



GOVERNMENT AND REGULATORY REFORM TASK FORCE
INTERIM REPORT #6
ATTORNEY GENERAL ROBERT F. MCDONNELL
JANUARY 9, 2009

COMMONWEALTH of VIRGINIA
Office of the Attorney General
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**Government and Regulatory Reform Task Force
The Honorable Robert F. McDonnell
Attorney General**

**January 9, 2009
House Room 1- Virginia State Capitol**

AGENDA

- Welcoming Remarks -Co-Chairman Jack Rust
- Opening Remarks - Attorney General Bob McDonnell
- Working Group's Status Reports and Recommendations - Martin Kent, Chief Counsel to the Attorney General
 - Infrastructure Working Group Report and Recommendations
 - Health Care Working Group Report and Recommendations
- Public Comment
- Task Force Vote on Current Recommendations
- Future Work of the Task Force
- Conclusion

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Task Force Membership

TASK FORCE MEMBERS:

Jim Beamer, Dominion Resources, Richmond
The Honorable William Bolling, Lieutenant Governor, Richmond (Co-Chairman)
Jeff Brooke, Attorney, Huff Poole & Mahoney, P.C., Norfolk
Dr. Alvin Bryant, U.S. Army Retired, Surgeon, Hampton
Dan Clemente, CDC Real Estate Holdings, Vienna
Walter Curt, Businessman, Harrisonburg
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Kevin Gentry, Vice President, Charles G. Koch Charitable Foundation
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The Honorable Steve Landes, Member, House of Delegates, Weyers Cave
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Jorge Lozano, CEO & President, Condortech Services, Inc., Annandale
Donna Pugh Johnson, President, Virginia Agribusiness Council, Richmond
John Olivieri, President, Associated Development Management Corp., Virginia Beach
Mike Quillen, President and CEO, Alpha Natural Resources, Abingdon
Scott Rigell, Owner/President, Freedom Automotive, Virginia Beach
Tim Robertson, President, Bay Shore Enterprises, Virginia Beach
Mark Rubin, Senior Advisor to the Governor, Richmond
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Larry Sartoris, President, Virginia Hospital and Healthcare Association, Glen Allen
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Rick Sharp, Chairman, Carmax, Inc., Richmond
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Wayne Bolton, Board Member, VA Independent Consumers and Farmers Association, Green Bay
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Martha Moore, Director of Government Relations, Virginia Farm Bureau Federation, Richmond
The Honorable Phil Puckett, Member, State Senate, Tazewell
The Honorable Chris Saxman, Member, House of Delegates, Staunton
Dennis Treacy, Vice President, Environmental & Corporate Affairs, Smithfield Foods, Smithfield
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The Honorable Charles Colgan, Member, State Senate, Manassas
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Geoff Hinshelwood, Representative, Virginia Manufacturers Association, Hampton
Thomas Johnson, Thomas A. Johnson Furniture Co., Lynchburg
Jack Kreuter, President, Jack Kreuter Jewelers, Richmond
Howard Lee, Esq., Managing Director and Executive Secretary, Cosmos Alliance, Lorton
The Honorable Jennifer McClellan, Member, House of Delegates, Richmond
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George Peyton, Vice President, Government Relations, Retail Merchants Association, Richmond
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Mary Lynne Bailey, VP for Legal & Government Affairs, VA Healthcare Association, Richmond
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Gail Jaspen, Deputy Secretary of Health and Human Resources, Richmond
Timothy Musselman, R.Ph., Associate Ex. Director, VA Pharmacists Association, Richmond
The Honorable Stephen Newman, Member, State Senate, Forest
The Honorable John O'Bannon, M.D., Member, House of Delegates, Richmond
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Dr. Lou Rossiter, Ph.D., Senior Research Fellow, William and Mary, Williamsburg
Dr. Norris Royston, Jr., M.D., President, Medical Society of Virginia, Warrenton
The Honorable Mark Sickles, Member, House of Delegates, Alexandria
Dr. Christopher Stolle, M.D., Vice President of Medical Affairs, Riverside Regional Medical Center, Newport News
Laura Lee Viergever, Legislative Chairman, Virginia Association of Health Plans, Richmond
Dr. William Ward, D.C., Vice President, Virginia Chiropractic Association, Fredericksburg
The Honorable John Welch, Member, House of Delegates, Virginia Beach
Cal Whitehead, Whitehead Consulting, LLC, Richmond

ENVIRONMENTAL WORKING GROUP

The Honorable William Barlow, Member, House of Delegates, Smithfield
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The Honorable Robert Hurt, Member, House of Delegates, Chatham
Lisa Kardell, Director of Government Relations, Waste Management, Washington, D.C.
Tommy Kellum, Member, Virginia Seafood Council, Weems
Ned Massie, Member, Virginia Association of Realtors, Richmond
The Honorable Phil Puckett, Member, State Senate, Tazewell
Nikki Rovner, Deputy Secretary of Natural Resources, Richmond
The Honorable Chris Saxman, Member, House of Delegates, Staunton
David Schnare, Senior Fellow, Thomas Jefferson Institute for Public Policy, Fairfax
Wilmer Stoneman, Deputy Director of Government Relations, VA Farm Bureau, Richmond
Joseph Tannery, Staff Attorney, Chesapeake Bay Foundation, Richmond
James Thornton, Member, Virginia Manufacturers Association, Newport News
Dennis Treacy, Vice President, Environmental & Corporate Affairs, Smithfield Foods, Smithfield

INFRASTRUCTURE IN VIRGINIA WORKING GROUP

The Honorable George Barker – Virginia State Senate, 39th District
Dan Bell – Design-Build Project Manager, American Infrastructure
The Honorable Bill Bolling, Lieutenant Governor (Chairman)
Tom Brock – Former VP of Systems and Services, General Electric
Charles King – VP for Administration and Finance, James Madison University
The Honorable Robert Lazaro – Mayor, Town of Purcellville
The Honorable Manoli Loupassi – Virginia House of Delegates, 68th District
The Honorable Ryan McDougle – Virginia State Senate, 4th District
The Honorable Dianne Pettitt – Chesterfield County School Board, Clover Hill District
Dwight Shelton – VP of Finance and Chief Financial Officer, Virginia Tech
David Shuford – VP of State Regulations, Dominion Power
The Honorable John Stirrup – Prince William County Board of Supervisors, Gainesville District
Mike Thompson – Chairman and President, Thomas Jefferson Institute
Dietra Trent – Deputy Secretary of Education
Richard Walton – Chief of Policy and Environment, Virginia Department of Transportation
Andrea Warfield - Executive Vice President, VMS Inc.
A.D. Whittaker – President, A.D. Whittaker Construction

The following leaders will serve in an advisory capacity to the Working Group:

Dr. William Boshier – Dean, School of Education, Virginia Commonwealth University
Quintin Kendall – Chief of Staff, US Department of Transportation
Chris Lloyd - Senior Vice President and Director of Business Expansion Services, McGuireWoods Consulting

Review of Regulations – Decision Matrix

In reviewing regulations, the staff and members of the Task Force will take into consideration the following factors:

- Does the regulation have a bona fide purpose that makes sense in the 21st Century?
- Does the regulation exceed its statutory authority?
- Does the regulation conflict with another regulation on the books?
- Is the regulation redundant of existing statute and is that redundancy necessary?
- Is the regulation necessary to protect the health, safety and/or welfare of the citizens of the Commonwealth?
- Do monitoring and enforcement of the regulation impose unreasonable costs on the Commonwealth? If so, can the objective be met by more effective and alternative means?
- Can reporting requirements be fulfilled more effectively through electronic or other means?

