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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	State Board of Health
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	12VAC5-371
<b>VAC Chapter title(s)</b>	Regulations for the Licensure of Nursing Facilities
<b>Action title</b>	Amend Regulation to Incorporate Legislative Mandates from 2021, 2020, 2005, and 2004; to Update Terms to Match Statutory Language; and to Update Licensure Provisions
<b>Date this document prepared</b>	June 13, 2023

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This fast-track action is being utilized to conform 12VAC5-371-10 *et seq.* to the Code of Virginia and to update out-of-date regulatory provisions. Changes include amendments to address mandates found in:

- Chapter 72 of the 2021 Acts of Assembly, Special Session I (prohibition on discriminating against health insurance enrollee on the basis of the enrollee being a litigant or potential litigant due to a motor vehicle accident);
- Chapters 10 and 11 of the 2020 Acts of Assembly, Special Session I (visitation during public health emergencies);
- Chapter 829 of the 2020 Acts of Assembly (obligations with regards to the Sex Offenders and Crimes Against Minors Registry);
- Chapters 1080 and 1081 of the 2020 Acts of Assembly (prohibition on balance billing);

- Chapter 1278 of the 2020 Acts of Assembly (replacing occurrences of THC-A oil and cannabidiol oil with cannabis oil);
- Chapters 177 and 222 of the 2005 Acts of Assembly (design and construction guidelines for nursing facilities); and
- Chapter 762 of the 2004 Acts of Assembly (immunization standards for influenza and pneumonia).

The changes include including removing unused terminology, improving terminology consistency, providing definitions for terms to match current clinical and industry practices, moving regulatory provisions to the appropriate part of 12VAC5-371-10 *et seq.*, and revising provisions related to the licensing process and oversight procedures.

## 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.*

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“Board” means the Virginia Board of Health.

“FGI Guidelines” means the 2022 edition of *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities*, as amended by the August 2022 Errata, published by The Facilities Guidelines Institute.

“Nursing facility” means any nursing home as defined in § 32.1-123 of the Code of Virginia.

“VDH” means the Virginia Department of Health.

## 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.*

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The State Board of Health approved these Fast Track amendments to the Regulations for the Licensure of Nursing Facilities (12VAC5-371) on December 15, 2022.

## 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.*

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Chapter 72 (2021 Acts of Assembly, Special Session I) and Chapters 1080 and 1801 (2020 Acts of Assembly) placed prohibitions on balance billing and discrimination against current or potential motor vehicle accident litigants that apply to nursing facilities. Chapters 10 and 11 (2020 Acts of Assembly, Special Session I) required the Board to promulgate regulations about nursing facility visitation during public health emergencies. Chapter 829 (2020 Acts of Assembly) made nondiscretionary changes to nursing facilities’ obligations with regards to the Sex Offenders and Crimes Against Minors Registry. Chapter 1278 (2020

Acts of Assembly) replaced occurrences of “THC-A oil” and “cannabidiol oil” with “cannabis oil.” Chapters 177 and 222 (2005 Acts of Assembly) require the Board to promulgate regulations for the licensure of nursing facilities that include minimum standards for the design and construction of nursing facilities consistent with the current edition of design and construction guidelines issued by The Facilities Guidelines Institute (successor to the American Institute of Architects Academy of Architecture for Health). Chapter 762 (2004 Acts of Assembly) requires the Board to promulgate regulations for the licensure of nursing facilities to mandate that nursing facilities “provide or arrange for the administration to its residents of (i) an annual vaccination against influenza and (ii) a pneumococcal vaccination, in accordance with the most recent recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.”

The rulemaking is expected to be noncontroversial because it is being utilized to conform to the statutory mandates and language and because it is detailing longstanding agency licensing procedures. No new requirements are being developed. Additionally, the agency’s subject matter experts believe that proposed changes would not jeopardize the protection of public health, safety, and welfare. Further, the rulemaking does not alter the intent of the regulation or the requirements placed on nursing facilities.

### 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.*

Va. Code § 32.1-12 gives the Board the authority to make, adopt, promulgate, and enforce such regulations as may be necessary to carry out the provisions of Title 32.1 of the Code of Virginia. Va. Code § 32.1-127 requires the Board to adopt regulations that include minimum standards for (i) the construction and maintenance of nursing facilities to ensure the environmental protection and the life safety of its residents, employees, and the public; and (ii) the vaccination of residents, unless medically contraindicated or declined by the resident.

### 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 or justification for this regulatory change is that regulations should be clearly written, up to date, conform to the law, and should be the least burdensome means of protecting the health, safety, and welfare of citizens. The regulatory change is essential to protect the health, safety, and welfare of citizens because unclear regulations hamper licensees’ ability to comply and out of date regulations may reference standards and practices that are not consistent with current clinical practices. The goals of this regulatory change are to improve consistency across the sections of this regulatory text, bring the regulatory text into alignment with the statutes, and update references to current clinical guidelines.

### 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.*

Section 10 Definitions

Adds definitions for “ACIP,” “business day,” “CDC,” “CMS,” “inspector,” and “licensee.” Removes definitions for “THC-A oil” and renamed “cannabidiol oil” to “cannabis oil.”

Section 30 License

Adds language about the non-assignment and non-transferability of a licensee and moves language about nursing facilities’ posting licenses for the public from subsection G of 12VAC5-371-110.

Section 55 Plan of correction

Consolidates the plan of correction language found throughout the regulatory chapter to ensure the plan of correction requirements are consistent. Revisions include minimum elements of a plan of correction and the timeline for submission and completion of a plan of correction.

Section 60 On-site inspections

Section is renamed to “Inspection procedure.” Amends text to more closely align with the Register of Regulation’s style guide, adds language about frequency of inspections, and removes language about plans of correction.

Section 70 Complaint investigation

Amends text to more closely align with the Register of Regulation’s style guide, adds language about evaluating the need for an on-site complaint inspection, and removes language about plans of correction.

Section 90 Administrative sections

Section is renamed to “Disciplinary action.” Matches statutory provisions about prohibited acts and disciplinary options available.

Section 100 Surrender of license

Section is renamed to “Surrender of license; mid-term change of license.” Clarifies what is a mid-term change to a license and clarifies a nursing facility’s obligations and the process to obtain a changed license.

Section 110 Management and administration

Removes language about a nursing facility’s requirement to inform the OLC of changes impacting its license and to post its license for the public. Updates documents incorporated by reference to the most recent recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

Section 150 Resident rights

Amends section to match statutory language about registration, reregistration, and verification with the Sex Offender and Crimes Against Minors Registry.

Section 180 Infection control

Amends section to add provisions about visitation during public health emergencies related to COVID-19.

Section 300 Pharmaceutical services

Replaces “THC-A oil” and “cannabidiol oil” with “cannabis oil.”

Section 410 Unique design solutions

Updates documents incorporated by reference to the most recent FGI guidelines.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-371)

Updated to reflect the changes in the proposed text and to reference the most current edition of each relevant document.

**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.*

The primary advantages to the public are removal of language or requirements that were unclear, inconsistent, or outdated and addition of legislative mandates that had previously had not been incorporated into the regulations. The primary advantages to VDH or Commonwealth are clarity on the minimum requirements for nursing facilities and VDH in the administration of the nursing facility licensing program. There are no disadvantages to the public or the Commonwealth. There are no primary disadvantages to the agency or the Commonwealth. There is no other pertinent matters of interest to the regulated community, government officials and the public.

**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.*

VDH is not aware of any applicable federal requirements about:

- discriminating against health insurance enrollees on the basis of the enrollee being a litigant or potential litigant due to a motor vehicle accident, which is the subject of the mandate in Chapter 72 of the 2021 Acts of Assembly, Special Session I;
- Terminology for cannabis oil; and
- licensing of nursing facilities or any processes or procedures related to licensing of nursing facilities.

The regulatory change regarding the prohibition on balance billing derived from Chapters 1080 and 1081 of the 2020 Acts of Assembly do not exceed applicable federal requirements.

42 CFR § 483.80(d)(1) and (2) requires certified nursing facilities to offer influenza and pneumococcal vaccination to residents unless medically contradicted or the resident refuses vaccination. The legislative mandate in Chapter 762 of the 2004 Acts of Assembly is more specific than federal requirements about the clinical guidance informing vaccination, though the mandate does not exceed and is not more restrictive than applicable federal requirements.

The regulatory change regarding the design and construction guidelines for nursing facilities may be more restrictive than federal requirements, specifically 42 CFR § 483.90; however, Chapters 177 and 222 of the 2005 Acts of Assembly mandate the minimum requirements be consistent with the current edition of the applicable FGI guidelines so the Board does not have the discretion to be less restrictive.

The regulatory changes regarding the Sex Offender and Crimes Against Minors Registry and visitation during public health emergencies related to COVID-19 may be more restrictive than federal requirements in 42 CFR Part 483 Subpart B; however, Chapter 829 of the 2020 Acts of Assembly and Chapters 10 and 11 of the 2020 Acts of Assembly, Special Session I mandates the minimum requirements for nursing facilities so the Board does not have the discretion to be less restrictive.

**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 two licensed nursing facilities operated by the Department of Veterans Services will be particularly affected.

Localities Particularly Affected

The licensed nursing facility operated by the County of Bedford will be particularly affected.

Other Entities Particularly Affected

The 286 licensed nursing facilities (including those operated by the County of Bedford and the Department of Veterans Services) and applicants for nursing facility licensure will be particularly affected.

**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>There are no projected costs, savings, fees, or revenues resulting from the regulatory change.</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>There are no known projected savings, fees, or revenues resulting from the regulatory change.</p> <p>The Department of Veterans Services would have one-time costs associated with updating policies and procedures related to visitation. For its existing policies and procedures, VDH is estimating it would cost \$1,250 one-time to amend their policies per facility to conform to the regulatory minimums.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The regulatory change is designed to conform the regulation to the Code of Virginia, and to promote the health, safety, and welfare of residents by incorporating current clinical and industry practices as well as by requiring reasonable timely</p>

	<p>information from nursing facilities, access to information to ensure nursing facility compliance, remedial action within a reasonable and a consistently applied timeframe if noncompliance does occur.</p>
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**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>There are no known projected savings, fees, or revenues resulting from the regulatory change.</p> <p>The County of Bedford would have one-time costs associated with updating policies and procedures related to visitation. For its existing policies and procedures, VDH is estimating it would cost \$1,250 one-time to amend their policies to conform to the regulatory minimums.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The regulatory change is designed to conform the regulation to the Code of Virginia, and to promote the health, safety, and welfare of residents by incorporating current clinical and industry practices as well as by requiring reasonable timely information from nursing facilities, access to information to ensure nursing facility compliance, remedial action within a reasonable and consistently applied timeframe if noncompliance does occur.</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>Licensed nursing facilities and applicants for nursing facility licensure.</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;  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The 286 licensed nursing facilities (including those operated by the Department of Veterans Services and the County of Bedford) will be required to comply with the regulatory change. Applicants for new nursing facility licensure are infrequent and difficult to estimate.</p> <p>VDH does not have sufficient information to determine which nursing facilities have fewer than 500 full-time employees.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the</p>	<p>There are no known projected savings, fees, or revenues resulting from the regulatory change.</p>



<p>regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> <li>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</li> <li>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</li> <li>c) fees;</li> <li>d) purchases of equipment or services; and</li> <li>e) time required to comply with the requirements.</li> </ul>	<p>Licensed nursing facilities would have one-time costs associated with updating policies and procedures related to visitation. For its existing policies and procedures, VDH is estimating it would cost \$1,250 one-time to amend their policies per facility to conform to the regulatory minimums.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The regulatory change is designed to conform the regulation to the Code of Virginia, and to promote the health, safety, and welfare of residents by incorporating current clinical and industry practices as well as by requiring reasonable timely information from nursing facilities, access to information to ensure nursing facility compliance, remedial action within a reasonable and consistently applied timeframe if noncompliance does occur.</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.*

No alternative was considered because the General Assembly required the Board to adopt regulations governing the licensure of nursing facilities and amending the regulation is the least burdensome, least intrusive, and less costly method to accomplish the purpose of this action.

