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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Virginia Workers' Compensation Commission
<b>Virginia Administrative Code (VAC) citation(s)</b>	16 VAC 30-50-150
<b>Regulation title(s)</b>	Rule 14. Definition of Community
<b>Action title</b>	Amendment to Rule 14
<b>Date this document prepared</b>	Nov. 3, 2015

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to eighteen months), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation. This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.*

The proposed amendment to Commission Rule 14 reduces the number of communities for the purposes of determining the liability of employers and insurers for the cost of medical services rendered to injured workers pursuant to Va. Code Sec. 65.2-605 from 15 communities based on Planning District Commission Districts to 5 communities based on Health Planning Districts and geographic contiguity.

### Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

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None.

### Emergency Authority

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. Please explain why this is an emergency situation as described above, and provide specific citations to the Code of Virginia or the Appropriation Act, if applicable.

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Va. Code Sec. 65.2-605 was amended in 2015 by House Bill 1820, signed into law on March 23, 2015, to include a new subsection B, which requires the Commission to "...determine the number and geographic area of communities across the Commonwealth". Acts 2015, c. 456, cl. 2 provides "That the Workers' Compensation Commission shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment and shall provide an opportunity for public comment on the regulations prior to adoption."

### Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person.

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Va. Code Sec. 65.2-201(A) grants the Commission authority to make rules and regulations for carrying out the provisions of Title 65.2. Va. Code Sec. 65.2-605(B) and Acts 2015, c. 456, c. 2 specifically direct the Commission to adopt regulations that determine the number and geographic areas of communities across the Commonwealth.

### Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

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Va. Code Sec. 65.2-605 provides in pertinent part that "The pecuniary liability of the employer for medical surgical, and hospital service herein required when ordered by the Commission shall be limited to such charges as prevail in the same community for similar treatment when such treatment is paid for by the injured person..." This is generally referred to as the "prevailing community rate" standard. Rule 14 exists to divide the Commonwealth into defined communities for the purpose of determining the prevailing community rate. The existing Rule 14 divides the Commonwealth into 15 defined communities based on Planning District Commission Districts. However, because of their number, in many cases there is insufficient data available within the current communities to determine the prevailing community rate for particular medical services within that community. The proposed amendment reduces the number of

defined communities to 5 based on Health Planning Districts and geographic contiguity, thereby expanding the data available within each community for determining the prevailing community rate for medical services rendered to injured workers within that community.

### Need

*Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

The change is needed: (1) to reduce the amount of litigation over prevailing community rates in specific workers' compensation cases, which litigation has been increasing over the past several years; (2) to provide sufficient data to determine the prevailing community rate in those cases that must be litigated; and (3) to bring greater certainty and clarity to the determination of prevailing community rates for medical services rendered to injured workers.

### Substance

*Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the healthy, safety, or welfare of Virginians.*

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
16 VAC 30-50-150 (Rule 14)	N/A	Divides the Commonwealth into 15 communities for the purposes of Va. Code Sec. 65.2-605.	Reduces the number of communities to 5. The intent and likely impact is that greater data will be available within each community for determining the prevailing community rate for medical services rendered to injured workers in that community.

If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

The Commission considered dividing the Commonwealth into 5 “virtual” communities, not geographically contiguous, based on an analysis of charge data. However, many stakeholders, including representatives from the insurance and medical industries and the workers’ compensation bar, objected to the virtual community approach.

## Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments. Please also indicate whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel has been used in the development of the emergency regulation and whether it will also be used in the development of the permanent regulation.*

In connection with the adoption of this regulatory action as an emergency regulation, and as required by Acts 2015, c. 456, cl. 2, the Commission accepted written comments for a period of 30 days ending on October 14, 2015, and conducted a public hearing on October 13, 2015. Comments received through those processes resulted in revision of the proposed regulatory action to its current form.

The agency is seeking additional comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail or fax to James J. Szablewicz, Chief Deputy Commissioner, Virginia Workers’ Compensation Commission, 1000 DMV Drive, Richmond, Virginia 23220, (877) 432-5423. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

## Family impact

*Please assess the impact of this 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.*

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Not applicable