



## Virginia Department of Health Office of Licensure and Certification

Revised 12/1/14

---

### Frequently Asked Questions (FAQs) about First Trimester Abortion Facility Licensure

The VDH Office of Licensure and Certification (OLC) has received questions from potential licensees concerning implementation of the *Regulations for Licensure of Abortion Facilities*, 12VAC-412. This document provides responses to those questions. New entries are dated when added.

#### **INFORMED WRITTEN CONSENT** (11/01/12)

**Q.: What is meant by "informed consent" for an abortion and how will compliance with informed consent be assessed?**

A.: The OLC has produced a Guidance Document regarding informed written consent which is available at:

<http://www.vdh.virginia.gov/OLC/AcuteCare/documents/2012/pdf/Guidance%20Document%20Informed%20Consent%20final%20approved%2007%2020%2012.pdf>

#### **APPLICATION FOR LICENSURE**

**Q: Where can I find information about being licensed as an abortion facility?**

A: Information regarding licensure abortion facilities can be found on the Office of Licensure and Certification (OLC) web site at: [www.vdh.virginia.gov/olc/laws](http://www.vdh.virginia.gov/olc/laws) or <http://www.vdh.virginia.gov/OLC/AcuteCare/abortionfacilities.htm>

**Q: Where can I find the application for licensure?** (12/01/14)

A: The application for licensure can be found on the Office of Licensure and Certification (OLC) web site at: <http://www.vdh.virginia.gov/OLC/AcuteCare/abortionfacilities.htm>

**Q: When should a facility submit an application for licensure? Where applications should be submitted?** (12/01/14)

A: All facilities performing five or more first trimester abortions per month must be licensed. A facility must submit an application for licensure prior to performing five or more first trimester

abortions a month. A licensed facility which is changing ownership or location must submit a new application for licensure at least 30 days in advance of the change. All applications for licensure shall be submitted to the OLC.

**Q: What supporting documentation needs be submitted to OLC with the application for licensure?**

A: The following information is required to be submitted with the application:

1. Proposed organizational chart;
2. Facility's disaster preparedness plan (12VAC5-412-350);
3. Facility's patient rights policies and procedures (12VAC5-412-210);
4. Job description, qualifications and specific responsibilities of the administrator (12VAC5-412-170F) ; and
5. Letter from the licensed architect certifying that the facility is in compliance with applicable building codes, ordinances and guidelines. (12VAC5-412-370).

**Q: What is the application fee?**

A: The application fee is \$75.00 and must accompany the application for licensure.

**VDH ACCESS TO ABORTION FACILITIES**

**Q: Does a VDH representative have the right to enter the abortion facility at any time?**

A: Yes. §32.1-25 of the Code of Virginia states: "Upon presentation of appropriate credentials and upon consent of the owner or custodian, the [State Health] Commissioner or his designee shall have the right to enter at any reasonable time onto the property to inspect, investigate, evaluate, conduct tests or take samples for testing as he reasonably deems necessary in order to determine compliance with.... Any regulations of the Board..." Appropriate credentials means a Commonwealth of Virginia authorized photo ID that is clearly visible upon entering the facility.

**Q: Will there be specific procedures to enable a facility administrator to verify the identity of an OLC representative seeking to obtain access to a facility and its patient records?**

A: The administrator can call the OLC at (804)367-2102 to verify the identification of its employees seeking to obtain access to the facility or patient records.

**THE PLAN OF CORRECTION (POC)**

**Q: How will VDH evaluate POCs?**

A: POCs will be carefully reviewed by VDH for compliance with the regulations. An on-site survey may be conducted before VDH determines if the POC can be approved or denied.

## **PATIENT CARE**

**Q: 12VAC5-412-110 states that a VDH representative must, upon request, be furnished with “a list of current patients.” What does “current patients” mean?**

A: "Current patients" means patients receiving services on the day of survey as well as a list of all facility patients for the previous 12 months.

**Q: Our facility includes a separate non-medical wing for use by our educators, development/fundraising staff and public policy staff. Do the personnel requirements of 12VAC5-412-180 pertain only to medical personnel that work in the medical area and that have direct involvement with patients?**

A: This regulation is applicable to all employees of the abortion facility.

**Q: 12VAC5-412-180 requires that personnel records shall be “readily available” for review by an OLC representative during inspection. Does electronic availability meet these regulatory requirements if personnel records are maintained off site?**

A: Yes – electronic availability is acceptable for meeting the intent of this regulation, provided VDH representatives are given direct access to the records. System security or system failures cannot be used to delay immediate access to requested records.

## **COMPLAINT FILING**

**Q: 12VAC5-412-200D requires “Any patient seeking an abortion shall be given a copy of the complaint procedures in a language or manner she understands at the time of admission to service.” Does this regulation apply to all patients or only those patients seeking abortion services?**

A: This regulation applies to patients seeking abortion services.

**Q: Can VDH provide some parameters for complying with 12 VAC5-412-200A?**

A: It is important that any facility providing medical services, regardless of the type or category of those services, have the ability to communicate effectively with its patients who may not understand English and are not accompanied or represented by an interpreter or a sign language interpreter. Bilingual print media and electronic translation services are accepted methods for meeting the regulatory provisions.

**Q: How will the OLC investigate complaints that it receives concerning abortion facilities?**

A: As with all health care entities licensed by VDH, all complaints will be reviewed and investigated for regulatory compliance. An investigation may include an on-site survey. At the conclusion of the investigation, findings will be documented and the allegations determined to be

either substantiated or unsubstantiated. If the allegations are substantiated, the facility will be required to submit a POC.

