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Fast-Track Regulation Agency Background Document

Agency name	Virginia Workers' Compensation Commission
Virginia Administrative Code (VAC) Chapter citation(s)	16VAC30-60 16VAC30-70
VAC Chapter title(s)	Procedural Regulations Governing the Administration of Medical Costs Peer Review by the Regional Peer Review Committees under the Virginia Workers' Compensation Act and Plan of Operation for the Medical Costs Peer Review Statewide Coordinating Committee under the Virginia Workers' Compensation Act
Action title	Repeal of 16VAC30-60 and 16VAC30-70
Date this document prepared	August 12, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This action would repeal 16VAC30-60 and 16VAC30-70. These Peer Review regulations were authorized by *Code of Virginia* §§ 65.2-1300 through 65.2-1310, which were repealed by the General Assembly in 2016 (Acts of the Assembly, 2016, Chapters 279 and 290), effective March 7, 2016. The Commission voted to repeal these regulations at the June 14, 2016 Commission Meeting.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

No acronyms have been used in completing this form.

Statement of Final Agency Action

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.

In a meeting held on June 14, 2016, the Virginia Workers' Commission voted to repeal the following regulations:

16VAC30-60, Procedural Regulations Governing the Administration of Medical Costs Peer Review by the Regional Peer Review Committees under the Virginia Workers' Compensation Act

and

16VAC30-70, Plan of Operation for the Medical Costs Peer Review Statewide Coordinating Committee under the Virginia Workers' Compensation Act.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The Peer Review statutes that established the basic parameters of the Peer Review regulations and gave the Commission authority to enact such regulations (*Code of Virginia* §§ 65.2-1300 through 65.2-1310), were repealed by the 2016 General Assembly via:

- HB 378 Workers' Compensation; fee schedules for medical and legal services. (See Chapter 279 of the 2016 Acts of Assembly.)
- SB 631 Workers' Compensation; fee schedules for medical services. (See Chapter 290 of the 2016 Acts of Assembly.)

These bills, which became effective March 7, 2016, revised § 65.2-605 to provide for medical fee schedules and directed the Commission to adopt fee schedule regulations. With this repeal, the Commission had no jurisdiction to continue the peer review program. The General Assembly did not adopt a replacement program, and hence the existing regulations no longer had any statutory authority. Indeed, there is no longer any mention of "peer review" in the Virginia Workers' Compensation Act. At the June 14, 2016 Commission meeting, the Commission unanimously voted to repeal the Peer Review Regulations.

Because of the repeal of the statutory provisions that authorized these regulations, this rulemaking is expected to be noncontroversial and, therefore, appropriate for the fast-track rulemaking process.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Virginia Workers' Compensation Commission administers the Virginia Workers' Compensation Act, §§ 65.2-100 et seq. of the *Code of Virginia*. *Code of Virginia* §§ 65.2-1300 through 65.2-1310 established basic parameters for peer review regulations and gave the Commission the authority to enact such regulations. However, §§ 65.2-1300 through 65.2-1310 were repealed in 2016, by the passage of HB 378 and SB 631, which were effective March 7, 2016. This repeal was part of the legislation that revised § 65.2-605 to provide for the medical fee schedules and that directed the Commission to adopt the fee schedule regulations. With the repeal, the Commission had no jurisdiction to continue the peer review program. The General Assembly did not adopt any replacement program and, therefore, the existing regulations no longer had any statutory authority. These bills removed the mention of "peer review" from the Virginia Workers' Compensation Act. (See the 2016 General Assembly Session HB 378 Workers' Compensation; fee schedules for medical and legal services, Chapter 279 of the 2016 Acts of Assembly. See also the 2016 General Assembly Session SB 631 Workers' Compensation; fee schedules for medical services, Chapter 290 of the 2016 Acts of Assembly).

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The rationale for the repeal of these regulations is that there is no longer statutory authority for the regulations. In addition, a repeal of these regulations would benefit the welfare of the citizens of Virginia because these regulations no longer have statutory authority. The repeal would solve the problem of existing regulations that are no longer authorized by statute.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The only change to these regulations is that they would be completely repealed.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

Issues associated with the regulatory change

1) The primary advantage to the public of implementing this regulatory action is that the end result will be to bring the *Virginia Administrative Code* into agreement with the *Code of Virginia*. There are no disadvantages to the public in implementing this regulatory action.

