporary detention order.

3. Procedures for making pertinent medical information and history available to the rescue squad and hospital, including [but not limited to, information on medications a copy of the current medication administration record] and advance directives.

4. Procedures to be followed in the event that a resident is missing, including [but not limited to] (i) involvement of facility staff, appropriate law-enforcement agency, and others as needed; (ii) areas to be searched; (iii) expectations upon locating the resident; and (iv) documentation of the event.

5. Procedures for notifying the resident's family, legal representative, designated contact person, and any responsible social agency.

6. Procedures for notifying the regional licensing office as specified in 22VAC40-73-70.

B. [The procedures in the plan for resident emergencies required in subsection A of this section shall be reviewed by the facility at least every six months with all staff. Documentation of the review shall be signed and dated by each staff person.

~~B- C.]~~ At least once every six months, all staff [currently on duty] on each shift shall participate in an exercise in which the procedures for resident emergencies are practiced. Documentation of each exercise shall be maintained in the facility for at least two years.

[C. D.] The plan for resident emergencies shall be readily available to all staff [, residents' families, and legal representatives].

Part X

Additional Requirements for Facilities that Care for Adults with Serious Cognitive Impairments

Article 1

Subjectivity

22VAC40-73-1000. Subjectivity.

All facilities that care for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare shall be subject to either Article 2 (22VAC40-73-1010 et seq.) or Article 3 (22VAC40-73-1080 et seq.) of this part. All facilities that care for residents with

serious cognitive impairments due to any other diagnosis who cannot recognize danger or protect their own safety and welfare shall be subject to Article 2 of this part.

Article 2
Mixed Population

22VAC40-73-1010. Applicability.

The requirements in this article apply when there is a mixed population consisting of any combination of (i) residents who have serious cognitive impairments due to a primary psychiatric diagnosis of dementia who are unable to recognize danger or protect their own safety and welfare and who are not in a special care unit as provided for in Article 3 (22VAC40-73-1080 et seq.) of this part; (ii) residents who have serious cognitive impairments due to any other diagnosis who cannot recognize danger or protect their own safety and welfare; and (iii) other residents. The requirements in this article also apply when all the residents have serious cognitive impairments due to any diagnosis other than a primary psychiatric diagnosis of dementia and cannot recognize danger or protect their own safety and welfare. Except for special care units covered by Article 3 of this part, these requirements apply to the entire facility unless specified otherwise.

22VAC40-73-1020. Staffing.

A. When residents are present, there shall be at least two direct care staff members awake and on duty at all times in each building who shall be responsible for the care and supervision of the residents.

B. During trips away from the facility, there shall be sufficient direct care staff to provide sight and sound supervision to all residents who cannot recognize danger or protect their own safety and welfare.

[~~Exception: The requirements of subsections A and B of this section do not apply when facilities are licensed for 10 or fewer residents if no more than three of the residents have serious cognitive impairments. Each prospective resident or his legal representative shall be notified of this exception prior to admission.~~]

22VAC40-73-1030. Staff training.

A. [~~Commencing immediately upon employment and within~~ Within] three months [of the starting date of employment], the administrator shall attend 12 hours of training in working with individuals who have a cognitive impairment, and the training shall meet the requirements of subsection C of this section.

1. Training in cognitive impairment that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable and counts toward the required 12 hours if there is documentation of the training.

2. Whether the training counts toward continuing education for administrator licensure and for what period of time depends upon the licensure requirements of the Virginia Board of Long-Term Care Administrators.

B. [~~Commencing immediately upon employment and within~~ Within] four months [of the starting date of employment], direct care staff shall attend six hours of training in working with individuals who have a cognitive impairment, and the training shall meet the requirements of subsection C of this section.

1. The six-hour training received within the first four months of employment is counted toward the annual training requirement for the first year.
2. Training in cognitive impairment that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable if there is documentation of the training.
3. The documented previous cognitive impairment training referenced in subdivision 2 of this subsection is counted toward the required six hours but not toward the annual training requirement.

C. Curriculum for the training in cognitive impairment for direct care staff and administrators shall be developed by a qualified health professional or by a licensed social worker, shall be relevant to the population in care, shall maximize the level of a resident's functional ability, and shall include [~~but~~ need not be limited to]:

1. Information about cognitive impairment, including areas such as cause, progression, behaviors, and management of the condition;
2. Communicating with the resident;
3. Resident care techniques for [persons residents] with physical, cognitive, behavioral, and social disabilities;
4. Managing dysfunctional behavior;
5. Creating a therapeutic environment;
6. Planning and facilitating activities appropriate for each resident; and
7. Identifying and alleviating safety risks to residents with cognitive impairment.

D. Within the first month of employment, staff, other than the administrator and direct care staff, shall complete two hours of training on the nature and needs of residents with cognitive impairments relevant to the population in care.

22VAC40-73-1040. Doors and windows.

A. Doors leading to the outside shall have a system of security monitoring of residents with serious cognitive impairments, such as door alarms, cameras, constant staff oversight, security bracelets that are part of an alarm system,

Regulations

or delayed egress mechanisms. Residents with serious cognitive impairments may be limited but not prohibited from exiting the facility or any part thereof. Before limiting any resident from freely leaving the facility, the resident's record shall reflect the behavioral observations or other bases for determining that the resident has a serious cognitive impairment and cannot recognize danger or protect his own safety and welfare.

B. There shall be protective devices on the bedroom and the bathroom windows of residents with serious cognitive impairments and on windows in common areas accessible to these residents to prevent the windows from being opened wide enough for a resident to crawl through. The protective devices on the windows shall be in conformance with the Virginia Uniform Statewide Building Code (13VAC5-63).

22VAC40-73-1050. Outdoor access.

A. The facility shall have a secured outdoor area for the residents' use or provide direct care staff supervision while residents with serious cognitive impairments are outside.

B. Weather permitting, residents with serious cognitive impairments shall be reminded of the opportunity to be outdoors on a daily basis.

22VAC40-73-1060. Indoor walking area.

The facility shall provide to residents free access to an indoor walking corridor or other indoor area that may be used for walking.

22VAC40-73-1070. Environmental precautions.

A. Special environmental precautions shall be taken by the facility to eliminate hazards to the safety and well being of residents with serious cognitive impairments. Examples of environmental precautions include signs, carpet patterns and arrows that point the way, and reduction of background noise.

B. When there are indications that ordinary materials or objects may be harmful to a resident with a serious cognitive impairment, these materials or objects shall be inaccessible to the resident except under staff supervision.

Article 3 Safe, Secure Environment

22VAC40-73-1080. Applicability.

A. In order to be admitted or retained in a safe, secure environment as defined in 22VAC40-73-10, except as provided in subsection B of this section, a resident must have a serious cognitive impairment due to a primary psychiatric diagnosis of dementia and be unable to recognize danger or protect his own safety and welfare. The requirements in this article apply when such residents reside in a safe, secure environment. These requirements apply only to the safe, secure environment.