If the regulation passes the above tests, it will be considered as a regulation worthy of retention.

If a regulation has been deemed by the above criteria to require further consideration, it will be put into one of four categories:

Modify- The regulation is outdated, overly burdensome, or does not serve a worthwhile or the desired purpose, but the issue can be corrected through changes to the regulation. The Task Force will recommend to the AG that he take steps to have the regulation amended.

Eliminate- The regulation is outdated, overly burdensome, or does not serve a worthwhile or the desired purpose. The Commonwealth is best served by the regulation being repealed and the Task Force will recommend to the AG that he take steps to have the regulation removed.

External Action Required (e.g.-Federal & State Government)- The regulation is in place as a result of a federal or other requirement. The Task Force will recommend to the AG the proper federal agency or branch where to best request relief from these requirements and what type of relief is most appropriate.

Retain- The regulation is troublesome, but circumstances require maintaining it. The Task Force will compile a list of these regulations, but no official action will be taken.

Infrastructure in Virginia Working Group

Government and Regulatory Reform Task Force

Working Group Meeting: December 12, 2008

Status Report:

The Infrastructure in Virginia Working Group held its final meeting on December 12, which included follow up from the October 9, 2008 meeting in Richmond, Virginia.

David Von Moll, State Comptroller, gave the group an overview of the Agency Risk Management and Internal Control Standards (ARMICS). This presentation resulted from discussion during the August 27th meeting that dealt with higher education. It was suggested during that meeting that the ARMICS review is duplicative of what internal auditors and the Auditor of Public Accounts currently do and should be eliminated. After Mr. Von Moll's presentation, there were no motions by the Working Group to formalize the earlier discussion in the form of a recommendation.

Supervisor John Stirrup (Prince William County) followed with a presentation on behalf of himself and Mayor Bob Lazarro (Town of Purcellville) that included recommendations from local government to VDOT. The recommendations that were raised and addressed were:

1. **Traffic Impact Analysis (TIA) timelines need to match the County's.** Currently, the regulations allow the County 30 days to review a TIA, while VDOT has up to 90 days. This can make the review process difficult and can delay the applicant an additional 60 days. Our initiatives are designed to expedite commercial development. This hinders our ability to move forward expeditiously.
2. **Access Management – The regulations make it difficult for developers to assure themselves adequate access in certain areas of the County.** Although this can be looked at on a case-by-case basis, these reviews add time to the County process.
3. **Secondary Street Requirements – The new regulation and standards make it difficult for a development to get its streets accepted into the VDOT system.** The requirements mandate a development to create an urban-like street pattern, in order to meet a “connectivity ratio” that will be difficult to meet.
4. **Self Certification for Projects – Municipalities such as Purcellville in Loudon County, would like to have the ability to self-certify our projects as to compliance with environmental, VDOT standards, procurement issues, etc. The Commonwealth has such a program (Second Cities Program), but our analysis of the requirements, is that it would force the Town to hire two or three additional personnel. We need to look at the program**

to see where Towns such as Purcellville (population 6500) can self-certify at a much more reasonable level.

5. **Federal Monies in State Projects** – Federalizing almost every State project by placing Federal dollars in them in certain instances requires duplicative review. I would suggest that VDOT look at establishing a threshold amount with respect to when Federal dollars would be placed in the project. Duplicative review takes time and costs money.
6. **As you will recall, I recounted how in Purcellville a project we initiated to place sidewalk along a 30’ strip of property along Main Street (controlled by VDOT) cost the Town more money in terms of plans, engineering review etc. that it did in the actual construction of the sidewalk.** Municipalities get strangled by this kind of red tape. Our internal examination of a project using state money if it required a right-of way could take more than five years beginning to end.
7. **Design and exception waivers should be handled locally and not sent to Richmond to be reviewed by an engineer that may or may not be familiar with the specifics of the project.**
8. **Need a “project champion”** – Someone from VDOT should serve as a point-of contact for a single project, rather than each facet needing a different person or section to review. VDOT should have a local coordinator to administer each project that can make critical path decisions quickly and effectively.
9. **Ability to make judgment calls on projects on the field and not wait on VDOT reviews to hold up the consultant or contractor.**
10. **Local decision making authority for “no thru truck” and other safety designations.**
11. **Reviews of signal or turn lane warrants should be expedited when introduced by the local jurisdiction.**

Kathy Ichter (Fairfax County VDOT Director), Tom Biesiadny (Fairfax VDOT), and Ricardo Canizales (Prince William VDOT) gave a brief presentation of their experiences in implementing “527 Legislation” adopted in the 2006 Session of the General Assembly. Specifically, the implementation of “527 Legislation” affects three development processes. 1) Comprehensive Plan Amendments/Updates, 2) Rezoning/Special Use and Special Exemption Permits, 3) Site Plans.

Northern Virginia is in the final stages of full implementation, which began in January of 2008. Since Northern Virginia was the first region to begin implementation of this, they have made several recommendations:

- 1) Comprehensive Plan amendment/updates section of the regulations needs further development and improvement to meet the needs of the process (especially dealing with multiple amendments at the same time).

- 2) Low-volume rule needs to be examined for adequacy in determining actual need of a Traffic Impact Analysis.
- 3) Once the locality makes a decision that a Traffic Impact Analysis is not required, VDOT should not mention the need for one in future comments.
- 4) Timeframes need to be modified to be more consistent with local government review times and scheduled hearings on the case. Consider having Traffic Impact Analysis approved by VDOT first, before locality review time begins.
- 5) Consider particularly accelerating VDOT review times for cases of local significance

Finally, Christopher Lloyd, Senior Vice President and Director of Business Expansion Services at McGuireWoods Consulting gave a presentation on Public Private Partnerships (PPP). Specifically, he addressed some lingering issues that need to be resolved in the PPP process. In consultation with staff to the Working Group, he concluded with some legislative recommendations to several of these issues. Those recommendations included amendments to Virginia's Public Private Education Facilities and Infrastructure Act of 2002 (PPEA) and Public-Private Transportation Act of 1995 (PPTA).

PPEA Amendments

§ [56-575.1](#). Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affected jurisdiction" means any county, city or town in which all or a portion of a qualifying project is located.

"Appropriating body" means the body responsible for appropriating or authorizing funding to pay for a qualifying project.

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity required by § [56-575.9](#).

"Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

"Interim agreement" means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

"Lease payment" means any form of payment, including a land lease, by a public entity to the private entity for the use of a qualifying project.

"Material default" means any default by the private entity in the performance of its duties under subsection E of § [56-575.8](#) that jeopardizes adequate service to the public from a qualifying project.

"Operate" means to finance, maintain, improve, equip, modify, repair, or operate.

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity, or other business entity.

"Public entity" means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of the Commonwealth, any public body politic and corporate, or any regional entity that serves a public purpose.

"Qualifying project" means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for any public entity; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any services designed to increase *the* productivity or efficiency ~~through the direct or indirect use of technology of the responsible public entity~~, (viii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; or (ix) any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

"Responsible public entity" means a public entity that has the power to develop or operate the applicable qualifying project.

"Revenues" means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project, including without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

"Service contract" means a contract entered into between a public entity and the private entity pursuant to § [56-575.5](#).

"Service payments" means payments to the private entity of a qualifying project pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"User fees" mean the rates, fees or other charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to the comprehensive agreement pursuant to § [56-575.9](#).

§ [56-575.17](#). Posting of conceptual proposals; public comment; public access to procurement records.