2) The primary advantages to the Virginia Workers' Compensation Commission and the Commonwealth of implementing this regulatory action is that the end result will be to bring the *Virginia Administrative Code* into agreement with the *Code of Virginia*. There are no disadvantages to the Commission or to the Commonwealth in implementing this regulatory action.

3) The only pertinent matters of interest to the regulated community, government officials, and the public is that this regulatory action would bring the *Virginia Administrative Code* into agreement with the *Code of Virginia*. Implementing this regulatory action will not result in any disadvantages to the public or to the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

The repeal of these regulations does not particularly affect any other state agencies.

Localities Particularly Affected

The repeal of these regulations does not particularly affect any localities.

Other Entities Particularly Affected

The repeal of these regulations does not particularly affect any other entities.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>For the Virginia Workers' Compensation Commission, this regulatory change should not result in any projected costs, savings, fees or revenues, including: a) fund source / fund detail; or b) delineation of one-time versus on-going expenditures. This regulatory change should not result in any costs or revenue loss.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>For other state agencies, this regulatory change should not result in any projected costs, savings, fees or revenues, including one-time or on-going expenditures.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>This regulatory change will benefit all agencies by bringing the <i>Virginia Administrative Code</i> into agreement with the <i>Code of Virginia</i>.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>This regulatory change should not result in any costs, savings, fees or revenues for localities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>This regulatory change will benefit localities by bringing the <i>Virginia Administrative Code</i> into agreement with the <i>Code of Virginia</i>.</p>

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>No other entities will be affected by this change.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and;</p>	<p>No other entities will be affected by this change.</p>

<p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>This regulatory change should not result in any costs for any individuals, businesses or other entities including, but not limited to: a) reporting, recordkeeping or other administrative costs required for compliance by small businesses; b) costs related to the development of real estate for commercial or residential purposes; c) fees; d) purchases of equipment or services; or e) time required to comply with requirements.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>This regulatory change will bring the <i>Virginia Administrative Code</i> into agreement with the <i>Code of Virginia</i>.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no viable alternatives to this regulatory change because §§ 65.2-1300 through 65.2-1310 of the *Code of Virginia*, which established the basic parameters for the Peer Review regulations and gave the Commission the authority to enact such regulations, were repealed as a result of the passage in 2016 of HB 378 (Chapter 279 of the 2016 Acts of Assembly) and SB 631 (Chapter 290 of the 2016 Acts of Assembly), which were effective March 7, 2016. The passage of HB 378 and SB 631 removed the mention of “peer review” from the Virginia Workers’ Compensation Act. This repeal (of §§ 65.2-1300 through 65.2-1310) was part of the legislation that revised § 65.2-605 to provide for the medical fee schedules and that directed the Commission to adopt the fee schedule regulations. Following that repeal, the Commission no longer had jurisdiction to continue the peer review program. No replacement program was adopted by the

General Assembly and, therefore, the statutory authority for these regulations was eliminated. (See the 2016 General Assembly Session HB 378 Workers’ Compensation; fee schedules for medical and legal services, Chapter 279 of the 2016 Acts of Assembly. See also the 2016 General Assembly Session SB 631 Workers’ Compensation; fee schedules for medical services, Chapter 290 of the 2016 Acts of Assembly.)

These two regulations, 16VAC30-60 and 16VAC30-70, did not intrude upon or present costs for small businesses and their repeal, likewise, will also not intrude upon or present costs for small businesses.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

These regulations had no adverse impact on small businesses. There is no alternative to the repeal of these regulations because they are no longer authorized by the *Code of Virginia*.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, 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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Virginia Workers' Compensation Commission is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to:

Reba O'Connor

Mailing address: Virginia Workers' Compensation Commission
333 East Franklin Street, Richmond, Virginia 23218

Phone Number: 804-774-4183

Fax Number: 804-423-6945

Email Address: reba.oconnor@workcomp.virginia.gov

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
16VAC30-60	Not Applicable		This regulatory change repeals 16VAC30-60 because the statutory provisions that authorized this regulation were repealed by the General Assembly and are, therefore, no longer part of the <i>Code of Virginia</i> .
16VAC30-70	Not Applicable		This regulatory change repeals 16VAC30-70 because the statutory provisions that authorized this regulation were repealed by the General Assembly and are, therefore, no longer part of the <i>Code of Virginia</i> .

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

*If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.*

*If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.*

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage