



Fast Track Proposed Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12 VAC 5-220
Regulation title	Medical Care Facilities Certificate of Public Need Rules and Regulations
Action title	To amend specific sections related to miscellaneous capital expenditures pursuant to HB2546 (2007)
Date this document prepared	November 13, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

Section 32.1-102.1 of the Code of Virginia related to the Certificate of Public Need (COPN) program by requiring an annual increase in the threshold for capital expenditure projects to “reflect inflation using appropriate measures incorporating construction costs and medical inflation.” Therefore, 12 VAC 5-220-110 and 200 must be amended annually to conform to the law. Using the Consumer Price Index published by the U.S. Department of Labor, the capital expenditure threshold for projects requiring registration increased from \$5,698,607 to \$5,869,565 and those projects requiring the filing of an application increased from \$17,095,823 to \$17,608,697.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Board of Health approved this action at its December 13, 2012 meeting.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The regulation is promulgated under the authority of § 32.1-102.2 of the Code of Virginia, which grants the Board of Health the legal authority to "promulgate regulations that are consistent with" Article 1 (§32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia. Therefore, this authority is mandated. Section 32.1-102.1 of the Code of Virginia requires that sections 110 and 220 of 12 VAC 5-220 be updated annually.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The COPN program is the mechanism used in Virginia to restrain specified health care facilities and services from unnecessary duplication as a cost control measure. Section 32.1-102.1 of the Code of Virginia requires an annual adjustment to the project cost threshold by which health care entities subject to COPN can make necessary capital improvements such as parking decks and computer systems without having to register or obtain a certificate. Raising the cost threshold for capital expenditures projects benefits health care entities by reducing the costs of those projects.

The proposed regulatory action assists in protecting the health, safety and welfare of Virginians by allowing medical care facilities and services providers subject to the COPN program to make necessary capital improvements quicker and for less cost this improving service delivery of certain regulated medical services to those patients in need of those services. Adjusting the cost of miscellaneous expenditures also provides greater opportunity for smaller medical providers subject to certificate of need to expand their services, thus providing more patient choice in medical services available.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either

house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Because § 32.1-102.1 of the Code of Virginia does not specify which nationally recognized consumer price index to use in adjusting the capital expenditure threshold, the department chose to use the Consumer Price Index published by the U.S. Department of Labor (USDL). The discretionary decision prohibits use of the exempt regulatory action process for updating the project threshold each year. The department, however, has not received negative response from affected constituents in using the USDL index. Therefore, the department believes this action will remain noncontroversial and is appropriate for the fast track process.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.

This action affects the cost threshold amounts for miscellaneous capital expenditure projects requiring a COPN in two ways: 1) raises the threshold for registration for projects costing more than \$5,859,565 and ii) raises the threshold for projects requiring a COPN application to more than \$17,608,697.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The proposed regulatory action has the advantage of ensuring that the provisions of § 32.1-102.1 of the Code of Virginia can be complied with in a more efficient manner. The proposed regulatory action does not pose any disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements pertaining to the approval of certain medical care facilities and services

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality is disproportionately affected by this required action.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The regulation is clearly mandated by law; there are no other available alternatives to comply with the law.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	Cost to the department to implement and enforce this action is considered the routine cost to promulgate regulations (i.e., \$5,000). Program 40608,fund 0220, cost code 552
Projected cost of the new regulations or changes to existing regulations on localities.	There is no impact on localities as a result of this action.
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	Medical care facilities and service entities (large and small) subject to Certificate of Public Need and their lawyers are affected by this action.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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	Unless a medical care facilities and services entity plans to make capital improvements, there is no impact on the entity.

of less than \$6 million.	
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	None, in fact this action would save entities dollars towards to costs of certain planned capital improvements.
Beneficial impact the regulation is designed to produce.	Providers subject to the COPN law are saved the cost of filing a COPN application for miscellaneous capital expenditures each year since 2007,

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no alternatives that meet the intent of the law.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no direct impact on the family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
110		Registration of certain capital expenditures	Raises the threshold for registration of capital improvement projects to only those costing more than \$5,869,565. Capital projects costing less are not required to register.
220		On hundred ninety-day review cycle	Amends the threshold amount in each batch cycle listed to more than \$17,608,697 for projects that are required to obtain a COPN before construction begins.