B. A resident's spouse, parent, adult sibling, or adult child who otherwise would not meet the criteria to reside in a safe, secure environment may reside in the special care unit if the spouse, parent, sibling, or child so requests in writing, the facility agrees in writing, and the resident, if capable of making the decision, agrees in writing. The written request and agreements must be maintained in the resident's file. The spouse, parent, sibling, or child is considered a resident of the facility and as such this chapter applies. The requirements of this article do not apply for the spouse, parent, adult sibling, or adult child [~~since~~ because] the individual does not have a serious cognitive impairment due to a primary psychiatric diagnosis of dementia with an inability to recognize danger or protect his own safety and welfare.

22VAC40-73-1090. Assessment.

A. Prior to his admission to a safe, secure environment, the resident shall have been assessed by an independent clinical psychologist licensed to practice in the Commonwealth or by an independent physician as having a serious cognitive impairment due to a primary psychiatric diagnosis of dementia with an inability to recognize danger or protect his own safety and welfare. The physician shall be board certified or board eligible in a specialty or subspecialty relevant to the diagnosis and treatment of serious cognitive impairments (e.g., family practice, geriatrics, internal medicine, neurology, neurosurgery, or psychiatry). The assessment shall be in writing and shall include [~~but not be limited to~~] the following areas:

1. Cognitive functions (e.g., orientation, comprehension, problem-solving, attention and concentration, memory, intelligence, abstract reasoning, judgment, and insight);
2. Thought and perception (e.g., process and content);
3. Mood/affect;
4. Behavior/psychomotor;
5. Speech/language; and
6. Appearance.

B. The assessment required in subsection A of this section shall be maintained in the resident's record.

22VAC40-73-1100. Approval.

A. Prior to placing a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia in a safe, secure environment, the facility shall obtain the written approval of one of the following persons, in the following order of priority:

1. The resident, if capable of making an informed decision;
2. A guardian or other legal representative for the resident if one has been appointed;

3. A relative who is willing and able to take responsibility to act as the resident's representative, in the following specified order: (i) spouse, (ii) adult child, (iii) parent, (iv) adult sibling, (v) adult grandchild, (vi) adult niece or nephew, (vii) aunt or uncle; or

4. If the resident is not capable of making an informed decision and a guardian, legal representative, or relative is unavailable, an independent physician who is skilled and knowledgeable in the diagnosis and treatment of dementia.

B. The obtained written approval shall be retained in the resident's file.

C. The facility shall document that the order of priority specified in subsection A of this section was followed, and the documentation shall be retained in the resident's file.

D. As soon as one of the persons in the order as prioritized in subsection A of this section disapproves of placement or retention in the safe, secure environment, then the assisted living facility shall not place or retain the resident or prospective resident in the special care unit. [If the resident is not to be retained in the unit, the discharge requirements specified in 22VAC40-73-430 apply.]

22VAC40-73-1110. Appropriateness of placement and continued residence.

A. Prior to admitting a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia to a safe, secure environment, the licensee, administrator, or designee shall determine whether placement in the special care unit is appropriate. The determination and justification for the decision shall be in writing and shall be retained in the resident's file.

B. Six months after placement of the resident in the safe, secure environment and annually thereafter, the licensee, administrator, or designee shall perform a review of the appropriateness of each resident's continued residence in the special care unit.

C. Whenever warranted by a change in a resident's condition, the licensee, administrator, or designee shall also perform a review of the appropriateness of continued residence in the unit.

D. The reviews specified in subsections B and C of this section shall be performed in consultation with the following persons, as appropriate:

1. The resident;
2. A responsible family member;
3. A guardian or other legal representative;
4. A designated contact person;
5. Direct care staff who provide care and supervision to the resident;

6. The resident's mental health provider;

7. The licensed health care professional required in 22VAC40-73-490;

8. The resident's physician; and

9. Any other professional involved with the resident.

E. The licensee, administrator, or designee shall make a determination as to whether continued residence in the special care unit is appropriate at the time of each review required by subsections B and C of this section. The determination and justification for the decision shall be in writing and shall be retained in the resident's file.

22VAC40-73-1120. Activities.

A. In addition to the requirements of this section, all the requirements of 22VAC40-73-520 apply to safe, secure environments, except for 22VAC40-73-520 C and E.

B. There shall be at least 21 hours of scheduled activities available to the residents each week for no less than two hours each day.

C. If appropriate to meet the needs of the resident with a short attention span, there shall be multiple short activities.

D. Staff shall regularly encourage residents to participate in activities and provide guidance and assistance, as needed.

E. As appropriate, residents shall be encouraged to participate in supervised activities or programs outside the special care unit.

F. There shall be a designated staff person responsible for managing or coordinating the structured activities program. This staff person shall be on site in the special care unit at least 20 hours a week, shall maintain personal interaction with the residents and familiarity with their needs and interests, and shall meet at least one of the following qualifications:

1. Be a qualified therapeutic recreation specialist or an activities professional;
2. Be eligible for certification as a therapeutic recreation specialist or an activities professional by a recognized accrediting body;
3. Have one year full-time work experience within the last five years in an activities program in an adult care setting;
4. Be a qualified occupational therapist or an occupational therapy assistant; or
5. Prior to or within six months of employment, have successfully completed 40 hours of department-approved training in adult group activities and in recognizing and assessing the activity needs of residents.

The required 20 hours on site does not have to be devoted solely to managing or coordinating activities; neither is it

Regulations

required that the person responsible for managing or coordinating the activities program conduct the activities.

22VAC40-73-1130. Staffing.

~~A. [When residents are present, there shall be at least two direct care staff members awake and on duty at all times on each floor in each special care unit who shall be responsible for the care and supervision of the residents, except as provided in subsection B of this section. This requirement is independent of 22VAC40-73-280 D and 22VAC40-73-1020~~

~~A. When 20 or fewer residents are present, at least two direct care staff members shall be awake and on duty at all times in each special care unit who shall be responsible for the care and supervision of the residents, except as noted in subsection B of this section. For every additional 10 residents, or portion thereof, at least one more direct care staff member shall be awake and on duty in the unit.]~~

B. Only one direct care staff member has to be awake and on duty in the unit if sufficient to meet the needs of the residents, if (i) there are no more than five residents present in the unit and (ii) there are at least two other direct care staff members in the building, one of whom is readily available to assist with emergencies in the special care unit, provided that supervision necessary to ensure the health, safety, and welfare of residents throughout the building is not compromised.

[The requirements in subsections A and B of this section are independent of 22VAC40-73-280 D and 22VAC40-73-1020 A.]

C. During trips away from the facility, there shall be sufficient direct care staff to provide sight and sound supervision to residents.

22VAC40-73-1140. Staff training.

~~A. [Commencing immediately upon employment and within]~~ Within] three months [of the starting date of employment], the administrator shall attend at least 12 hours of training in cognitive impairment that meets the requirements of subsection C of this section.

1. Training in cognitive impairment that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable and counts toward the required 12 hours if there is documentation of the training.

2. Whether the training counts toward continuing education for administrator licensure and for what period of time depends upon the licensure requirements of the Virginia Board of Long-Term Care Administrators.

~~B. [Commencing immediately upon employment in the safe, secure environment and within]~~ Within] four months [of the starting date of employment in the safe, secure environment], direct care staff shall attend at least 10 hours

of training in cognitive impairment that meets the requirements of subsection C of this section.

1. The training is counted toward the annual training requirement for the first year.

2. Training in cognitive impairment that meets the requirements of subsection C of this section and was completed in the year prior to employment is transferable if there is documentation of the training.

3. The documented previous cognitive impairment training referenced in subdivision 2 of this subsection is counted toward the required 10 hours but not toward the annual training requirement.

C. The training in cognitive impairment required by subsections A and B of this section shall be relevant to the population in care, shall maximize the level of a resident's functional ability, and shall include [~~but not be limited to,~~] the following topics:

1. Information about cognitive impairment, including areas such as cause, progression, behaviors, and management of the condition;

2. Communicating with the resident;

3. Resident care techniques for persons with physical, cognitive, behavioral, and social disabilities;

4. Managing dysfunctional behavior;

5. Creating a therapeutic environment;

6. Planning and facilitating activities appropriate for each resident; and

7. Identifying and alleviating safety risks to residents with cognitive impairment.

D. The training specified in subsection C of this section shall be developed and provided by:

1. A licensed health care professional practicing within the scope of his profession who has at least 12 hours of training in the care of individuals with cognitive impairments due to dementia; or

2. A person who has been approved by the department to develop or provide the training.

E. Within the first month of employment, staff, other than the administrator and direct care staff, who will have contact with residents in the special care unit shall complete two hours of training on the nature and needs of residents with cognitive impairments due to dementia.

22VAC40-73-1150. Doors and windows.

A. Doors that lead to unprotected areas shall be monitored or secured through devices that conform to applicable building and fire codes, including [~~but not limited to,~~] door alarms, cameras, constant staff oversight, security bracelets

that are part of an alarm system, pressure pads at doorways, delayed egress mechanisms, locking devices, or perimeter fence gates. Residents who reside in safe, secure environments may be prohibited from exiting the facility or the special care unit [3] if applicable building and fire codes are met.

B. There shall be protective devices on the bedroom and bathroom windows of residents and on windows in common areas accessible to residents to prevent the windows from being opened wide enough for a resident to crawl through. The protective devices on the windows shall be in conformance with the Virginia Uniform Statewide Building Code (13VAC5-63).

22VAC40-73-1160. Outdoor access.

A. The facility shall have a secured outdoor area for the residents' use or provide direct care staff supervision while residents are outside.

B. Residents shall be given the opportunity to be outdoors on a daily basis, weather permitting.

22VAC40-73-1170. Indoor walking area.

The facility shall provide to residents free access to an indoor walking corridor or other indoor area that may be used for walking.

22VAC40-73-1180. Environmental precautions.

A. Special environmental precautions shall be taken by the facility to eliminate hazards to the safety and well-being of residents. Examples of environmental precautions include signs, carpet patterns and arrows that point the way, high visual contrast between floors and walls, and reduction of background noise.

B. When there are indications that ordinary materials or objects may be harmful to a resident, these materials or objects shall be inaccessible to the resident except under staff supervision.

C. Special environmental enhancements, tailored to the population in care, shall be provided by the facility to enable residents to maximize their independence and to promote their dignity in comfortable surroundings. Examples of environmental enhancements include memory boxes, activity centers, rocking chairs, and visual contrast between plates and eating utensils and the table.

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 (22VAC40-73)

[[Report of Tuberculosis Screening](#)

~~[Virginia Department of Health Report of Tuberculosis Screening Form \(eff. 3/2011\)](#)~~

~~[Virginia Department of Health TB Control Program TB Risk Assessment Form, TB 512 \(eff. 5/2011\)](#)~~

[Report of Tuberculosis Screening \(eff. 10/2011\)](#)

[Virginia Department of Health Report of Tuberculosis Screening Form \(undated\)](#)

[Virginia Department of Health TB Control Program Risk Assessment Form, TB 512 \(eff. 9/2016\) \]](#)

V.A.R. Doc. No. R12-3227; Filed August 23, 2017, 11:11 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 22VAC40-73. Standards for Licensed Assisted Living Facilities (amending 22VAC40-73-10, 22VAC40-73-50, 22VAC40-73-310, 22VAC40-73-390; adding 22VAC40-73-45).

Statutory Authority: §§ 63.2-217, 63.2-1732, 63.2-1802, 63.2-1805, and 63.2-1808 of the Code of Virginia.

Effective Date: February 1, 2018.

Agency Contact: Judith McGreal, Licensing Program Consultant, Division of Licensing Programs, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 663-5535, FAX (804) 819-7093, TTY (800) 828-1120, or email judith.mcgregal@dss.virginia.gov.

Summary:

This action makes technical corrections to the new comprehensive assisted living facility regulation, 22VAC40-73, which replaces 22VAC40-72. The technical corrections incorporate the requirements for liability insurance disclosure (32:26 3573-3581 August 22, 2016) and hospice care (33:2 VA.R. 259-260 October 19, 2016), which were promulgated during the pendency of the regulatory action creating 22VAC40-73, to continue those regulatory requirements.

22VAC40-73-10. Definitions.

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

Regulations

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

"Administer medication" means to open a container of medicine or to remove the ordered dosage and to give it to the resident for whom it is ordered.

"Administrator" means the licensee or a person designated by the licensee who is responsible for the general administration and management of an assisted living facility and who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Admission" means the date a person actually becomes a resident of the assisted living facility and is physically present at the facility.

"Advance directive" means, as defined in § 54.1-2982 of the Code of Virginia, (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983 of the Code of Virginia.

"Ambulatory" means the condition of a resident who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by 13VAC5-63, the Virginia Uniform Statewide Building Code, without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate.

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

"Assisted living facility" means, as defined in § 63.2-100 of the Code of Virginia, any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm, or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or

residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21 years, or 22 years if enrolled in an educational program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments, or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm, or disabled adults. Maintenance or care means the protection, general supervision, and oversight of the physical and mental well-being of an aged, infirm, or disabled individual.

"Attorney-in-fact" means strictly, one who is designated to transact business for another: a legal agent.