A. Conceptual proposals submitted in accordance with subsection A or B of § [56-575.4](#) to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals as follows:

1. For responsible public entities that are state agencies, departments, and institutions, posting shall be on the Department of General Service's web-based electronic procurement program commonly known as "eVA;" and

2. For responsible public entities that are local bodies, posting shall be on the responsible public entity's website or by publication, in a newspaper of general circulation in the area in which the contract is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the local responsible public entity.

In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § [2.2-3705.6](#) shall not be required to be posted, except as otherwise agreed to by the responsible public entity and the private entity.

~~B. In addition to the posting requirements of subsection A, at least 30 days prior to entering into an interim or comprehensive agreement, a~~ The responsible public entity shall hold a public hearing on the proposals *during the proposal review process, but not later than 30 days prior to entering into an interim or comprehensive agreement.* ~~After the public hearing is held, no additional posting shall be required.~~

C. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete, but before an interim agreement or a comprehensive agreement is entered into, a responsible public entity shall make available the proposed agreement in a manner provided in subsection A.

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, upon request. For the purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ [59.1-336](#) et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

F. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

G. The provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement.

§ [56-575.18](#). Auditor of Public Accounts.

The Auditor of Public Accounts shall periodically review interim and comprehensive agreements entered into pursuant to this chapter to ensure compliance with the provisions of this chapter. *Copies of the agreements filed with the Auditor of Public Accounts shall be made available on the online database maintained pursuant to Section 30-133 (H) 1 of the Code of Virginia.*

2. That the Chairmen of the Senate and House Committees on General Laws shall convene a working group to meet at least annually to review the model guidelines used by responsible public entities and to consider best practices recommendations for use by responsible public entities. Such findings shall be reported back to the Chairmen of each respective Committee on or before September 30th of each year.

PPTA Amendments

§ [56-560](#). Approval by the responsible public entity.

A. The private entity may request approval by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity in its guidelines or other instructions given, in writing, to the private entity with respect to the transportation facility or facilities that the private entity proposes to develop and/or operate as a qualifying transportation facility:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities;
2. A description of the transportation facility or facilities, including the conceptual design of such facility or facilities and all proposed interconnections with other transportation facilities;
3. The proposed date for development and/or operation of the transportation facility or facilities along with an estimate of the life-cycle cost of the transportation facility as proposed;

4. A statement setting forth the method by which the private entity proposes to secure any property interests required for the transportation facility or facilities;
 5. Information relating to the current transportation plans, if any, of each affected jurisdiction;
 6. A list of all permits and approvals required for developing and/or operating improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;
 7. A list of public utility facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the private entity to accommodate such crossings;
 8. A statement setting forth the private entity's general plans for developing and/or operating the transportation facility or facilities, including identification of any revenue, public or private, or proposed debt or equity investment or concession proposed by the private entity;
 9. The names and addresses of the persons who may be contacted for further information concerning the request;
 10. Information on how the private entity's proposal will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency; and
 11. Such additional material and information as the responsible public entity may reasonably request pursuant to its guidelines or other written instructions.
- B. The responsible public entity may request proposals from private entities for the development and/or operation of transportation facilities. The responsible public entity shall not charge a fee to cover the costs of processing, reviewing, and evaluating proposals received in response to such requests.
- C. The responsible public entity may grant approval of the development and/or operation of the transportation facility or facilities as a qualifying transportation facility if the responsible public entity determines that it serves the public purpose of this chapter. The responsible public entity may determine that the development and/or operation of the transportation facility or facilities as a qualifying transportation facility serves such public purpose if:
1. There is a public need for the transportation facility or facilities the private entity proposes to develop and/or operate as a qualifying transportation facility;
 2. The transportation facility or facilities and the proposed interconnections with existing transportation facilities, and the private entity's plans for development and/or operation of the qualifying transportation facility or facilities, are, in the opinion of the responsible public entity, reasonable and will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency;
 3. The estimated cost of developing and/or operating the transportation facility or facilities is reasonable in relation to similar facilities; and
 4. The private entity's plans will result in the timely development and/or operation of the transportation facility or facilities or their more efficient operation.

In evaluating any request, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

D. The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request submitted by a private entity pursuant to subsection A, including without limitation, reasonable attorney's fees and fees for financial and other necessary advisors or consultants. The responsible public entity shall also develop guidelines that establish the process for the acceptance and review of a proposal from a private entity pursuant to subsections A and B. Such guidelines shall establish a specific schedule for review of the proposal by the responsible public entity, a process for alteration of that schedule by the responsible public entity if it deems that changes are necessary because of the scope or complexity of proposals it receives, the process for receipt and review of competing proposals, and the type and amount of information that is necessary for adequate review of proposals in each stage of review. For qualifying transportation facilities that have approved or pending state and federal environmental clearances, secured significant right of way, have previously allocated significant state or federal funding, or exhibit other circumstances that could reasonably reduce the amount of time to develop and/or operate the qualifying transportation facility in accordance with the purpose of this chapter, the guidelines shall provide for ~~a prioritized~~ *an accelerated* documentation, review, and selection process.

E. The approval of the responsible public entity shall be subject to the private entity's entering into an interim agreement or a comprehensive agreement with the responsible public entity. For any project with an estimated construction cost of over \$50 million, the responsible public entity also shall require the private entity to pay the costs for an independent audit of any and all traffic and cost estimates associated with the private entity's proposal, as well as a review of all public costs and potential liabilities to which taxpayers could be exposed (including improvements to other transportation facilities that may be needed as a result of the proposal, failure by the private entity to reimburse the responsible public entity for services provided, and potential risk and liability in the event the private entity defaults on the comprehensive agreement or on bonds issued for the project). This independent audit shall be conducted by an independent consultant selected by the responsible public entity, and all such information from such review shall be fully disclosed.

F. In connection with its approval of the development and/or operation of the transportation facility or facilities as a qualifying transportation facility, the responsible public entity shall establish a date for the acquisition of or the beginning of construction of or improvements to the qualifying transportation facility. The responsible public entity may extend such date from time to time.

G. The responsible public entity shall take appropriate action, as more specifically set forth in its guidelines, to protect confidential and proprietary information provided by the private entity pursuant to an agreement under subdivision 11 of § [2.2-3705.6](#).

H. The responsible public entity may also apply for, execute, and/or endorse applications submitted by private entities to obtain federal credit assistance for qualifying projects developed and/or operated pursuant to this chapter.

Health Care Working Group

Government and Regulatory Reform Task Force

Working Group Meetings: November 14, 2008
 December 19, 2008

STATUS REPORT:

The Health Care Working Group held its meeting on November 14 and again on December 19, 2008, in Richmond, Virginia. The meetings focused primarily on chapters within the Department of Health (VDH). The last part of the meeting on November included follow-up on requests from the Patient Advocate Foundation that were previously submitted to the Working Group as well as one request for additional follow-up by the Full Task Force at its October meeting.

The presentation of the recommendations from the Patient Advocate Foundation generated much interest and debate. While consensus was reached on the importance of several items, in the end it was concluded that most of the recommendations were either beyond the scope of this Task Force in that they required significant policy change in the Code of Virginia which necessitated significant action by the Virginia General Assembly or they were matters better reviewed directly by the VDH.