## **REQUESTS FOR VARIANCES**

**Q.: What is meant by "temporary variance" for an abortion facility and what are the requirements/process for obtaining one? (11/01/12)**

A.: The OLC has produced a Guidance Document regarding temporary variances for abortion facilities which is available at:

<http://www.vdh.virginia.gov/OLC/AcuteCare/documents/2012/pdf/Abortion%20Facility%20Variance%20Guidance.pdf>

**Q: Can facilities seek variances to certain regulatory requirements, and under what circumstances?**

A: The Regulations authorize the State Health Commissioner to issue temporary variances. An abortion facility can request a variance to a particular standard when the requirement poses an impractical hardship unique to the facility and when a variance would not endanger the safety or well-being of patients, employees, or the public. Consideration of a variance is initiated when a written request is submitted to the Director of the Office of Licensure and Certification. Temporary variances expire with a license.

The request for variance must describe the impractical hardship unique to the facility caused by the enforcement of the requirements. When possible, the request should include proposed alternatives to meet the purpose of the requirements which will ensure the protection and wellbeing of patients, employees and the public.

The State Health Commissioner can only authorize variances to the agency's own licensing requirements, not to regulations of another agency or to any requirements in federal, state or local laws.

The facility shall develop procedures for monitoring the implementation of any approved variances to assure the ongoing collection of any data relevant to the variance and the presentation of any later report concerning the variance as requested by OLC. At no time shall a variance for one facility be extended to general applicability.

**Q: Can a variance be rescinded or modified?**

A: Yes a variance may be rescinded or modified at the discretion of the Commissioner.

## **GENERAL**

**Q: Are abortion facilities required to meet all the inpatient hospital requirements contained in Article 1 of Chapter 5 of Title 32.1 of the Code of Virginia (§ 32.1-123 et seq.)?**

A: VDH intends to only take enforcement action for violations of Virginia Code §§ 32.1-125.01, 32.1-125.4, 32.1-132, 32.1-135.2, and 32.1-137.01 or the Regulations for Licensure of Abortion Facilities.

**Q. How will VDH surveyors protect patient confidentiality while reviewing patient records?**

A: VDH staff are bound by confidentiality laws and agency policy. No record that contains personal health information will be released publically. If deficiencies are found during review of patient records, documentation which supports the deficiency citation may be copied and retained in the surveyor's working papers. However, the regulations at 12 VAC 5-412-100(B) state "If copies of records are removed from the premises, patient names and addresses contained in such records shall be redacted by the abortion facility before removal."

**Q: If we submit our facility disaster preparedness plans with the licensure application as required, will they be treated as confidential information and not be released in response to a Freedom of Information Act (FOIA) request? (2/10/2012)**

A: Documents submitted to VDH OLC as part of the licensure application are subject to FOIA and VDH cannot guarantee absolute protection from disclosure. Concerning facility disaster preparedness plans, there are two FOIA exclusions under the Code of Virginia (§2.2-3705.2(3) and (4)) that may be applicable and could give VDH discretion to withhold certain documents if a FOIA request was made. VDH recommends that if you believe one of those exclusions would apply to any portion of the disaster preparedness plan being submitted then you should clearly mark those portions. If a FOIA request were to be received, VDH would consider this information as to the applicability of the FOIA exclusion; however the discretion to disclose or withhold is ultimately VDH's.

**Q: Will review of facility policies and procedures be restricted to the facility?**

A: VDH surveyors will be reviewing policies that are necessary to determine whether an abortion facility is in compliance with the Regulations.

**Q: If I am the sole owner of an abortion facility must there be a Board of Directors or separate governing body?**

A: No, a sole owner can be the governing body of an abortion facility.

**Q: If an abortion facility performs four or less first trimester abortions per month, is it subject to any state legal requirements?**

A: Yes. All abortions performed in the Commonwealth are required (pursuant to 12 VAC5-550120(B)) to be reported to the VDH Division of Vital Records using the Report of Induced Termination of Pregnancy form.

VDH will provide abortion facilities with these forms. Additional forms can be obtained from the VDH Division of Vital Records:

Telephone: (804) 662-6233 (Donna Owens)  
(804) 482-7936 (Janice Gardner)

Mail: Division of Vital Records Attn:  
Cashier Office  
P. O. Box 1000  
Richmond, Virginia 23218

Email: [vitalrec.supplies@vdh.virginia.gov](mailto:vitalrec.supplies@vdh.virginia.gov)

In addition, prior to performing any abortion, physicians are required (pursuant to §18.2-76 of the Code of Virginia) to obtain the informed written consent of the pregnant woman. In obtaining the informed written consent, the physician is required to offer the pregnant woman the opportunity to review the following printed materials published by VDH:

Abortion: Making An Informed Decision  
Fetal Development: Understanding the Stages  
A Virginia Guide to Family Planning, Genetics and Social Services

VDH will provide abortion facilities with these materials. Additional copies are available upon request from:

VDH Division of Child and Family Health Attn:  
Ardriene Stuart  
109 Governor Street, 8th Floor West  
Richmond, VA 23219  
Phone: (804) 864-7755 Fax: (804) 864-7771 Email: [Ardriene.stuart@vdh.virginia.gov](mailto:Ardriene.stuart@vdh.virginia.gov)

**NOTE: Please check back periodically as this FAQ document will be updated as needed.**