"Behavioral health authority" means the organization, appointed by and accountable to the governing body of the city or county that established it, that provides mental health, developmental, and substance abuse services through its own staff or through contracts with other organizations and providers.

"Board" means the State Board of Social Services.

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

"Cardiopulmonary resuscitation" or "CPR" means an emergency procedure consisting of external cardiac massage and artificial respiration; the first treatment for a person who has collapsed, has no pulse, and has stopped breathing; and attempts to restore circulation of the blood and prevent death or brain damage due to lack of oxygen.

"Case management" means multiple functions designed to link clients to appropriate services. Case management may include a variety of common components such as initial screening of needs, comprehensive assessment of needs, development and implementation of a plan of care, service monitoring, and client follow-up.

"Case manager" means an employee of a public human services agency who is qualified and designated to develop and coordinate plans of care.

"Chapter" or "this chapter" means these regulations, that is, Standards for Licensed Assisted Living Facilities, 22VAC40-73, unless noted otherwise.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms or symptoms from mental illness or intellectual disability and that prohibits the resident from reaching his highest level of functioning.

"Commissioner" means the commissioner of the department, his designee, or authorized representative.

"Community services board" or "CSB" means a public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, developmental, and substance abuse programs and services within the political subdivision or political subdivisions participating on the board.

"Companion services" means assistance provided to residents in such areas as transportation, meal preparation, shopping, light housekeeping, companionship, and household management.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public conservator pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals.

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

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

"Days" means calendar days unless noted otherwise.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services, acting as an authorized agent of the Commissioner of Social Services.

"Dietary supplement" means a product intended for ingestion that supplements the diet, is labeled as a dietary supplement, is not represented as a sole item of a meal or diet, and contains a dietary ingredient or ingredients, (e.g., vitamins, minerals, amino acid, herbs or other botanicals, dietary substances (such as enzymes), and concentrates, metabolites, constituents, extracts, or combinations of the preceding types of ingredients). Dietary supplements may be found in many forms, such as tablets, capsules, liquids, or bars.

"Direct care staff" means supervisors, assistants, aides, or other staff of a facility who assist residents in the performance of personal care or daily living activities.

"Discharge" means the movement of a resident out of the assisted living facility.

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Emergency placement" means the temporary status of an individual in an assisted living facility when the person's health and safety would be jeopardized by denying entry into the facility until the requirements for admission have been met.

"Emergency restraint" means a restraint used when the resident's behavior is unmanageable to the degree an immediate and serious danger is presented to the health and safety of the resident or others.

"General supervision and oversight" means assuming responsibility for the well-being of residents, either directly or through contracted agents.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the Department for Aging and Rehabilitative Services as a public guardian pursuant to Article 6 (§ 51.5-149 et seq.) of Chapter 14 of Title 51.5 of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the Department for Aging and

Regulations

Rehabilitative Services as a public guardian, it may also serve as a guardian for other individuals.

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

"Health care provider" means a person, corporation, facility, or institution licensed by this Commonwealth to provide health care or professional services, including a physician or hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, or health maintenance organization.

"Household member" means any person domiciled in an assisted living facility other than residents or staff.

"Imminent physical threat or danger" means clear and present risk of sustaining or inflicting serious or life threatening injuries.

"Independent clinical psychologist" means a clinical psychologist who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the facility.

"Independent living status" means that the resident is assessed as capable of performing all activities of daily living and instrumental activities of daily living for himself without requiring the assistance of another person and is assessed as capable of taking medications without the assistance of another person. If the policy of a facility dictates that medications are administered or distributed centrally without regard for the residents' capacity, this policy shall not be considered in determining independent status.

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

"Individualized service plan" or "ISP" means the written description of actions to be taken by the licensee, including coordination with other services providers, to meet the assessed needs of the resident.

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

"Intellectual disability" means disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with

accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

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

"Legal representative" means a person legally responsible for representing or standing in the place of the resident for the conduct of his affairs. This may include a guardian, conservator, attorney-in-fact under durable power of attorney ("durable power of attorney" defines the type of legal instrument used to name the attorney-in-fact and does not change the meaning of attorney-in-fact), trustee, or other person expressly named by a court of competent jurisdiction or the resident as his agent in a legal document that specifies the scope of the representative's authority to act. A legal representative may only represent or stand in the place of a resident for the function or functions for which he has legal authority to act. A resident is presumed competent and is responsible for making all health care, personal care, financial, and other personal decisions that affect his life unless a representative with legal authority has been appointed by a court of competent jurisdiction or has been appointed by the resident in a properly executed and signed document. A resident may have different legal representatives for different functions. For any given standard, the term "legal representative" applies solely to the legal representative with the authority to act in regard to the function or functions relevant to that particular standard.

"Licensed health care professional" means any health care professional currently licensed by the Commonwealth of Virginia to practice within the scope of his profession, such as a nurse practitioner, registered nurse, licensed practical nurse (nurses may be licensed or hold multistate licensure pursuant to § 54.1-3000 of the Code of Virginia), clinical social worker, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, and speech-language pathologist. Responsibilities of physicians referenced in this chapter may be implemented by nurse practitioners or physician assistants in accordance with their protocols or practice agreements with their supervising physicians and in accordance with the law.

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

"Manager" means a designated person who serves as a manager pursuant to 22VAC40-73-170 and 22VAC40-73-180.

"Mandated reporter" means persons specified in § 63.2-1606 of the Code of Virginia who are required to report matters giving reason to suspect abuse, neglect, or exploitation of an adult.

"Maximum physical assistance" means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument. An individual who can participate in any way with performance of the activity is not considered to be totally dependent.

"Medical/orthopedic restraint" means the use of a medical or orthopedic support device that has the effect of restricting the resident's freedom of movement or access to his body for the purpose of improving the resident's stability, physical functioning, or mobility.

"Medication aide" means a staff person who has current registration with the Virginia Board of Nursing to administer drugs that would otherwise be self-administered to residents in an assisted living facility in accordance with the Regulations Governing the Registration of Medication Aides (18VAC90-60). This definition also includes a staff person who is an applicant for registration as a medication aide in accordance with subdivision 2 of 22VAC40-73-670.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental impairment" means a disability that reduces an individual's ability to reason logically, make appropriate decisions, or engage in purposeful behavior.

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

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

"Nonambulatory" means the condition of a resident who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

"Nonemergency restraint" means a restraint used for the purpose of providing support to a physically weakened resident.

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

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or

adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to his body.

"Physician" means an individual licensed to practice medicine or osteopathic medicine in any of the 50 states or the District of Columbia.

"Premises" means a building or buildings, under one license, together with the land or grounds on which located.

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.

"Private duty personnel" means an individual hired, either directly or through a licensed home care organization, by a resident, family member, legal representative, or similar entity to provide one-on-one services to the resident, such as a private duty nurse, home attendant, personal aide, or companion. Private duty personnel are not hired by the facility, either directly or through a contract.