The VDH regulations covered during these meetings included the following chapters:

November 14, 2008

- Chapter 20-Conduct of Human Research
- Chapter 71-Va. Newborn Screening Services
- Chapter 80-Va. Hearing Impairment Identification and Monitoring System
- Chapter 90-Disease Reporting and Control
- Chapter 191-Children With Special Healthcare Needs
- Chapter 195-Va. WIC Program
- Chapter 507-General Assembly Nursing Scholarships and Loan Repayment
- Chapter 510-General Assembly Nursing Scholarships
- Chapter 520-Dental Scholarship and Loan Repayment
- Chapter 530-Va. Medical Scholarship Program
- Chapter 540-Identification of Medically Underserved Areas in Va.
- Chapter 542-Va. Nurse Practitioner/Midwife Scholarship Program

December 19, 2008:

- Chapter 31-EMS
- Chapter 66-Durable Do Not Resuscitate Orders
- Chapter 110 – Regulations for the Immunization of School Children
- Chapter 120 – Regulations for Testing Children for Elevated Blood Lead Levels
- Chapter 200-Stds. and Charges for Medical Care Services to Individuals
- Chapter 215 – Rules and Regulations Governing Health Data Reporting
- Chapter 216 – Methodology to Measure Efficiency and Productivity of Health Care Institutions
- Chapter 217 – Regulations of the Patient Level Data System
- Chapter 218 –Rules and Regulations Governing Outpatient Health Data Reporting
- Chapter 410-Licensure of Hospitals in Va.
- Chapter 475-Va. Organ and Tissue Donor Registry
- Chapter 550-Vital Records

Assistant Attorneys General Matt Cobb, Usha Koduru and Clay Garrett made several recommendations regarding these chapters. Most of their recommendations focused on removing definitions that are repeated in the Code of Virginia. The reason for doing this is to reduce redundancy as well as keeping the regulations up to date if the General Assembly changes the Code definition. Other recommendations included removing some deadlines in the regulations which have already passed, adding a definition for clarity, updating names of programs and offices, and deleting redundant regulations that are already summarized in the Code. Chapters 66 and 410 dealing with EMS and Licensure of Hospitals in Virginia, respectively, are currently in the process of redrafting. The Working Group used the current redraft of those Chapters in lieu of those currently listed in the Administrative Code for purposes of its review.

RECOMMENDATIONS:

**Recommendations for the Healthcare Working Group Meeting
Department of Health Regulations**

- 1. Delete the following provisions as they were not otherwise used within the regulations, were unnecessary or could lead to confusion:**

12 VAC 5-80-10 “Definitions”:

"Diagnostic audiological evaluation" means those physiologic and behavioral procedures required to evaluate and diagnose hearing status.

12VAC5-80-40. Administration and application of chapter.

B. This chapter has general application throughout the Commonwealth.

12 VAC 5-20-10 "Definitions":

"Institution" or "agency" means any facility, program, or organization owned or operated by the Commonwealth, by any political subdivision, or by any person, firm, corporation, association, or other legal entity.

"Nontherapeutic research" means human research in which there is no reasonable expectation of direct benefit to the physical or mental condition of the participant.

12VAC5-195-30. Definitions.

"Annualized income" means income amount covering a 12-month period used to determine financial eligibility for the WIC Program.

"Applicant" or "retail store applicant" means a sole proprietorship, a partnership, cooperative association or a corporation that is not currently authorized to accept WIC food instruments.

"Cash value food benefits" means a special food instrument that has been issued to eligible participants for a specific dollar amount that must be used to purchase fruits and vegetables. Unless stated otherwise, all references to food instruments include cash value food benefits, as well as food and formula food instruments.

"Food instrument type" or "FI type" means a grouping of certain foods and formula together that is used for reimbursement purposes in a paper-based system.

"Leave and earnings statement" or "LES" means the earnings statement for a member of the uniformed service.

12 VAC5-90-10. Definitions.

"Communicable disease of public health significance" means an illness caused by a specific or suspected infectious agent that may be transmitted directly or indirectly from one individual to another. This includes but is not limited to infections caused by human immunodeficiency viruses, bloodborne pathogens, and tubercle bacillus. The State Health Commissioner may determine that diseases caused by other pathogens constitute communicable diseases of public health significance.

"Companion animal" means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purpose of this regulation.

"Isolation" means the physical separation, including confinement or restriction of movement, of an individual or individuals who are infected with, or are reasonably suspected to be infected

with, a communicable disease of public health threat in order to prevent or limit the transmission of the communicable disease of public health threat to uninfected and unexposed individuals.

"Law-enforcement agency" means any sheriff's office, police department, adult or youth correctional officer, or other agency or department that employs persons who have law-enforcement authority that is under the direction and control of the Commonwealth or any local governing body. "Law-enforcement agency" shall include, by order of the Governor, the Virginia National Guard.

"Tubercle bacilli" means disease-causing organisms belonging to the Mycobacterium tuberculosis complex and includes Mycobacterium tuberculosis, Mycobacterium bovis, and Mycobacterium africanum or other members as may be established by the commissioner.

12 VAC5-31-10. Definitions.

"Bypass" means to transport a patient past a commonly used medical care facility to another hospital for accessing a more readily available or appropriate level of medical care.

"Defibrillator -- combination unit" means a single device designed to incorporate all of the required capabilities of both an Automated External Defibrillator and a Manual Defibrillator.

"Emergency medical services communications plan" or "EMS communications plan" means the state plan for the coordination of electronic telecommunications by EMS agencies as approved by the Office of EMS.

"Emergency operations plan" means the Commonwealth of Virginia Emergency Operations Plan.

"Medical community" means the physicians and allied healthcare specialists located and available within a definable geographic area.

"Medical protocol" means preestablished written physician authorized procedures or guidelines for medical care of a specified clinical situation based on patient presentation.

"Prehospital patient data report" or "PPDR" means a document designed to be optically scanned that may be used to report to the Office of EMS, the minimum patient care data items as prescribed by the board.

"Standard of care" means the established approach to the provision of basic and advanced medical care that is considered appropriate, prudent and in the best interests of patients within a geographic area as derived by consensus among the physicians responsible for the delivery and oversight of that care. The standard of care is dynamic with changes reflective of knowledge gained by research and practice.

"Virginia Statewide Trauma Registry" or "Trauma Registry" means a collection of data on patients who receive hospital care for certain types of injuries. The collection and analysis of

such data is primarily intended to evaluate the quality of trauma care and outcomes in individual institutions and trauma systems. The secondary purpose is to provide useful information for the surveillance of injury morbidity and mortality.

"Wheelchair" means a chair with wheels specifically designed and approved for the vehicular transportation of a person in an upright, seated (Fowler's) position.

12VAC5-110-80. Exemptions from immunization requirements.

A. Religious and medical exemptions. No certificate of immunization shall be required of any student for admission to school if:

1. The student or his parent or guardian submits a Certificate of Religious Exemption (Form CRE 1), to the admitting official of the school to which the student is seeking admission. Form CRE 1 is an affidavit stating that the administration of immunizing agents conflicts with the student's religious tenets or practices. For a student enrolled before July 1, 1983, any document present in the student's permanent school record claiming religious exemption shall be acceptable, or

2.. The school has written certification on any of the documents specified under "documentary proof" in 12VAC5-110-10 from a physician or a local health department that one or more of the required immunizations may be detrimental to the student's health. Such certification of medical exemption shall specify the nature and probable duration of the medical condition or circumstance that contraindicates immunization. For a student enrolled before July 1, 1983, any document attesting to the fact that one or more of the required immunizations may be detrimental to the student's health shall be acceptable.