### 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.*

The Board is required to regulate the licensure of nursing facilities consistent with the provisions of Article 1 (§ 32.1-123 *et seq.*) of Chapter 5 of Title 32.1 of the Code of Virginia. Initiation of this regulatory action is the least burdensome method to conform the Regulations for the Licensure of Nursing Facilities (12VAC5-371-10 *et seq.*) to the statute.

### 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 Board 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 Rebekah E. Allen, Senior Policy Analyst, Virginia Department of Health, Office of Licensure and Certification, 9960 Mayland Drive, Suite 401, Henrico, VA 23233; email: [regulatorycomment@vdh.virginia.gov](mailto:regulatorycomment@vdh.virginia.gov); fax: (804) 527-4502. 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.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
371-10	N/A	<p><b>12VAC5-371-10. Definitions.</b></p> <p>The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:</p> <p style="text-align: center;">* * *</p> <p>"Cannabidiol oil" means the same as the term is defined in subsection A of § 54.1-3408.3 of the Code of Virginia.</p>	<p><b>CHANGE:</b> The Board is proposing the following change:</p> <p><b>12VAC5-371-10. Definitions.</b></p> <p>The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:</p> <p style="text-align: center;">* * *</p> <p><u>"ACIP" means the Advisory Committee on Immunization Practices of the CDC.</u></p> <p style="text-align: center;">* * *</p>

		<p style="text-align: center;">* * *</p> <p>"THC-A oil" means the same as the term is defined in subsection A of § 54.1-3408.3 of the Code of Virginia.</p> <p style="text-align: center;">* * *</p>	<p><u>"Business day" means any day that is not a Saturday, Sunday, legal holiday, or day on which the OLC is closed. For the purposes of this chapter, any day on which the Governor authorizes the closing of the state government shall be considered a legal holiday.</u></p> <p><u>"<del>Cannabidiol</del> oil" "Cannabis oil"</u> means the same as the term is defined in subsection A of § 54.1-3408.3 of the Code of Virginia.</p> <p><u>"CDC" means the Centers for Disease Control and Prevention.</u></p> <p style="text-align: center;">* * *</p> <p><u>"CMS" means the Centers for Medicare and Medicaid Services.</u></p> <p style="text-align: center;">* * *</p> <p><u>"Inspector" means an individual employed by or contracted by the department and designated by the commissioner to conduct inspections, investigations, or evaluations.</u></p> <p style="text-align: center;">* * *</p> <p><u>"Licensee" means a person that has received and maintains an active license under the provisions of Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia and this chapter.</u></p> <p style="text-align: center;">* * *</p> <p><u>"THC A oil" means the same as the term is defined in subsection A of § 54.1-3408.3 of the Code of Virginia.</u></p> <p style="text-align: center;">* * *</p> <p><b>INTENT:</b> The intent of the change is to create, remove, and update definitions for terms that have been cause for confusion.</p> <p><b>RATIONALE:</b> The rationale for the change is that commonly used terms that may have multiple meanings depending on the speaker should be defined so that all audiences have a consistent understanding of the terms' intended meaning.</p> <p><b>LIKELY IMPACT:</b> The likely impact of the change is reduced confusion for nursing facilities, VDH, and the public.</p>
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<p>371-30</p>	<p>N/A</p>	<p><b>12VAC5-371-30. License.</b> * * *</p> <p>B. A license to operate a nursing facility is issued to a person or organization. An organization may be a partnership, association, corporation, or public entity.</p> <p>C. Each license and renewal thereof shall be issued for one year. A nursing facility shall operate within the terms of its license, which include the:</p> <ol style="list-style-type: none"> <li>1. Name of the nursing facility;</li> <li>2. Name of the operator;</li> <li>3. Physical location of the nursing facility;</li> <li>4. Maximum number of beds allowed; and</li> <li>5. Date the license expires.</li> </ol> <p>* * *</p> <p>F. The number of resident beds allowed in a nursing facility shall be determined by the department. Requests to increase beds must be made in writing and must include an approved Certificate of Public Need, except as provided in 12VAC5-371-40 G.</p> <p>G. Nursing facility units located in and operated by hospitals shall be licensed under Regulations for the Licensure of Hospitals in Virginia (12VAC5-410). Approval for such units shall be included on the annual license issued to each hospital.</p> <p>* * *</p>	<p><b>CHANGE:</b> The Board is proposing the following change:</p> <p><b>12VAC5-371-30. License.</b> * * *</p> <p>B. A license to operate a nursing facility <del>is shall be</del> issued to a person <del>or organization. An organization may be a</del> partnership, association, corporation, or <del>public entity.</del></p> <p>C. Each license <u>shall expire at midnight December 31 of the year issued and renewal thereof shall be issued for one year.</u> A nursing facility shall operate within the terms of its license, which include the:</p> <ol style="list-style-type: none"> <li>1. Name of the nursing facility;</li> <li>2. Name of the operator;</li> <li>3. Physical location of the nursing facility;</li> <li>4. Maximum number of beds allowed, <u>except as provided in 12VAC5-371-40 G;</u> and</li> <li>5. Date the license expires.</li> </ol> <p>* * *</p> <p>F. The number of resident beds allowed in a nursing facility shall be determined by the <u>department commissioner.</u> <del>Requests to increase beds must be made in writing and must include an approved Certificate of Public Need, except as provided in 12VAC5-371-40 G.</del></p> <p>G. <u>Nursing facility Long-term care nursing units</u> located in and operated by hospitals shall be licensed under Regulations for the Licensure of Hospitals in Virginia (12VAC5-410). Approval for such units shall be included on the annual license issued to each hospital.</p> <p>* * *</p> <p><u>I. The licensee shall at all times:</u></p> <ol style="list-style-type: none"> <li>1. <u>Maintain an active and accurate license; and</u></li> <li>2. <u>Post its current license in a place readily visible and accessible to the public at the nursing facility.</u></li> </ol>
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			<p><b>INTENT:</b> The intent of the change is to remove duplicative or confusing provisions, to group general licensing principles together, and to conform the regulation to the statutes.</p> <p><b>RATIONALE:</b> The rationale for the change is that the duplicative material is addressed earlier in 12VAC5-371, that the topics within the regulation should be addressed in singular locations instead of multiple, and that the regulation should be consisted with the Code of Virginia.</p> <p><b>LIKELY IMPACT:</b> The likely impact of the change is reduced confusion for nursing facilities.</p>
N/A	371-55	None	<p><b>CHANGE:</b> The Board is proposing the following change:</p> <p><b><u>12VAC5-371-55. Plan of correction.</u></b></p> <p><u>A. Upon receipt of a written inspection report, the administrator or his designee shall prepare a written plan of correction addressing each licensing violation cited at the time of inspection.</u></p> <p><u>B. The administrator or his designee shall submit to the OLC a written plan of correction no more than 15 business days after receipt of the inspection report. The plan of correction shall contain for each licensing violation cited:</u></p> <ol style="list-style-type: none"> <li><u>1. A description of the corrective action or actions to be taken and the position title of the employees to implement the corrective action. If employees share the same position title, the administrator or his designee shall assign the employees a unique identifier to distinguish them;</u></li> <li><u>2. The expected correction date, not to exceed 45 business days from the exit date of the inspection; and</u></li> <li><u>3. A description of the measures implemented to prevent a recurrence of each licensing violation.</u></li> </ol> <p><u>C. The administrator or his designee shall ensure that the person responsible</u></p>