"Private pay" means that a resident of an assisted living facility is not eligible for an auxiliary grant.

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

"Public pay" means that a resident of an assisted living facility is eligible for an auxiliary grant.

"Qualified" means having appropriate training and experience commensurate with assigned responsibilities, or if referring to a professional, possessing an appropriate degree or having documented equivalent education, training, or experience. There are specific definitions for "qualified assessor" and "qualified mental health professional" in this section.

"Qualified assessor" means an individual who is authorized to perform an assessment, reassessment, or change in level of care for an applicant to or resident of an assisted living facility. For public pay individuals, a qualified assessor is an employee of a public human services agency trained in the completion of the uniform assessment instrument (UAI). For private pay individuals, a qualified assessor is an employee of the assisted living facility trained in the completion of the UAI or an independent private physician or a qualified assessor for public pay individuals.

Regulations

"Qualified mental health professional" means a behavioral health professional who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis, including (i) a physician licensed in Virginia; (ii) a psychologist: an individual with a master's degree in psychology from a college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience; (iii) a social worker: an individual with at least a master's degree in human services or related field (e.g., social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, or human services counseling) from college or university accredited by an association recognized by the U.S. Secretary of Education, with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (iv) a registered psychiatric rehabilitation provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS); (v) a clinical nurse specialist or psychiatric nurse practitioner licensed in the Commonwealth of Virginia with at least one year of clinical experience working in a mental health treatment facility or agency; (vi) any other licensed mental health professional; or (vii) any other person deemed by the Department of Behavioral Health and Developmental Services as having qualifications equivalent to those described in this definition. Any unlicensed person who meets the requirements contained in this definition shall either be under the supervision of a licensed mental health professional or employed by an agency or organization licensed by the Department of Behavioral Health and Developmental Services.

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

"Resident" means any adult residing in an assisted living facility for the purpose of receiving maintenance or care. The definition of resident also includes adults residing in an assisted living facility who have independent living status. Adults present in an assisted living facility for part of the day for the purpose of receiving day care services are also considered residents.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. Included in this level of service are individuals who are dependent in medication administration as documented on the uniform assessment instrument, although they may not require minimal assistance with the activities of daily living. This definition includes the services provided by the facility to

individuals who are assessed as capable of maintaining themselves in an independent living status.

"Respite care" means services provided in an assisted living facility for the maintenance or care of aged, infirm, or disabled adults for a temporary period of time or temporary periods of time that are regular or intermittent. Facilities offering this type of care are subject to this chapter.

"Restorative care" means activities designed to assist the resident in reaching or maintaining his level of potential. These activities are not required to be provided by a rehabilitative therapist and may include activities such as range of motion, assistance with ambulation, positioning, assistance and instruction in the activities of daily living, psychosocial skills training, and reorientation and reality orientation.

"Restraint" means either "physical restraint" or "chemical restraint" as these terms are defined in this section.

"Safe, secure environment" means a self-contained special care unit for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Nothing in this definition limits or contravenes the privacy protections set forth in § 63.2-1808 of the Code of Virginia.

"Sanitizing" means treating in such a way to remove bacteria and viruses through using a disinfectant solution (e.g., bleach solution or commercial chemical disinfectant) or physical agent (e.g., heat).

"Serious cognitive impairment" means severe deficit in mental capability of a chronic, enduring, or long-term nature that affects areas such as thought processes, problem-solving, judgment, memory, and comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, and impulse control. Such cognitive impairment is not due to acute or episodic conditions, nor conditions arising from treatable metabolic or chemical imbalances or caused by reactions to medication or toxic substances. For the purposes of this chapter, serious cognitive impairment means that an individual cannot recognize danger or protect his own safety and welfare.

"Significant change" means a change in a resident's condition that is expected to last longer than 30 days. It does not include short-term changes that resolve with or without intervention, a short-term acute illness or episodic event, or a well-established, predictive, cyclic pattern of clinical signs and symptoms associated with a previously diagnosed condition where an appropriate course of treatment is in progress.

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

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Staff" or "staff person" means personnel working at a facility who are compensated or have a financial interest in the facility, regardless of role, service, age, function, or duration of employment at the facility. "Staff" or "staff person" also includes those individuals hired through a contract with the facility to provide services for the facility.

"Substance abuse" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), without a compelling medical reason, or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii) because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care. All determinations of whether a compelling medical reason exists shall be made by a physician or other qualified medical personnel.

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

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

"Trustee" means one who stands in a fiduciary or confidential relation to another; especially, one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.

"Uniform assessment instrument" or "UAI" means the department designated assessment form. There is an alternate version of the form that may be used for private pay residents. Social and financial information that is not relevant because of the resident's payment status is not included on the private pay version of the form.

"Volunteer" means a person who works at an assisted living facility who is not compensated. An exception to this definition is a person who, either as an individual or as part of

an organization, is only present at or facilitates group activities on an occasional basis or for special events.

22VAC40-73-45. Minimum amount for liability insurance disclosure.

A. The minimum amount of liability insurance coverage to be maintained by an assisted living facility for purposes of disclosure in the statement required by 22VAC40-73-50 and the resident agreement required by 22VAC40-73-390 is as follows:

1. \$500,000 per occurrence to compensate residents or other individuals for injuries and losses from the negligent acts of the facility; and
2. \$500,000 aggregate to compensate residents or other individuals for injuries and losses from the negligent acts of the facility.

B. No facility shall state that liability insurance is in place unless the insurance provides the minimum amount of coverage established in subsection A of this section.

22VAC40-73-50. Disclosure.

A. The assisted living facility shall prepare and provide a statement to the prospective resident and his legal representative, if any, that discloses information about the facility. The statement shall be on a form developed by the department and shall:

1. Disclose information fully and accurately in plain language;
2. Be provided in advance of admission and prior to signing an admission agreement or contract;
3. Be provided upon request; and
4. Disclose the following information, which shall be kept current:
 - a. Name of the facility;
 - b. Name of the licensee;
 - c. Ownership structure of the facility (e.g., individual, partnership, corporation, limited liability company, unincorporated association, or public agency);
 - d. Description of all accommodations, services, and care that the facility offers;
 - e. Fees charged for accommodations, services, and care, including clear information about what is included in the base fee and all fees for additional accommodations, services, and care;
 - f. Criteria for admission to the facility and restrictions on admission;

Regulations

g. Criteria for transfer to a different living area within the same facility, including transfer to another level or type of care within the same facility or complex;

h. Criteria for discharge;

i. Categories, frequency, and number of activities provided for residents;

j. General number, position types, and qualifications of staff on each shift;

k. Whether or not the facility maintains liability insurance that provides at least the minimum amount of coverage established by the board for disclosure purposes set forth in 22VAC40-73-45 to compensate residents or other individuals for injuries and losses from negligent acts of the facility. The facility shall state in the disclosure statement the minimum amount of coverage established by the board in 22VAC40-73-45;

~~k. l.~~ Notation that additional information about the facility that is included in the resident agreement is available upon request; and

~~l. m.~~ The department's website address, with a note that additional information about the facility may be obtained from the website.