B. Demonstration of existing immunity. The demonstration in a student of antibodies against either rubeola or rubella in sufficient quantity to ensure protection of that student against that disease, shall render that student exempt from the immunization requirements contained in 12VAC5-110-70 for the disease in question. Such protection should be demonstrated by means of a serological testing method appropriate for measuring protective antibodies against rubeola or rubella respectively.

(Repeal subsections A.1. and A.2. as they are now obsolete.)

12VAC5-110-140. General penalties.

In accordance with § 32.1-27 of the Code of Virginia, "any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the board or commissioner of any provision of this title shall be guilty of a Class 1 misdemeanor unless a different penalty is specified."

(Repeal as redundant to statutory language.)

2. Modify or amend the provision to reflect updated statutory references, standards of practice, or correct terminology within the authorizing statute:

12 VAC 5-80-10 “Definitions”:

"Neonatal intensive care services" means those services provided by a hospital's newborn services that are designated as both specialty level and subspecialty level as defined in subdivision D 2 of 12VAC5-410-440. (The correct regulation reference should be 12 VAC 5-410-443 (B)(3) and (B)(4).)

12VAC5-80-40. Administration and application of chapter.

A. This chapter is promulgated to implement the system and amended as necessary by the State Board of Health. The State Health Commissioner or his designee is charged with its administration, and the Virginia Department of Health shall provide the staff necessary for its implementation. (Refers to the “State Health Commissioner” after having defined the term to mean “Commissioner” in paragraph 10. Should be amended to read “Commissioner.”)

12VAC5-80-80. Responsibilities of hospitals.

Hospitals with newborn nurseries and hospitals with neonatal intensive care services shall:

1. Prior to discharge after birth, but no later than three months of age, screen the hearing, in both ears, of all infants using objective physiologic measures. The methodology used for hearing screening shall have a false-positive rate and false-negative rate no greater than those recommended by the American Academy of Pediatrics in "Newborn and Infant Hearing Loss: Detection and Intervention" (Pediatrics Vol. 103, No. 2, February 1999). If the error rates exceed these recommendations, the hospital shall examine and modify its hearing screening methodology to reduce its error rates below these maximum rates;
2. If an infant is missed, inform the parent prior to discharge of the need for hearing screening and provide a mechanism by which screening can occur at no additional cost to the family;
3. Prior to discharge, give written information to the parent of each infant that includes purposes and benefits of newborn hearing screening, indicators of hearing loss, procedures used for hearing screening, results of the hearing screening, the recommendations for further testing, and where the testing can be obtained;
4. Give written information to the infant's primary medical care provider that includes procedures used for hearing screening, the limitations of screening procedures, the results of the hearing screening, and the recommendations for further testing;
5. Within one week of discharge, complete the Virginia Department of Health report as required by the board pursuant to § 32.1-64.1 F of the Code of Virginia and in a manner devised by the department, which may be electronic, on each infant who does not pass the hearing screening and send it to the Virginia Department of Health;

6. On a monthly basis, send to the Virginia Department of Health a report of the total number of discharges, the total number of infants who passed the newborn hearing screening, the total number who failed, and the total number not tested due to parents' exercise of their rights under § 32.1-64.1 H of the Code of Virginia; and

7. Report to the Virginia Department of Health, on a yearly basis, the test procedures used by the newborn hearing screening program, the name of the program director, the name of the advising audiologist, equipment calibration records, screening protocols, and referral procedures.

(In paragraph 1. this regulation provides that the “methodology used for hearing screening shall have a false-positive rate and false-negative rate no greater than those recommended by the American Academy of Pediatrics in “Newborn and Infant Hearing Loss: Detection and Intervention” (Pediatrics Vol. 103, No. 2, February 1999.) This reference to an article in the American Academy of Pediatrics is almost 10 years old and should be updated to reflect more current science.)

12VAC5-20-100. Informed consent.

A. To conduct human research, informed consent of the participant or his legally authorized representative must be obtained, subscribed to in writing by the participant or his legally authorized representative and supported by the signature of a witness not involved in the conduct of research, except as provided for in subsections F and H of this section. If the participant is a minor otherwise capable of rendering informed consent, consent shall be subscribed to in writing by both the minor and his legally authorized representative.

B. A legally authorized representative may not consent to nontherapeutic research unless it is determined by the committee that such research will present no more than a minor increase over minimal risk to the participant.

C. An investigator shall seek such consent only under circumstances that provide the prospective participant or the representative sufficient opportunity to consider whether or not to participate and that assures absence of coercion or undue influence. The information that is given to the participant or the representative shall be in language understandable to the participant or the representative with regard to his educational level and language of greatest fluency.

D. No informed consent form shall include any language through which the prospective participant waives or appears to waive any of his legal rights, including any release of any individual, institution or agency or any agents thereof from liability for negligence.

E. Notwithstanding consent by a legally authorized representative, no person who is otherwise capable of rendering informed consent shall be forced to participate in any human research. In the case of persons suffering from organic brain diseases causing progressive deterioration of cognition for which there is no known cure or medically accepted treatment, the implementation of experimental courses of therapeutic treatment to which a legally authorized representative has given informed consent shall not constitute the use of force.

F. The committee may approve a consent procedure which omits or alters some or all of the elements of informed consent set forth in 12VAC5-20-10, or waives the requirement to obtain informed consent provided the committee finds and documents that:

1. The research involves no more than minimal risk to the participants;
2. The omission, alteration or waiver will not adversely affect the rights and welfare of the participants;
3. The research could not practicably be performed without the omission, alteration or waiver; and
4. Whenever appropriate, the participants will be provided with additional pertinent information after participation.

G. Except as provided in subsection H of this section, the consent form may be either of the following:

1. A written consent document that embodies the elements of informed consent required by 12VAC5-20-10. This form may be read to the participant or the participant's legally authorized representative, but, in any event, the investigator shall give either the participant or the representative adequate opportunity to read it before it is signed and witnessed; or
2. A short form written consent document stating that the elements of informed consent required by 12VAC5-20-10 has been presented orally to the participant or the participant's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the committee shall approve a written summary of what is to be said to the participant or the representative. Only the short form itself is to be signed by the participant or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary and a copy of the short form shall be given to the participant or the representative.

H. The committee may waive the requirement that the investigator obtain written informed consent for some or all participants if it finds that the only record linking the participant and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each participant will be asked whether he wants documentation linking him to the research, and the participant's wishes shall govern. In cases where the documentation requirement is waived, the committee may require the investigator to provide participants with a written statement explaining the research.

(Terminology throughout needs to be amended to be consistent with authorizing statute.)

12VAC5-20-110. Categories of human research exempt from regulation.

Research activities in which the only involvement of human participants will be in one or more of the following categories are exempt from this chapter:

1. The surveillance and investigation by the department into all preventable diseases and epidemics in the Commonwealth and into the means for the prevention of such diseases and epidemics conducted pursuant to § 32.1-39 of the Code of Virginia.
2. Research designed to study on a large scale anonymous vital records and registry data collected pursuant to the Code of Virginia, Chapter 7 (§ 32.1-249 et seq.) of Title 32.1 (Vital Records), § 32.1-64.1 (Virginia Hearing Impairment Identification and Monitoring System), § 32.1-69.1 (Virginia Congenital Anomalies Reporting and Education System), § 32.1-70 (Statewide Cancer Registry), § 32.1-71.1 (Statewide Alzheimer's Disease and Related Disorders Registry), and §§ 32.116.1 and 32.116.1:2 (Emergency Medical Services Patient Care Information System).
3. Research or student learning outcomes assessment conducted in educational settings such as research involving:
 - a. Regular or special education instructional strategies; or
 - b. The effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods; or
 - c. The use of educational tests, whether cognitive, diagnostic, aptitude, or achievement, if the data from such tests are recorded in a manner so that participants cannot be identified, directly or through identifiers linked to the participants.
4. Research involving survey or interview procedures unless responses are recorded in such a manner that the participants can be identified, directly or through identifiers linked to the participants, and either:
 - a. The participant's responses, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to his financial standing, employability, or reputation; or
 - b. The research deals with sensitive aspects of the participant's own behavior such as sexual behavior, drug or alcohol use, or illegal conduct.
5. Research involving survey or interview procedures, when the respondents are elected or appointed public officials or candidates for public office.
6. Research involving solely the observation of public behavior, including observation by participants, unless observations are recorded in such a manner that the participants can be identified, directly or through identifiers linked to the participants, and either:
 - a. The observations recorded about the individual, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to his financial standing, employability, or reputation; or

b. The research deals with sensitive aspects of the participant's own behavior, such as sexual behavior, drug or alcohol use, or illegal conduct.