			<p><u>for the validity of the plan of correction signs, dates, and indicates their title on the plan of correction.</u></p> <p><u>D. The OLC shall notify the administrator or his designee if the OLC determines any item in the plan of correction is unacceptable.</u></p> <p><u>E. The OLC may conduct an inspection to verify any portion of a plan of correction has been implemented.</u></p> <p><u>F. The administrator or his designee shall ensure the plan of correction is implemented and monitored so that compliance is maintained.</u></p> <p><u>G. The commissioner may deny licensure or renewal of licensure or revoke licensure if the administrator or his designee fails to submit an acceptable plan of correction or fails to implement an acceptable plan of correction.</u></p> <p><u>H. The OLC shall consider the submission date of a plan of correction to be the date it is postmarked or the date it is received, whichever is earlier.</u></p> <p><b>INTENT:</b> The intent of the change is to standardize the plan of correction process to make it more similar to federal plan of correction processes.</p> <p><b>RATIONALE:</b> The rationale for the change is that documentation of remedial action and completion of remedial action should be consistently applied to all nursing facilities.</p> <p><b>LIKELY IMPACT:</b> The likely impact of the change is improved clarity about what should be in a plan of correction, when it is due, and when it should be completed.</p>
371-60	N/A	<p><b>12VAC5-371-60. On-site inspections.</b></p> <p>A. The licensing representative shall make unannounced on-site inspections of the nursing facility. The licensee shall be responsible for correcting any deficiencies found during any on-site inspection. Compliance with all standards</p>	<p><b>CHANGE:</b> The Board is proposing the following change:</p> <p><b>12VAC5-371-60. On-site inspections Inspection procedure.</b></p> <p>A. The <del>licensing representative</del> <u>OLC</u> shall make <u>periodic</u> unannounced on-site inspections of the nursing facility <u>as necessary but not less often than biennially.</u> <u>The OLC may make on-site inspections of applicants for licensure.</u></p>

		<p>will be determined by the OLC.</p> <p>B. The licensee shall make available to the licensing representative any necessary records.</p> <p>C. The licensee shall also allow the licensing representative to interview the agents, employees, residents, family members, and any person under its custody, control, direction or supervision.</p> <p>D. After the on-site inspection, the licensing representative shall discuss the findings of the inspection with the administrator or designee.</p> <p>E. As applicable, the administrator shall submit an acceptable plan for correcting any deficiencies found during an on-site inspection.</p> <p>F. The administrator will be notified whenever any item in the plan of correction is determined to be unacceptable.</p> <p>G. The administrator shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.</p>	<p><del>The licensee shall be responsible for correcting any deficiencies found during any on-site inspection. Compliance with all standards will shall be determined by the OLC.</del></p> <p>B. The licensee <u>or applicant</u> shall:</p> <ol style="list-style-type: none"> <li><u>1. make <del>Make</del> available to the licensing <del>representative</del> inspector any necessary requested records;</u></li> <li><u>2. Permit an inspector to enter upon and into its property to inspect or investigate as the inspector reasonably deems necessary in order to determine the state of compliance with the provisions of this chapter and all laws administered by the board; and</u></li> <li><u>3. Allow the inspector access to interview the agents, employees, independent <del>contractors,</del> residents, legal representatives, resident's family members, and any person under the licensee's or applicant's control, direction, or supervision.</u></li> </ol> <p><del>G. The licensee shall also allow the licensing representative to interview the agents, employees, residents, family members, and any person under its custody, control, direction or supervision.</del></p> <p><del>D. C.</del> <u>C. After the on-site inspection, the licensing representative inspector shall:</u></p> <ol style="list-style-type: none"> <li><u>1. Discuss the findings of the inspection with the administrator or his designee; and</u></li> <li><u>2. Provide a written inspection report to the administrator or his designee.</u></li> </ol> <p><del>E. As applicable, the administrator shall submit an acceptable plan for correcting any deficiencies found during an on-site inspection.</del></p> <p><del>F. The administrator will be notified whenever any item in the plan of correction is determined to be unacceptable.</del></p>
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			<p><del>G. The administrator shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.</del></p> <p><u>D. If the OLC cites one or more licensing violations in the written inspection report, the administrator or his designee shall submit a plan of correction in accordance with 12VAC5-371-55.</u></p> <p><b>INTENT:</b> The intent of the change is to more clearly specify what is expected of a hospital and VDH when an inspection occurs.</p> <p><b>RATIONALE:</b> The rationale for the change is nursing facilities are better able to anticipate what may be needed during inspection process if parameters are specified in regulation.</p> <p><b>LIKELY IMPACT:</b> The likely impact of the change is reduced confusion for nursing facilities.</p>
371-70	N/A	<p><b>12VAC5-371-70. Complaint investigation.</b></p> <p>A. The OLC has the responsibility to investigate any complaints regarding alleged violations of the standards or statutes and complaints of the abuse or neglect of persons in care. The Department of Social Services and the State Ombudsman are notified of complaints received.</p> <p>B. Complaints may be received in written or oral form and may be anonymous.</p> <p>C. When the investigation is complete, the licensee and the complainant, if known, will be notified of the findings of the investigation.</p> <p>D. As applicable, the administrator shall submit an acceptable plan for correcting any deficiencies found during a complaint investigation.</p>	<p><b>CHANGE:</b> The Board is proposing the following change:</p> <p><b>12VAC5-371-70. Complaint investigation.</b></p> <p>A. The OLC <del>has the responsibility to</del> <u>shall investigate any complaints and shall determine if an investigation requires an on-site inspection. In making this determination, the OLC shall consider several factors, to include: regarding</u> <del>alleged violations of the standards or statutes and complaints of the abuse or neglect of persons in care. The Department of Social Services and the State Ombudsman are notified of complaints received.</del></p> <ol style="list-style-type: none"> <li><u>1. If the complainant has first-hand knowledge of the alleged incident;</u></li> <li><u>2. The nursing facility's regulatory history, including the number and severity of substantiated prior complaints;</u></li> <li><u>3. If the OLC has recently inspected the nursing facility and if the alleged incident would have</u></li> </ol>



		<p>E. The administrator will be notified whenever any item in the plan of correction is determined to be unacceptable.</p> <p>F. The administrator shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.</p>	<p><u>been reviewed during the prior inspection;</u></p> <p><u>4. The nature of the complaint, including degree of potential serious harm to residents; and</u></p> <p><u>5. If the complaint may be investigated pursuant to Title XVIII or Title XIX of the Social Security Act.</u></p> <p><u>B. The OLC may request records from the licensee to assist in making a determination pursuant to subsection A of this section. The licensee shall provide the requested records no more than seven calendar days after OLC makes a request pursuant to this subsection.</u></p> <p><del>B. C. The OLC may receive Complaints</del> <u>complaints may be received</u> in written or oral form and may <del>be receive</del> <u>receive</u> anonymous <u>complaints</u>.</p> <p><del>C. D.</del> <u>When the investigation is complete, the OLC shall notify the licensee and the complainant, if known, will be notified in writing of the findings of the investigation.</u></p> <p><del>D. E. As applicable, For any licensing violation cited during a complaint investigation,</del> <u>the administrator or his designee shall submit an acceptable a plan of correction for correcting any deficiencies found during a complaint investigation in accordance with 12VAC5-371-55.</u></p> <p><del>E. The administrator will be notified whenever any item in the plan of correction is determined to be unacceptable.</del></p> <p><del>F. The administrator shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.</del></p> <p><b>INTENT:</b> The intent of the changes is to update the regulatory text to match the style guidelines, and to give VDH flexibility in determining whether a complaint warrants an on-site inspection.</p> <p><b>RATIONALE:</b> The rationale for the change is that the style guidelines ensure more intelligible regulatory text and that VDH should be maximize efficient and</p>
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			<p>effective use of limited agency resources in responding to complaints.</p> <p><b>LIKELY IMPACT:</b> The likely impact of these proposed changes is improved readability of the section and a more adaptive and efficient complaint process.</p>
371-90	N/A	<p><b>12VAC5-371-90. Administrative sanctions.</b></p> <p>A. Nothing in this part shall prohibit the department from exercising its responsibility and authority to enforce the regulation, including proceeding directly to imposition of administrative sanctions, when the quality of care or the quality of life has been severely compromised.</p> <p>B. The commissioner may impose such administrative sanctions or take such actions as are appropriate for violation of any of the standards or statutes or for abuse or neglect of persons in care. Such sanctions include:</p> <ol style="list-style-type: none"> <li>1. Restricting or prohibiting new admissions to any nursing facility;</li> <li>2. Petitioning the court to impose a civil penalty or to appoint a receiver, or both; or</li> <li>3. Revoking or suspending the license of a nursing facility.</li> </ol> <p>C. The following reasons may be considered by the department for the imposition of administrative sanctions or the imposition of civil penalties:</p> <ol style="list-style-type: none"> <li>1. Failure to demonstrate or maintain compliance with applicable standards or for violations of the</li> </ol>	<p><b>CHANGE:</b> The Board is proposing the following change:</p> <p><b>12VAC5-371-90. Administrative sanctions <u>Disciplinary action.</u></b></p> <p><del>A. Nothing in this part shall prohibit the department from exercising its responsibility and authority to enforce the regulation, including proceeding directly to imposition of administrative sanctions, when the quality of care or the quality of life has been severely compromised.</del></p> <p><del>B. The commissioner may impose such administrative sanctions or take such actions as are appropriate for violation of any of the standards or statutes or for abuse or neglect of persons in care. Such sanctions include:</del></p> <ol style="list-style-type: none"> <li><del>1. Restricting or prohibiting new admissions to any nursing facility;</del></li> <li><del>2. Petitioning the court to impose a civil penalty or to appoint a receiver, or both; or</del></li> <li><del>3. Revoking or suspending the license of a nursing facility.</del></li> </ol> <p><del>C. The following reasons may be considered by the department for the imposition of administrative sanctions or the imposition of civil penalties:</del></p> <ol style="list-style-type: none"> <li><del>1. Failure to demonstrate or maintain compliance with applicable standards or for violations of the provisions of the Code of Virginia;</del></li> <li><del>2. Permitting, aiding, or abetting the commission of any illegal act in the nursing facility; or</del></li> <li><del>3. Deviating significantly from the program or services for which a license was issued without obtaining prior written approval from the OLC, or failure to correct</del></li> </ol>

		<p>provisions of the Code of Virginia;</p> <p>2. Permitting, aiding, or abetting the commission of any illegal act in the nursing facility; or</p> <p>3. Deviating significantly from the program or services for which a license was issued without obtaining prior written approval from the OLC, or failure to correct such deviations within a specified time.</p> <p>D. Violations which in the judgment of the OLC jeopardize the health and safety of residents shall be sufficient cause for immediate imposition of this section.</p> <p>E. The licensee will receive a notice of the department's intent to impose sanctions. The notice shall describe the reasons for imposing the sanction.</p> <p>F. Upon receipt of the notice to impose a sanction, the licensee has the right and the opportunity to appeal according to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). The procedures for filing an appeal shall be outlined in the notice.</p>	<p><del>such deviations within a specified time.</del></p> <p><del>D. Violations which in the judgment of the OLC jeopardize the health and safety of residents shall be sufficient cause for immediate imposition of this section.</del></p> <p><del>E. The licensee will receive a notice of the department's intent to impose sanctions. The notice shall describe the reasons for imposing the sanction.</del></p> <p><del>F. Upon receipt of the notice to impose a sanction, the licensee has the right and the opportunity to appeal according to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). The procedures for filing an appeal shall be outlined in the notice.</del></p> <p><u>A. The licensee may not:</u></p> <ol style="list-style-type: none"> <li><u>1. Violate the provisions of this chapter or Articles 1 (§ 32.1-123 et seq.) or 2 (§ 32.1-138 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia;</u></li> <li><u>2. Permit, aid, or abet the commission of any illegal act in the nursing facility; or</u></li> <li><u>3. Engage in a pattern of violations of § 38.2-3445.01 of the Code of Virginia.</u></li> </ol> <p><u>B. The commissioner may:</u></p> <ol style="list-style-type: none"> <li><u>1. For each violation of subsection A of this section:</u> <ol style="list-style-type: none"> <li><u>a. Deny, revoke, or suspend the license to operate the nursing facility in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia);</u></li> <li><u>b. Restrict or prohibit new admissions to the nursing facility in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia);</u></li> <li><u>c. Refer the licensee for criminal prosecution pursuant to subsection A of § 32.1-27 of the Code of Virginia;</u></li> </ol> </li> </ol>
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			<p><u>d. Petition an appropriate court for an injunction, mandamus, or other appropriate remedy against the licensee pursuant to subsection B of § 32.1-27 of the Code of Virginia;</u></p> <p><u>e. Petition an appropriate court for imposition of a civil monetary penalty against the licensee pursuant to subsection C of § 32.1-27 of the Code of Virginia or subsection A of § 32.1-27.1 of the Code of Virginia; or</u></p> <p><u>f. Petition an appropriate court for appointment of a receiver pursuant to subsection B of § 32.1-27.1 of the Code of Virginia; and</u></p> <p><u>2. For each violation of subdivision A 3 of this section, levy a fine upon the licensee in an amount not to exceed \$1,000 per violation, in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).</u></p> <p><u>C. Suspension of a license shall in all cases be for an indefinite time.</u></p> <p><u>D. For each violation of subsection A of this section and with the consent of the person who has violated subsection A of this section, the board may provide, in an order issued by the board, for the payment of civil charges for past violations in specific sums, which may not exceed the limits specified in §§ 32.1-27 or 32.1-27.1 of the Code of Virginia.</u></p> <p><u>E. Upon receipt of a completed application and a nonrefundable service charge, the commissioner may issue a new license to the licensee that has had its license revoked if the commissioner determines that:</u></p> <ol style="list-style-type: none"> <li><u>1. The conditions upon which revocation was based have been corrected; and</u></li> <li><u>2. The applicant is in compliance with this chapter, Articles 1 (§ 32.1-123 et seq.) and 2 (§ 32.1-</u></li> </ol>
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			<p><u>138 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, and all other applicable state and federal law and regulations.</u></p> <p><u>F. Upon receipt of a completed application, the commissioner may partially or completely restore a suspended license to the licensee if the commissioner determines that:</u></p> <ol style="list-style-type: none"> <li><u>1. The conditions upon which suspension was based have been completely or partially corrected; and</u></li> <li><u>2. The interests of the public will not be jeopardized by resumption of operation.</u></li> </ol> <p><u>G. The commissioner may not require an additional fee for restoring a license pursuant to subsection F of this section.</u></p> <p><u>H. The licensee shall submit evidence relevant to subdivisions E 1, E 2, F 1, and F 2 of this section that is satisfactory to the commissioner or his designee. The commissioner or his designee may conduct an inspection prior to making a determination.</u></p> <p><b>INTENT:</b> The intent of the change is to describe the grounds upon which the commissioner may take disciplinary action against a nursing facility, the options available to the commissioner for disciplinary action, and how a nursing facility may obtain a license after suspension or revocation.</p> <p><b>RATIONALE:</b> The rationale for the change is that the regulation should conform to Chapter 72 of the 2021 Acts of Assembly, Special Session I, Chapters 1080 and 1081 of the 2020 Acts of Assembly, and to Va. Code §§ 32.1-27, 32.1-27.1, and 32.1-135.</p> <p><b>LIKELY IMPACT:</b> The likely impact of the change is improved clarity for nursing facilities about what acts are not permitted and what consequences may follow if a prohibited act occurs.</p>