B. Written acknowledgment of the receipt of the disclosure by the resident or his legal representative shall be retained in the resident's record.

C. The disclosure statement shall also be available to the general public, upon request.

22VAC40-73-310. Admission and retention of residents.

A. No resident shall be admitted or retained:

1. For whom the facility cannot provide or secure appropriate care;
2. Who requires a level of care or service or type of service for which the facility is not licensed or which the facility does not provide; or
3. If the facility does not have staff appropriate in numbers and with appropriate skill to provide the care and services needed by the resident.

B. Assisted living facilities shall not admit an individual before a determination has been made that the facility can meet the needs of the individual. The facility shall make the determination based upon the following information at a minimum:

1. The completed UAI.
2. The physical examination report.
3. A documented interview between the administrator or a designee responsible for admission and retention decisions, the individual, and his legal representative, if any. In some

cases, conditions may create special circumstances that make it necessary to hold the interview on the date of admission.

4. A mental health screening in accordance with 22VAC40-73-330 A.

C. An assisted living facility shall only admit or retain individuals as permitted by its use and occupancy classification and certificate of occupancy. The ambulatory or nonambulatory status, as defined in 22VAC40-73-10, of an individual is based upon:

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

D. Based upon review of the UAI prior to admission of a resident, the assisted living facility administrator shall provide written assurance to the resident that the facility has the appropriate license to meet his care needs at the time of admission. Copies of the written assurance shall be given to the legal representative and case manager, if any, and a copy signed by the resident or his legal representative shall be kept in the resident's record.

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

F. No person shall be admitted without his consent and agreement, or that of his legal representative with demonstrated legal authority to give such consent on his behalf.

G. The facility shall not require a person to relinquish the rights specified in § 63.2-1808 of the Code of Virginia as a condition of admission or retention.

H. In accordance with § 63.2-1805 D of the Code of Virginia, assisted living facilities shall not admit or retain individuals with any of the following conditions or care needs:

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

- 6. Nasogastric tubes;
- 7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection K of this section;
- 8. Individuals presenting an imminent physical threat or danger to self or others;
- 9. Individuals requiring continuous licensed nursing care;
- 10. Individuals whose physician certifies that placement is no longer appropriate;
- 11. Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the UAI and meet Medicaid nursing facility level of care criteria as defined in the State Plan for Medical Assistance Program (12VAC30-10); or
- 12. Individuals whose physical or mental health care needs cannot be met in the specific assisted living facility as determined by the facility.

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

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

K. At the request of the resident in an assisted living facility and when his independent physician determines that it is appropriate, care for the conditions or care needs (i) specified in subdivisions H 3 and H 7 of this section may be provided to the resident by a physician licensed in Virginia, a nurse licensed in Virginia or a nurse holding a multistate licensure privilege under a physician's treatment plan, or a home care organization licensed in Virginia or (ii) specified in subdivision H 7 of this section may also be provided to the resident by facility staff if the care is delivered in accordance with the regulations of the Board of Nursing for delegation by a registered nurse, 18VAC90-19-240 through 18VAC90-19-280, and 22VAC40-73-470 E. This standard does not apply to recipients of auxiliary grants.

L. When care for a resident's special medical needs is provided by licensed staff of a home care agency, the assisted living facility direct care staff may receive training from the home care agency staff in appropriate treatment monitoring techniques regarding safety precautions and actions to take in case of emergency. This training is required prior to direct

care staff assuming such duties. Updated training shall be provided as needed. The training shall include content based on the resident's specific needs. The training shall be documented and maintained in the staff record.

M. Notwithstanding § 63.2-1805 of the Code of Virginia, at the request of the resident, hospice care may be provided in an assisted living facility under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia if the hospice program determines that such program is appropriate for the resident. However, to the extent allowed by federal law, no assisted living facility shall be required to provide or allow hospice care if such hospice care restrictions are included in a disclosure statement that is signed by the resident prior to admission. If hospice care is provided, there shall be a written agreement between the assisted living facility and any hospice program that provides care in the facility. The agreement shall include:

- 1. Policies and procedures to ensure appropriate communication and coordination between the facility and the hospice program;
- 2. Specification of the roles and responsibilities of each entity, including listing of the services that will generally be provided by the facility and the services that will generally be provided by the hospice program;
- 3. Acknowledgment that the services provided to each resident shall be reflected on the individualized service plan as required in 22VAC40-73-450 D; and
- 4. Signatures of an authorized representative of the facility and an authorized representative of the hospice program.

22VAC40-73-390. Resident agreement with facility.

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

- 1. Financial arrangement for accommodations, services, and care that specifies:
 - a. Listing of specific charges for accommodations, services, and care to be made to the individual resident signing the agreement, the frequency of payment, and any rules relating to nonpayment;
 - b. Description of all accommodations, services, and care that the facility offers and any related charges;
 - c. For an auxiliary grant recipient, a list of services included under the auxiliary grant rate;
 - d. The amount and purpose of an advance payment or deposit payment and the refund policy for such payment,

Regulations

except that recipients of auxiliary grants may not be charged an advance payment or deposit payment;

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

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

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

2. Requirements or rules to be imposed regarding resident conduct and other restrictions or special conditions.

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

4. Specific acknowledgments that:

a. Requirements or rules regarding resident conduct, other restrictions, or special conditions have been reviewed by the resident or his legal representative;

b. The resident or his legal representative has been informed of the policy regarding the amount of notice required when a resident wishes to move from the facility;

c. The resident has been informed of the policy required by 22VAC40-73-840 regarding pets living in the facility;

d. The resident has been informed of the policy required by 22VAC40-73-860 K regarding weapons;

e. The resident or his legal representative or responsible individual as stipulated in 22VAC40-73-550 H has reviewed § 63.2-1808 of the Code of Virginia, Rights and Responsibilities of Residents of Assisted Living Facilities, and that the provisions of this statute have been explained to him;

f. The resident or his legal representative or responsible individual as stipulated in 22VAC40-73-550 H has reviewed and had explained to him the facility's policies and procedures for implementing § 63.2-1808 of the Code of Virginia;

g. The resident has been informed and had explained to him that he may refuse release of information regarding his personal affairs and records to any individual outside the facility, except as otherwise provided in law and except in case of his transfer to another caregiving facility, notwithstanding any requirements of this chapter;