7. Research involving the collection or study of existing data, documents, records, or pathological specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner so that participants cannot be identified, directly or through identifiers linked to the participants.

(Terminology throughout needs to be amended to be consistent with authorizing statute.)

12 VAC5-90-10. Definitions

"Midwife" means any person who is licensed as a nurse midwife by the Virginia Boards of Nursing and Medicine or who possesses a midwife permit issued by the State Health Commissioner. (Should be amended to include "lay midwives" as currently licensed by the Board of Medicine.)

12VAC5-90-50. Applicability.

A. This chapter has general application throughout the Commonwealth.

B. The provisions of the Virginia Administrative Process Act, which is codified as Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia, shall govern the adoption, amendment, modification, and revision of this chapter, and the conduct of all proceedings and appeals hereunder. All hearings on such regulations shall be conducted in accordance with § 9-6.14:7.1 of the Code of Virginia. (Update outdated Code citations.)

12VAC5-510-10. Legislative authority.

Titles 23-35.9 - 23.35.13 of the Code of Virginia authorize annual nursing scholarships for students enrolled in undergraduate and graduate nursing programs. Undergraduate nursing programs are defined as those leading to an associate degree, diploma, or baccalaureate degree in nursing. Graduate nursing programs are those offering masters and doctoral degrees.

Under the law, all scholarship awards are made by an Advisory Committee appointed by the State Board of Health. The Advisory Committee consists of eight members: four deans or directors of schools of nursing, two former scholarship recipients, and two members with experience in the administration of student financial aid programs. Committee appointments are for two-year terms and members may not serve for more than two successive terms.

The Office of Public Health Nursing of the State Health Department serves as the staff element to the Advisory Committee and plays no role in the determination of scholarship recipients.

The basis for determining scholarship recipients is established by the Advisory Committee with due regard given to scholastic attainment, financial need, character, and adaptability to the nursing profession.

(The first paragraph contains an incorrect citation and should be amended to reflect the correct citation.)

12VAC5-520-190. Default.

A. With respect to default, the contract shall provide that a scholarship or loan repayment recipient who fails to fulfill his obligation to practice dentistry as described in 12VAC5-520-160 shall be deemed in default under the following circumstances and shall forfeit all monetary scholarship or loan repayment awards made to him and shall make repayment of those funds plus interest plus penalty, where applicable, to the Commonwealth of Virginia as provided for in this chapter. The contract shall:

1. Provide that if the scholarship recipient defaults while still in dental school, by voluntarily notifying the commissioner in writing that he will not practice dentistry in a Virginia dental underserved area as required by his contract, by voluntarily not proceeding to the next year of dental education, or by withdrawing from dental school, the student shall pay the Commonwealth of Virginia all monetary scholarship awards plus interest at the prevailing rate for similar amounts of unsecured debt.
2. Provide that the scholarship recipient who defaults by failing to maintain grade levels that will allow the dental student to graduate, or by reason of his dismissal from dental school for any reason, shall repay the Commonwealth of Virginia all monetary scholarship awards plus interest.
3. Provide that if the scholarship or loan repayment recipient is in default due to death or permanent disability so as not to be able to engage in dental practice, the recipient or his personal representative shall repay the Commonwealth all monetary scholarship awards plus 8.0% interest on the amount of the award. Partial fulfillment of the recipient's contractual obligation by the practice of dentistry as provided for in this contract prior to death or permanent disability shall reduce the amount of repayment plus interest due by a proportionate amount of money, such proportion being determined as the ratio of the number of whole months that a recipient has practiced dentistry in an approved location to the total number of months of the contractual obligation the recipient has incurred. The commissioner may waive all or part of the scholarship or loan repayment obligation under application by the recipient or his estate under these conditions and consider whole or partial forgiveness of payment or service in consideration of individual cases of extraordinary hardship.
4. Provide that any recipient of a scholarship or loan repayment who defaults by evasion or refusal to fulfill the obligation to practice dentistry in an underserved area or designated state facility for a period of years equal to the number of annual scholarships or loan repayment awards received shall make restitution by repaying all monetary scholarship or loan repayment awards plus penalty plus interest to the Commonwealth of Virginia.

(Should be amended to reflect the correct regulation citation in subsections A.1. through A.3. Additionally the interest rate used in A. 3. differs from the interest rate used in other medical scholarship programs and should be evaluated based on current market conditions.)

12 VAC5-31-10. Definitions.

"Chief operations officer" means the person authorized or designated by the agency or service as the highest operational officer.

"Registered nurse" means an individual who holds a valid, unrestricted license to practice as a registered nurse in the Commonwealth. (Modify to conform to current definitions in the Code of Virginia.)

12VAC5-31-800. Nontransport response vehicle specifications.

A. A vehicle maintained and operated for response to the location of a medical emergency to provide immediate medical care at the basic or advanced life support level (excluding patient transport) shall be permitted as a nontransport response vehicle unless specifically authorized under Part VI (12VAC5-31-2100 et seq.) of this chapter.

A nontransport response vehicle may not be used for the transportation of patients except in the case of a major medical emergency. In such an event, the circumstances of the call shall be documented.

B. A nontransport response vehicle must be constructed to provide sufficient space for safe storage of required equipment and supplies specified in these regulations.

A nontransport response vehicle used for the delivery of advanced life support must have a locking storage compartment or approved locking bracket for the security of medications and medication kits. When not in use, medications and medication kits must be kept locked in the required storage compartment or approved bracket at all times. The EMS agency shall maintain medications and medication kits as specified in these regulations.

1. Sedan/zone car must have an approved locking device attached within the passenger compartment or trunk, inaccessible by the public.

2. Utility vehicle/van must have an approved locking device attached within the vehicle interior, inaccessible by the public.

3. Rescue vehicle/fire apparatus must have an approved locking device attached within the vehicle interior or a locked compartment, inaccessible by the public.

C. A nontransport response vehicle must have a motor vehicle safety inspection performed following completion of conversion and before applying for an EMS vehicle permit.

(Update references to regulations throughout)

12VAC5-31-1950. Physician endorsement exemptions.

A. On January 1, 2003, endorsement as an EMS physician will be initially issued to each licensed physician currently recorded as having previously been endorsed to serve as an operational medical director by the Office of EMS. Issuance of an EMS physician endorsement will be subject to renewal pursuant to 12VAC5-31-1820.

B. EMS physicians initially endorsed through the "grandfather" clause who fail to request renewal before expiration will be subject to compliance with the full provisions of 12VAC5-31-1810 in order to regain endorsement as an EMS physician.