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<p>371-100</p>	<p>N/A</p>	<p><b>12VAC5-371-100. Surrender of a license.</b></p> <p>A. Upon revocation or suspension of a license, the licensee must surrender its license to a representative of the OLC.</p> <p>B. If a license is revoked, a new license may be issued by the commissioner after satisfactory evidence is submitted that the conditions upon which revocation was based have been corrected and after proper inspection has been made and compliance with this chapter and applicable state and federal law has been obtained.</p> <p>C. Suspension of a license shall in all cases be for an indefinite time. The commissioner may completely or partially restore a suspended license when he determines that the conditions upon which suspension was based have been completely or partially corrected and that the interests of the public will not be jeopardized by resumption of operation.</p> <p>D. Other circumstances under which a license must be surrendered include transfer of ownership and discontinuation of services. The licensee must notify the OLC, in writing, 30 days before discontinuing services.</p>	<p><b>CHANGE:</b> The Board is proposing the following change:</p> <p><b>12VAC5-371-100. Surrender of a license; mid-term change of license.</b></p> <p>A. Upon revocation or suspension of a license, the licensee must <u>shall</u> surrender its license to a <del>representative of</del> the OLC.</p> <p><del>B. If a license is revoked, a new license may be issued by the commissioner after satisfactory evidence is submitted that the conditions upon which revocation was based have been corrected and after proper inspection has been made and compliance with this chapter and applicable state and federal law has been obtained.</del></p> <p><del>C. Suspension of a license shall in all cases be for an indefinite time. The commissioner may completely or partially restore a suspended license when he determines that the conditions upon which suspension was based have been completely or partially corrected and that the interests of the public will not be jeopardized by resumption of operation.</del></p> <p><del>D. Other circumstances under which a license must be surrendered include transfer of ownership and discontinuation of services. The licensee must notify the OLC, in writing, 30 days before discontinuing services.</del></p> <p><u>B. A licensee shall notify the director of the OLC in writing by submitting a mid-term change application no less than 30 calendar days in advance of implementing any:</u></p> <ol style="list-style-type: none"> <li><u>1. Change of location of the nursing facility;</u></li> <li><u>2. Change of ownership of the nursing facility;</u></li> <li><u>3. Change of operator of the nursing facility;</u></li> <li><u>4. Change of name of the nursing facility;</u></li> <li><u>5. Change of bed capacity, except as provided in 12VAC5-371-40 G, which shall be accompanied by an approved Certificate of Public Need if the</u></li> </ol>
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			<p><u>requested change is for an increase in bed capacity.;</u></p> <p><u>6. Change in management contract or lease agreement to operate the nursing facility;</u></p> <p><u>7. Change of services being provided, including any proposed addition or discontinuation, regardless of whether licensure is required for the service; or</u></p> <p><u>8. Closure of the nursing facility.</u></p> <p><u>C. The OLC shall:</u></p> <p><u>1. Consider the submission date of a mid-term change application to be the date it is postmarked or the date it is received, whichever is earlier; and</u></p> <p><u>2. Notify in writing the licensee if the commissioner will issue a changed license.</u></p> <p><u>D. The commissioner's issuance of changed license to the licensee shall satisfy the requirements of subdivision C 2 of this section.</u></p> <p><u>E Upon receipt of the changed license, the licensee shall surrender its prior license issued by the commissioner to the OLC and destroy any copies of the prior license.</u></p> <p><u>F. A license may not be transferred or assigned. The commissioner may not issue a changed license in response to a change of operator of the nursing facility, but shall instead require the nursing facility to obtain a new license.. If the nursing facility intends to implement a change of operator, it shall:</u></p> <p><u>1. File for a new license, in accordance with 12VAC5-371-40, no less than 30 calendar days in advance of any operator change; and</u></p> <p><u>2. Upon receipt of the new license, surrender its prior license issued by the commissioner to the OLC and destroy any copies of the prior license.</u></p> <p><u>G. If the nursing facility is closing or will otherwise no longer be operational, it shall:</u></p>
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			<p><u>1. Notify residents, legal representatives, and the OLC no fewer than seven calendar days prior to closing or ceasing operations where all clinical records are to be located following closure or cessation of operations; and</u></p> <p><u>2. Surrender its license to the OLC and destroy all copies of its license no more than five calendar days after the nursing facility closes or ceases operations.</u></p> <p>H. <u>The OLC shall determine if any changes listed in subsection B affect the terms of the license or the continuing eligibility for a license. An inspector may inspect the nursing facility during the process of evaluating a proposed change.</u></p> <p><b>INTENT:</b> The intent of the change is to create a consistent list of what changes VDH needs to be aware of, when those changes are reportable, and what changes can result in a changed license versus a new license.</p> <p><b>RATIONALE:</b> The rationale for the change is that transfer or assignment of licenses are prohibited by law, that certain license changes may require a new license, a new inspection (in the case of a change of location), or both, and that VDH needs to be aware of nursing facilities' active service lines for disaster preparedness planning and implementation.</p> <p><b>LIKELY IMPACT:</b> The likely impact of the change is reduced confusion for nursing facilities and VDH about when and what changes are reportable, and what changes warrant a new license.</p>
371-110	N/A	<p><b>12VAC5-371-110. Management and administration.</b></p> <p style="text-align: center;">* * *</p> <p>D. The nursing facility shall submit, in a timely manner as determined by the OLC, and implement a written</p>	<p><b>CHANGE:</b> The Board is proposing the following change:</p> <p><b>12VAC5-371-110. Management and administration.</b></p> <p style="text-align: center;">* * *</p> <p><del>D. The nursing facility shall submit, in a timely manner as determined by the</del></p>