h. The resident has been informed that interested residents may establish and maintain a resident council, that the facility is responsible for providing assistance with the formation and maintenance of the council, whether or not such a council currently exists in the facility, and the general purpose of a resident council (See 22VAC40-73-830);

i. The resident has been informed of the bed hold policy in case of temporary transfer or movement from the facility, if the facility has such a policy (See 22VAC40-73-420 B);

j. The resident has been informed of the policy or guidelines regarding visiting in the facility, if the facility has such a policy or guidelines (See 22VAC40-73-540 C);

k. The resident has been informed of the rules and restrictions regarding smoking on the premises of the facility, including that which is required by 22VAC40-73-820;

l. The resident has been informed of the policy regarding the administration and storage of medications and dietary supplements; ~~and~~

m. The resident has been notified in writing whether or not the facility maintains liability insurance that provides at least the minimum amount of coverage established by the board for disclosure purposes set forth in 22VAC40-73-45 to compensate residents or other individuals for injuries and losses from negligent acts of the facility. The facility shall state in the notification the minimum amount of coverage established by the board in 22VAC40-73-45. The written notification must be on a form developed by the department; and

n. The resident has received written assurance that the facility has the appropriate license to meet his care needs at the time of admission, as required by 22VAC40-73-310 D.

B. Copies of the signed agreement/acknowledgment and any updates as noted in subsection C of this section shall be provided to the resident and, as appropriate, his legal representative and shall be retained in the resident's record.

C. The original agreement/acknowledgment shall be updated whenever there are changes to any of the policies or information referenced or identified in the agreement/acknowledgment and dated and signed by the licensee or administrator and the resident or his legal representative.

VA.R. Doc. No. R18-5266; Filed October 19, 2017, 9:38 a.m.

GENERAL NOTICES/ERRATA

COMMONWEALTH TRANSPORTATION BOARD

Pending Action Affecting the Use of State Highway Right-of-Way for Mobile Food Vending

As part of its efforts to comply with Chapter 765 of the 2016 Acts of Assembly, the Virginia Department of Transportation (VDOT) plans to propose to the Commonwealth Transportation Board (CTB) amendments to the Rules and Regulations for the Administration of Parking Lots and Environs (24VAC30-100) and the Land Use Permit Regulations (24VAC30-151) concerning mobile food vending in VDOT-owned commuter parking lots in Planning District 8, which is comprised of the following counties: Loudoun, Prince William, and Fairfax. The Land Use Permit Regulations (24VAC30-151) were amended in 2015 to allow food vendors to sell items on state highway right-of-way as directed by Chapter 466 of the 2015 Acts of Assembly. Chapter 765 directs VDOT to develop guidelines, consistent with the board's regulations and policies, to permit mobile food vending in a commuter parking lot owned by the Department of Transportation in Planning District 8. Additionally, any necessary regulatory changes are to be exempt from the Administrative Process Act. To prepare its amendments, VDOT conducted a survey of the commuter lots in the planning district to determine lot sizes, percentages of utilization, and locations and identified prohibitions on vending at such sites (such as federal regulations). VDOT also met with affected stakeholders, including mobile food vendors; Senator Jeremy S. McPike, the patron of Chapter 765; the Federal Highway Administration; and representatives from the DC/MD/VA Food Truck Association to develop regulatory amendments that include a market-based fee structure for such sales. In addition, affected localities were contacted for input.

VDOT tentatively plans to make a presentation to the CTB discussing its amendments in December and to submit a resolution for consideration in January of 2018.

For further information, see the contact information below.

Contact Information: Robert W. Hofrichter, Land Use Director, Office of Land Use, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-0780, FAX (804) 225-4785, or email robert.hofrichter@vdot.virginia.gov.

CRIMINAL JUSTICE SERVICES BOARD

Revisions to Performance Outcomes: Civil Process, Corrections, Courtroom Security, Dispatchers, Jailors, and Law Enforcement

Revisions and new performance outcomes effective date: January 1, 2018.

Additions and deletions have been made to the performance outcomes in all the regulated fields (civil process, corrections,

courtroom security, dispatchers, jailors, and law enforcement). To view all the performance outcome revisions please go to the Department of Criminal Justice Services website and view the Law Enforcement webpage <https://www.dcs.virginia.gov/law-enforcement>.

Civil Process (Category: Civil Process)

- New performance outcomes numbered 4.10., 4.11., 4.12., and 4.13. have been created to address terrorism awareness.

Civil Process (Category: Field Training)

- Performance outcome 9.7. has been repealed.

Corrections Officer (Category: Emergency Response)

- Performance outcome 4.5. has been revised.
- New performance outcomes numbered 4.6., 4.7., 4.8., and 4.9. have been created to address terrorism awareness.

Courtroom Security (Category: Court Security Operations)

- New performance outcomes numbered 4.9., 4.10., 4.11., and 4.12. have been created to address terrorism awareness.

Courtroom Security (Category: Field Training)

- Performance outcome 9.10. has been repealed.

Dispatcher (Category: Dispatcher Judgment)

- New performance outcome 2.4.

Jail Officer (Category: Jail Operations)

- New performance outcomes numbered 4.8., 4.9., 4.10., and 4.11. have been created to address terrorism awareness.

Jail Officer (Category: Field Training)

- Performance outcome 9.69. has been repealed.

Law Enforcement Officer (Category: Legal Issues)

- Performance outcome 2.40. has been revised.

Law Enforcement Officer (Category: Patrol)

- Performance outcomes 4.16., 4.17., and 4.22. have been revised.
- New performance outcomes numbered 4.57., 4.58., 4.59., and 4.60. have been created to address terrorism awareness.

Noncustodial Employees of the Department of Corrections

- New performance outcomes have been created to address the training needs of noncustodial employees of the Department of Corrections (DOC) who have been designated by the Director of DOC to carry a firearm.

Contact Information: Barbara Peterson-Wilson, Law Enforcement Program Coordinator, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, FAX (804)

General Notices/Errata

786-0410, or email barbara.peterson-wilson@dcjs.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Environmental Quality conducted a small business impact review of **9VAC15-90, Uniform Environmental Covenants Act Regulation**, and determined that this regulation should be retained in its current form. The Department of Environmental Quality is publishing its report of findings dated September 21, 2017, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The current regulation continues to be needed, and no public comments were received concerning the content of this regulation during the public comment period. The regulation contains a framework that defines how activity and use limitations prescribed by an agency pursuant to an environmental response project are to be drafted, recorded, and enforced as a Uniform Environmental Covenants Act "environmental covenant."

This regulation was adopted in 2011 to implement the Virginia Uniform Environmental Covenants Act, and the content of the regulation continues to be consistent with state law. The regulations are explanatory in nature and do not place any additional regulatory burden on the regulated community including small businesses.