(Correct citation to regulations.)

12 VAC 5-66-10 "Definitions":

"Qualified health care facility" means a facility, program or organization operated or licensed by the State Board of Health, or by the Department of Mental Health, Mental Retardation and Substance Abuse Services or operated, licensed or owned by another state agency.

(Should be amended to reflect that the Commissioner and not the State Board of Health is the licensing official in accordance with the Code of Virginia.)

"Qualified health care personnel" means any qualified emergency medical services personnel and any licensed healthcare provider or practitioner functioning in any facility, program or organization operated or licensed by the State Board of Health, or by the Department of Mental Health, Mental Retardation and Substance Abuse Services or operated, licensed or owned by another state agency.

(Should be amended to reflect that the Commissioner and not the State Board of Health is the licensing official in accordance with the Code of Virginia.)

Add a definition for "bona fide physician/patient relationship." Suggested language for the definition: "means the bona fide physician/patient relationship defined by the guidelines of the Board of Medicine pursuant to § 54.1-2987.1."

(This is important to clarify the intent of this regulation.)

12VAC5-66-40. The Authorized Durable Do Not Resuscitate Order Form.

The Durable DNR Order Form shall be a ~~unique~~ standardized document ~~printed on distinctive paper,~~ as approved by the board and consistent with these regulations. The following requirements and provisions shall apply to the approved Durable DNR Order Form.

A. Content of the Form - A Durable DNR Order Form shall contain, from a physician with whom the patient has a bona fide physician/patient relationship, a do not resuscitate determination, signature and the date of issue, the signature of the patient or, if applicable, the person authorized to consent on the patient's behalf;

B. Effective Period for a Signed Durable DNR Order Form - A signed Durable DNR Order shall remain valid until revoked;

C. ~~Original Durable DNR Order Form - An original Durable DNR Order or an Alternate Durable DNR Jewelry form~~ that complies with [12VAC5-66-50](#) shall be valid for the purposes of withholding or withdrawing cardiopulmonary resuscitation by qualified health care personnel in the event of cardiac or respiratory arrest;

D. ~~Availability Displaying of the Durable DNR Order Form - The original Durable DNR Order Form that complies with [12VAC5-66-50](#) or an Alternate Durable DNR form that complies with [12 VAC 5-66-60](#) shall be maintained and displayed readily available at the patient's current location or residence. Within any facility, program or organization operated or licensed by the State Board of Health, of by the Department of Mental Health, Mental retardation and Substance Abuse Services or operated, licensed or owned by another state agency the Durable DNR Order Form, Alternate Durable DNR, or an Other Durable DNR Order should be readily available to the patient; in one of the places designated on the form, or should accompany the patient, if traveling. Photocopies of the Durable DNR Order may be given to other providers or persons for information, with the express consent of the patient or the patient's designated agent or the person authorized to consent on the patient's behalf. However, such photocopies of the Durable DNR Order are not valid for withholding cardiopulmonary resuscitation.~~

E. Qualified health care personnel may honor a legible photocopy of a Durable DNR Form or Other Durable DNR Order;

F. A patient that is traveling outside their home or between health care facilities should have an original or photocopied Durable DNR Order Form or Other Durable DNR Order accompany them;

G. Revocation of a Durable DNR Order Form - A Durable DNR Order Form may be revoked at any time by the patient (i) by ~~physical~~ physically destroying the Durable DNR Order Form cancellation or destruction by the patient or having another person in his/her presence and at his direction destroy of the Durable DNR Order Form and/or any alternate form of identification; or (ii) by oral expression of intent to revoke. The Durable DNR Order may also be revoked by the patient's designated agent or the person authorized to consent on the patient's behalf unless that person knows the patient would object to such revocation. If an Other Durable DNR Order exists and a patient or their authorized agent revokes the Durable DNR, health care personnel should assure the revocation is honored by updating or destroying the Other Durable DNR Order;

H. Distribution of Durable DNR Order Forms – ~~Authorized~~ The authorized Virginia Durable DNR Order Forms, with instructions, shall be a standardized form available only to physicians. for download via the internet from the Office of Emergency Medical Services Website. The downloadable form will contain directions for completing the form and three identical Durable DNR Order Forms; one form to be kept by the patient, the second to be placed in the patients permanent medical record and the third to be used for requesting an Alternate Durable DNR i.e. DNR necklace or bracelet;

I. Hard copies of the Durable DNR Order Form shall also be made available to physicians or licensed health care facilities by the Office of EMS. The Office of EMS may utilize a vendor to

print and distribute the Durable DNR Order Form and a nominal fee can be charged to cover printing and shipping fees.

(Should be amended to reflect that the Commissioner and not the State Board of Health is the licensing official in accordance with the Code of Virginia.)

12VAC5-66-60. Other DNR Orders.

~~A. Qualified health care personnel can honor do not resuscitate (DNR) orders by a physician that are written in a format other than using the standardized Durable DNR Order Form to not resuscitate a patient in the event of a cardiac or respiratory arrest when the patient is currently admitted to a hospital or other qualified health care facility. If an Other Durable DNR Order is used it must contain the same information as listed in subdivision 1 of 12 VAC 5-66-40; Nothing in these regulations shall be construed to preclude licensed health care practitioners from following any other written orders of a physician not to resuscitate a patient in the event of cardiac or respiratory arrest.~~

~~B. Additionally, nothing in these regulations or in the definition of Durable DNR Orders provided in §54.1-2982of the Code of Virginia shall be construed to limit the authorization of qualified health care personnel to follow Do Not Resuscitate Orders other than Durable DNR Orders that are written by a physician. Such other DNR Orders issued in this manner, to be honored by EMS personnel, shall contain the information listed in subdivision 1 of [12VAC5-66-40](#) and the time of issuance by the physician in accordance with accepted medical practice, for patients who are currently admitted to a hospital or other health care facility.~~

~~C. B. Nothing in these regulations shall prohibit qualified health care personnel from following any direct verbal order issued by a licensed physician not to resuscitate a patient in cardiac or respiratory arrest when such physician is physically present Statutory Authority~~

(New paragraph B. fails to actually cite to the correct statutory authority at the end.)

12VAC5-110-50. Application of the Administrative Process Act.

The provisions of the Virginia Administrative Process Act, contained in Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia, shall govern the adoption, amendment, modification and revision of this chapter, and the conduct of all proceedings and appeals hereunder.

(Amend to reflect current Code citation.)

12VAC5-200-20. Authority for regulations.

Section 32.1-11 of the Code of Virginia establishes the responsibility of the board as follows: "The board may formulate a program of environmental health services, laboratory services and preventive, curative and restorative medical care services, including home and clinic health services described in Titles V, XVIII and XIX of the United States Social Security Act and amendments thereto, to be provided by the department on a district or local basis. The board

shall define the income limitations within which a person shall be deemed to be medically indigent. Persons so deemed to be medically indigent shall receive the medical care services of the department without charge. The board may also prescribe the charges to be paid for the medical care services of the department by persons who are not deemed to be medically indigent and may, in its discretion and within the limitations of available funds, prescribe a scale of such charges based upon ability to pay. Funds received in payment of such charges are hereby appropriated to the board for the purpose of carrying out the provisions of this title. The board shall review periodically the program and charges adopted pursuant to this section."

(Amend to reflect current Code citation.)

12VAC5-215-30. Purpose, administration, application, and effective date of rules and regulations.

A. The board has promulgated these rules and regulations to set forth an orderly administrative process by which the board may govern its own affairs and require compliance with the provisions of §§ 32.1-276.2 through 32.1-276.11 of the Code of Virginia.

