



## Periodic Review / Retain Regulation Agency Background Document

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| <b>Agency name</b>                                 | Virginia Department of Health                       |
| <b>Virginia Administrative Code (VAC) citation</b> | 12VAC5-371  |
| <b>Regulation title</b>                            | Regulations for the Licensure of Nursing Facilities |
| <b>Document preparation date</b>                   | November 18, 2010                                   |

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

### Legal basis

*Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.*

The regulation is promulgated under the authority of §32.1-12 and Article 1 (§32.1-123 et seq.) and Article 2 (§32.1-138 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia (Code). Section 32.1-12 grants the Board of Health (Board) the legal authority “to make, adopt, promulgate, and enforce such regulations necessary to carry out the provisions of Title 32.1 of the Code.” Section 32.1-127 of the Code allows the Board to promulgate regulations for nursing facilities that are in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established and recognized by medical and health care professionals. Section 32.1-19 C of the Code requires the State Health Commissioner to “ensure, in the licensure of health care facilities, that quality of care, patient safety, and patient privacy are overriding goals of such licensure and related enforcement issues.” Sections 32.1-126 and 32.1-131 of the Code permit the Commissioner to grant or renew licenses to nursing facilities found in compliance with the provisions of the Code and the regulations of the Board.

### Alternatives

*Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.*

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The regulation is clearly and directly mandated in law. The regulation honors the Department's statutory charge and is the least burdensome alternative for adequately addressing the mandate of the law.

### Public comment

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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No public comments were received.

### Effectiveness

*Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

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The regulation is intended to assure the safe, adequate and efficient nursing facility operation and to promote the health, safety and adequate care of residents in nursing facilities without unreasonably interfering with the operation of the facility. The regulation assures the public that uniform quality assurance standards are being maintained by all nursing facilities. The regulation is clearly written and understandable and meets the criteria of E.O. 14 (2010).

### Result

*Please state that the agency is recommending that the regulation should stay in effect without change.*

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The Department of Health is recommending that the regulation remain in effect without change at this time.

### Small business impact

*In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the*

*regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

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Licensure of facilities caring for Virginia's elderly and medically fragile populations is considered an essential government function. Regulation is the tool used by state agencies to provide the necessary consistency for both licensed providers and the state officials to measure the quality of care and determine compliance with applicable law. The state licensure of nursing facilities is mandated based on compliance with state regulations; therefore all nursing facilities must be licensed and must be in compliance with the applicable law and regulations in order to operate. For nursing facilities, the structure of the regulation is mandated in law, it must address: i) construction and maintenance, ii) the operation, staffing and equipping of facilities and iii) the qualifications and training of staff of the facility. Compliance with federal regulations is a voluntary program for those providers seeking federal reimbursement; not all of Virginia's 279 nursing facilities are federally certified. Federal certification regulations for nursing facilities are more prescriptive and burdensome than state regulations, which are subject to the policies set forth in Governors Executive Orders. The regulation does not overlap, is not duplicative, and does not conflict with the federal regulations. Legislative mandates have required regulatory action six (6) times in the last ten (10) years; these updates offset the periodic review process. Currently, the regulation meets the intent and purpose of the applicable state mandate. The department will continue to monitor its effectiveness and will seek amendment of the regulation in the event such action is deemed warranted. Repeal of the regulation can only be achieved through legislative action. However, there would likely be considerable concern expressed by those families that look to the regulation to hold nursing facility providers accountable for the services and quality of care provided to their family members residing in nursing facilities. Small businesses are not impacted by the regulation, unless they contract with a facility to provide goods or services.

### Family impact

*Please provide an analysis of the regulation's impact on the institution of the family and family stability.*

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The regulation does not directly impact the family unit in Virginia. Indirectly, the regulation has a positive impact on family units utilizing nursing facilities as it assures the necessary consistency in care provided to family members utilizing a nursing facility.