Contact Information: Melissa Porterfield, Office of Regulatory Affairs, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

BOARD OF PHARMACY

Notice of Hearing on Placing Chemicals in Schedule I

Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy is giving notice of a public hearing to consider placement of chemical substances in Schedule I of the Drug Control Act. The public hearing will be conducted at 9 a.m. on December 11, 2017, at the Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233. Public comment may also be submitted electronically or in writing prior to December 1, 2017, to Caroline Juran, Executive Director of the Board of Pharmacy to caroline.juran@dhp.virginia.gov.

The following compounds are classified as research chemicals. Compounds of this type have been placed in Schedule I (subdivision 3 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

1. 2-(methylamino)-2-phenyl-cyclohexanone (other name: Deschloroketamine), its optical, position, and geometric

isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. 2-methyl-1-(4-(methylthio)phenyl)-2-morpholinopropiophenone (other name: MMMP), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Alpha-ethylaminohexanophenone (other name: N-ethylhexedrone), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. N-ethyl-1-(3-methoxyphenyl)cyclohexylamine (other name: 3-methoxy-PCE), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

5. 4-fluoro-alpha-pyrrolidinohexiophenone (other name: 4-fluoro-alpha-PHP), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

6. N-ethyl-1,2-diphenylethylamine (other name: Ephedrine), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The following compounds are powerful synthetic opioids. Compounds of this type have been placed in Schedule I (subdivision 1 of § 54.1-3446) in previous legislative sessions.

1. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-1,3-benzodioxole-5-carboxamide (other name: Benzodioxole fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. 3,4-dichloro-N-[2-(diethylamino)cyclohexyl]-N-methylbenzamide (other name: U-49900), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

3. 2-(2,4-dichlorophenyl)-N-[2-(dimethylamino)cyclohexyl]-N-methylacetamide (other name: U-48800), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

The following compounds are classified as central nervous system stimulants. Compounds of this type have been placed in Schedule I (subdivision 5 of § 54.1-3446) in previous legislative sessions.

1. Methyl 2-(4-fluorophenyl)-2-(2-piperidinyl)acetate (4-fluoromethylphenidate), including its salts, isomers, and salts of isomers.
2. Isopropyl-2-phenyl-2-(2-piperidinyl)acetate (other name: Isopropylphenidate), including its salts, isomers, and salts of isomers.

Contact Information: Caroline Juran, RPh, Executive Director, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Special Order for Dickey's Auto Recyclers, Inc.

An enforcement action has been proposed for Dickey's Auto Recyclers, Inc. for violations at the site located at 9243 George Washington Highway, Gloucester County, Virginia. The State Water Control Board proposes to issue a special order by consent to Dickey's Auto Recyclers, 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, FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from November 13, 2017, to December 13, 2017.

Proposed Consent Special Order for Key Western, LLC

An enforcement action has been proposed for Key Western, LLC for violations at the site located north off of Overlook Drive in Russell County, Virginia. The State Water Control Board proposes to issue a special order by consent to Key Western, LLC 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, FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from November 27, 2017, to December 27, 2017.

Proposed Consent Special Order for Leonard Companies Family L.P.

An enforcement action has been proposed for Leonard Companies Family L.P. for violations at the site located at

approximate latitude 36° 49' 27"N and longitude 82° 08' 35"W in Russell County, Virginia. The State Water Control Board proposes to issue a special order by consent to Leonard Companies Family L.P. 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, FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from November 27, 2017, to December 27, 2017.

Proposed Consent Special Order for Leonard Companies, Ltd.

An enforcement action has been proposed for Leonard Companies, Ltd. for violations at the site located at the intersection of VA State Routes 19 and 58 in Russell County, Virginia. The State Water Control Board proposes to issue a special order by consent to Leonard Companies, Ltd. 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, FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from November 27, 2017, to December 27, 2017.

Total Maximum Daily Loads for the Blacks Run and Cooks Creek Watersheds

The Virginia Department of Environmental Quality (DEQ) will host a community meeting for the modification of total maximum daily loads (TMDLs) for the Blacks Run and Cooks Creek watersheds in Rockingham County, the Town of Bridgewater, and the City of Harrisonburg. Blacks Run and Cooks Creek were first listed as impaired on Virginia's § 303(d) TMDL Priority List and Report due to violations of the state's water quality standard for bacteria and the general standard (benthics) in 1998. The creeks have remained on the § 303(d) list for these impairments since then. A stressor analysis conducted by DEQ for both creeks indicated that sediment and phosphorous are the primary stressors responsible for the benthic impairment.

The impaired segment of Cooks Creek extends 13.32 miles from the headwaters downstream to its confluence with the North River. The impaired segment of Blacks Run extends 10.74 miles from its headwaters downstream to its confluence with Cooks Creek.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. DEQ

General Notices/Errata

completed sediment, phosphorous, and bacteria TMDLs for Cooks Creek and Blacks Run in April 2002. The TMDLs were approved by the U.S. Environmental Protection Agency in 2004. The TMDL reports are available on the DEQ website at <http://www.deq.virginia.gov/programs/water/waterqualityinformationtmdls/tmdl/tmdldevelopment/approvedtmdlreports.aspx>.

In order to address new and expanding discharges from permitted facilities in the watersheds since 2002, the TMDLs for these waterbodies required modification. This modification will ensure that discharge permits issued within the watersheds remain consistent with the wasteload allocations in the TMDLs. The modification process began in August of 2017, and has included a series of technical advisory committee meetings to collect input from stakeholders in the watersheds. A public meeting will be held on Wednesday, November 15, 2017, from 5:30 p.m. until 7 p.m. in the Community Room at the Rockingham County Administration Building, 20 East Gay Street, Harrisonburg, VA. The purpose of this meeting is to present the draft TMDL study to the community, answer questions about the project, and kick off a 30-day public comment period for the TMDLs. The public comment period will begin November 16, 2017, and will end December 15, 2017. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nesha McRae, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7850, FAX (540) 574-7878, or email nesha.mcrae@deq.virginia.gov.

For questions about the upcoming meeting or the project in general, please contact Nesha McRae at the telephone number or email address listed above.

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.

ERRATA

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12VAC30-30. **Groups Covered and Agencies Responsible for Eligibility Determination.**

Publication: 33:21 VA.R. 2368-2389 June 12, 2017.

Correction to Fast-Track Regulation:

Page 2376, 12VAC30-30-20, column 1, after the end of subdivision 11, on the next line, insert "~~13.~~ 12. Individuals under the State Eligibility Option of P.L. 111-148 § 2303 who are not pregnant and whose income does not exceed the state established income standard for pregnant women in the Virginia Medicaid and CHIP State Plan and related waivers, which is 200% of the federal poverty level, shall be eligible for the family planning program. Services are limited to family planning services as described in 12VAC30-50-130 D."

VA.R. Doc. No. R17-4396; Filed October 18, 2017, 2:51 p.m.