B. These rules and regulations are administered by the board.

C. These rules and regulations have general applicability throughout the Commonwealth. The requirements of the Virginia Administrative Process Act, codified as § 9-6.14:1 et seq. of the Code of Virginia, apply to their promulgation.

D. These rules and regulations or any subsequent amendment, modification, or deletion in connection with these rules and regulations shall become effective 30 days after the final regulation is published in The Virginia Register.

(Amend to reflect current Code citation.)

12VAC5-215-50. Annual historical filing.

Each individual health care institution shall submit an annual historical filing of revenues, expenses, other income, other outlays, assets and liabilities, units of service, and related statistics as prescribed in § 9-158 (Repealed) of the Code of Virginia on forms provided by the board together with unconsolidated certified audited financial statements. If the health care institution is part of a publicly held company, the individual institution may submit unconsolidated unaudited financial statements. Investor-owned institutions organized as proprietorships, partnerships, or S-corporations that impute income tax on the annual historical filing report an imputed income tax based on the maximum tax rates for federal and state income. The combined rate for 1989 is equal to 34% for individuals and 40% for corporations. Operating losses may be carried forward no more than five years but may not be carried back to prior years. The schedule of imputed income taxes shall be reported as a note to the financial statements or as a supplemental schedule of the certified audited financial statements submitted to the board by the institution. The annual historical filing and the unconsolidated certified audited financial statement shall be received by the board no later than 120 days after the end of the respective

applicable health care institution's fiscal year. The requirement for the submission of an annual historical filing and an unconsolidated certified audited financial statement may be waived if a health care institution can show that an extenuating circumstance exists. Requests for a waiver must be submitted in writing prior to the due date. Examples of an extenuating circumstance include, but are not limited to, involvement by the institution in a bankruptcy proceeding, closure of the institution, change of ownership of the institution, or the institution is a new facility that has recently opened.

Each health care institution with licensed nursing home beds or certified nursing facility beds shall exclude all revenues, expenses, other income, other outlays, assets and liabilities, units of service and related statistics directly associated with a hospital, continuing care retirement community, or with adult care residence beds in the annual report filed with the board. For those health care institutions that participate in either the Medicare or Medicaid program, the cost allocation methodology required by the Virginia Department of Medical Assistance Services and Medicare for cost reports submitted to it shall be utilized for filings submitted to the board. Any health care institution that does not participate in the Medicare or Medicaid program may develop and utilize an alternative methodology to determine the nursing home portion of its costs if it chooses not to utilize the cost allocation methodology used by the Department of Medical Assistance Services and Medicare. That methodology shall then be approved by the board and the health care institution must continue to utilize that methodology for all subsequent filings unless a subsequent change is approved by the board.

(Amend to be consistent with current statutory authority.)

12VAC5-215-60. Schedule of charges.

Each health care institution shall file annually a schedule of charges to be in effect on the first day of such fiscal year, as prescribed in § 9-159 A 3 (Repealed) of the Code of Virginia. The institution's schedule of charges shall be received by the board within 10 days after the beginning of its respective applicable fiscal year.

Any subsequent amendment or modification to the annually filed schedule of charges shall be filed within 10 days of the effective date of the revised annual projection. In addition to the requirement above, a new schedule of charges must be submitted if any of the following conditions exist: (i) the creation or revision of a markup or pricing methodology, or (ii) the creation or revision of charges for new services or products. Amendments or modifications to a schedule of charges that are due only to cost adjustments resulting from the pass through of a markup or pricing methodology that had been implemented since the beginning of the fiscal year are considered minimal and need not be reported.

(Amend to be consistent with current statutory authority.)

12VAC5-215-210. Statistical data.

The board shall release historical financial and statistical data reported by health care institutions pursuant to §§ 32.1-276.2 through 32.1-276.11 of the Code of Virginia. Under no circumstances

will data be released which contains "personal information" as defined in § 2.1-379(2) of the Code of Virginia.

(Amend to be consistent with current statutory authority.)

12VAC5-217-10. Definitions.

"Inpatient hospital" means a hospital providing inpatient care and licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, a hospital licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia, or a hospital operated by the University of Virginia or Virginia Commonwealth University.

(Modify to reflect the correct statutory references.)

12VAC5-475-10. Definitions.

"Agent" means an adult appointed by the declarant under an advance directive, executed or made in accordance with the provisions of § 54.1-2983 of the Code of Virginia, to make health care decisions for him, including decisions relating to visitation, provided the advance directive makes express provisions for visitation and subject to physician orders and policies of the institution to which the declarant is admitted. The declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1 of the Code of Virginia.

(Modify to reflect the correct statutory references.)

12VAC5-475-50. Registry membership.

Those persons 18 years and older who have indicated a willingness to donate in accordance with § 32.1-290 of the Code of Virginia and have completed the required registration form (VTC-1) shall be recorded in the registry. Persons under the age of 18 may enter the registry upon completion of the registration form and only with the written consent of his parent or legal guardian. No person may enter another person in the registry.

Those persons who have indicated a willingness to donate on their driver's license or personal identification card as authorized by the Department of Motor Vehicles will be automatically entered into the registry. Through inter-agency agreement, the Department of Motor Vehicles will assist the department by electronically providing this information to the registry on a daily basis. The VTC shall contact any such self-identified persons by United States mail regarding notification of membership to the registry and request the completion of the registration form (VTC-1).

(Modify to reflect the correct statutory references.)

12VAC5-475-70. Removal from the registry.

A person who has joined the registry may have his name removed by filing an appropriate form (VTC-0) with the VTC or in accordance with subsections E and F of § 32.1-290 or subsection G of § 46.2-342.

The name of a person entered in the registry who has died shall be removed from the registry within 90 days of notification of death by the Virginia Office of Vital Records and Health Statistics.

(Modify to reflect the correct statutory references.)

3. Amend to reflect use of current technology to improve notification to the public:

12VAC5-31-120. Public notice of request for exemption. .

Upon receipt of a request for an exemption, the Office of EMS will cause notice of such request to be published in a newspaper of general circulation in the area wherein the person making the request resides and in other major newspapers of general circulation in major regions of the Commonwealth. The cost of such public notice will be borne by the person making the request.

(Amend to provide for electronic notification on the VDH website as well.)

12VAC5-31-480. Termination of EMS agency licensure.

A. An EMS agency terminating service shall surrender the EMS agency license to the Office of EMS.

B. An EMS agency terminating service shall submit written notice to the Office of EMS at least 90 days in advance. Written notice of intent to terminate service must verify the following:

1. Notification of the applicable OMDs, regional EMS councils or local EMS resource agencies, PSAPs and governing bodies of each locality served.
2. Termination of all existing contracts for EMS services, Mutual Aid Agreements, or both.
3. Advertised notice of its intent to discontinue service has been published in a newspaper of general circulation in its service area.

C. Within 30 days following the termination of service, the EMS agency shall provide written verification to the Office of EMS of the following:

1. The return of its EMS agency license and all associated vehicle permits to the Office of EMS.
2. The removal of all signage or insignia that advertise the availability of EMS to include but not be limited to facility and roadway signs, vehicle markings and uniform items.

3. The return of all medication kits that are part of a local or regional medication exchange program or provision for the proper disposition of medications maintained under a Board of Pharmacy controlled substance registration.

4. The maintenance and secure storage of required agency records and prehospital patient care reports (PPCRs) for a minimum of five years from the date of termination of service.

(Amend subsection B. to provide for electronic notification on the VDH website as well.)