	<p>plan of action to correct any noncompliance with these regulations identified during an inspection. The plan shall include:</p> <ol style="list-style-type: none"> <li>1. Description of the corrective action or actions to be taken;</li> <li>2. Date of completion for each action; and</li> <li>3. Signature of the person responsible for the operation.</li> </ol> <p>E. The nursing facility shall permit representatives from the OLC to conduct inspections to...</p> <p>F. A nursing facility shall give written notification 30 calendar days in advance of implementation of changes affecting the accuracy of the license. Changes affecting the accuracy of the license are:</p> <ol style="list-style-type: none"> <li>1. Address;</li> <li>2. Operator;</li> <li>3. Name of the nursing facility;</li> <li>4. Any proposed change in management contract or lease agreement to operate the nursing facility;</li> <li>5. Implementing any proposed addition, deletion, or change in nursing facility services whether or not licensure is required;</li> <li>6. A change in ownership; or</li> <li>7. Bed capacity.</li> </ol> <p>Notices shall be sent to the attention of the director of the OLC.</p> <p>G. The current license from the commissioner shall</p>	<p><del>OLC, and implement a written plan of action to correct any noncompliance with these regulations identified during an inspection. The plan shall include:</del></p> <ol style="list-style-type: none"> <li><del>1. Description of the corrective action or actions to be taken;</del></li> <li><del>2. Date of completion for each action; and</del></li> <li><del>3. Signature of the person responsible for the operation.</del></li> </ol> <p><del>E. D.</del> The nursing facility shall permit representatives from the OLC to conduct inspections to...</p> <p><del>F.</del> A nursing facility shall give written notification 30 calendar days in advance of implementation of changes affecting the accuracy of the license. Changes affecting the accuracy of the license are:</p> <ol style="list-style-type: none"> <li><del>1. Address;</del></li> <li><del>2. Operator;</del></li> <li><del>3. Name of the nursing facility;</del></li> <li><del>4. Any proposed change in management contract or lease agreement to operate the nursing facility;</del></li> <li><del>5. Implementing any proposed addition, deletion, or change in nursing facility services whether or not licensure is required;</del></li> <li><del>6. A change in ownership; or</del></li> <li><del>7. Bed capacity.</del></li> </ol> <p><del>Notices shall be sent to the attention of the director of the OLC.</del></p> <p><del>G.</del> The current license from the commissioner shall be posted in a place clearly visible to the general public.</p> <p><del>H. E.</del> The nursing facility shall fully disclose...</p> <p><del>I. E.</del> The nursing facility shall identify...</p> <p><del>J. G.</del> Unless the vaccination is medically contraindicated or the resident declines the offer of vaccination, <u>The the</u> nursing facility shall provide, or arrange for, the administration to its residents of an annual influenza vaccination and a <u>pneumonia pneumococcal</u> vaccination <u>according in accordance with the following recommendations of ACIP; to</u></p>
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		<p>be posted in a place clearly visible to the general public.</p> <p>H. The nursing facility shall fully disclose...</p> <p>I. The nursing facility shall identify...</p> <p>J. The nursing facility shall provide, or arrange for, the administration to its residents of an annual influenza vaccination and a pneumonia vaccination according to the "Prevention and Control of Seasonal Influenza with Vaccines: Recommendations of the Advisory Committee on Immunization Practices — United States, 2020–21 Influenza Season" and "Guidelines for Preventing Health-Care-Associated Pneumonia" from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, unless the vaccination is medically contraindicated or the resident declines the vaccination offer.</p> <p>K. Upon request of the nursing facility's family council, the nursing facility shall...</p>	<p><del>the "Prevention and Control of Seasonal Influenza with Vaccines: Recommendations of the Advisory Committee on Immunization Practices — United States, 2020–21 Influenza Season" and "Guidelines for Preventing Health-Care-Associated Pneumonia" from the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, unless the vaccination is medically contraindicated or the resident declines the vaccination offer.</del></p> <p><a href="#">1. <u>Prevention and Control of Seasonal Influenza with Vaccines: Recommendations of the Advisory Committee on Immunization Practices — United States, 2022–23 Influenza Season, MMWR 71 (1), 2022, CDC;</u></a></p> <p><a href="#">2. <u>Use of 15-Valent Pneumococcal Conjugate Vaccine and 20-Valent Pneumococcal Conjugate Vaccine Among U.S. Adults: Updated Recommendations of ACIP — United States, MMWR 71 (4), 2022, CDC;</u></a></p> <p><a href="#">3. <u>Use of 13-Valent Pneumococcal Conjugate Vaccine and 23-Valent Pneumococcal Polysaccharide Vaccine Among Adults Aged &gt;65 Years: Updated Recommendations of ACIP, MMWR 68 (46), 2019, CDC;</u></a></p> <p><a href="#">4. <u>Intervals Between PCV13 and PPSV23 Vaccines: Recommendations of ACIP, MMWR 64 (15), 2015, CDC;</u></a></p> <p><a href="#">5. <u>Use of 13-Valent Pneumococcal Conjugate Vaccine and 23-Valent Pneumococcal Polysaccharide Vaccine Among Adults Aged &gt;65 Years: Recommendations of ACIP, MMWR 63 (37), 2014, CDC;</u></a></p> <p><a href="#">6. <u>Use of 13-Valent Pneumococcal Conjugate Vaccine and 23-Valent</u></a></p>
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			<p><a href="#">Pneumococcal Polysaccharide Vaccine Among Children Aged 6–18 Years with Immunocompromising Conditions: Recommendations of ACIP, MMWR 62 (25), 2013, CDC;</a></p> <p><a href="#">7. Use of 13-Valent Pneumococcal Conjugate Vaccine and 23-Valent Pneumococcal Polysaccharide Vaccine for Adults with Immunocompromising Conditions: Recommendations of ACIP, MMWR 61 (40), 2012, CDC;</a></p> <p><a href="#">8. Prevention of Pneumococcal Disease Among Infants and Children — Use of 13-Valent Pneumococcal Conjugate Vaccine and 23-Valent Pneumococcal Polysaccharide Vaccine: Recommendations of ACIP, MMWR 59 (RR-11), 2010, CDC; and</a></p> <p><a href="#">9. Updated Recommendations for Prevention of Invasive Pneumococcal Disease Among Adults Using the 23-Valent Pneumococcal Polysaccharide Vaccine (PPSV23), MMWR 59 (34), 2010, CDC.</a></p> <p><del>K. H.</del> Upon request of the nursing facility's family council, the nursing facility shall...</p> <p><b>INTENT:</b> The intent of the changes is to remove duplicative requirements and to update references to current immunization guidelines.</p> <p><b>RATIONALE:</b> The rationale for the changes is that the duplicative material is addressed earlier in 12VAC5-371 and that the regulation should be consistent with Chapter 762 of the 2004 Acts of Assembly.</p> <p><b>LIKELY IMPACT:</b> The likely impact of these proposed changes is reduced confusion for nursing facilities.</p>
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<p>371-150</p>	<p>N/A</p>	<p><b>12VAC5-371-150. Resident rights.</b></p> <p style="text-align: center;">* * *</p> <p>G. The nursing facility shall register with the Department of State Police to receive notice of the registration or reregistration of any sex offender within the same or a contiguous zip code area in which the nursing facility is located pursuant to § 9.1-914 of the Code of Virginia.</p> <p>H. Prior to admission, each nursing facility shall determine if a potential resident is a registered sex offender when the potential resident is anticipated to have a length of stay:</p> <ol style="list-style-type: none"> <li>1. Greater than three days; or</li> <li>2. In fact stays longer than three days.</li> </ol> <p style="text-align: center;">* * *</p>	<p><b>CHANGE:</b> The Board is proposing the following change:</p> <p><b>12VAC5-371-150. Resident rights.</b></p> <p style="text-align: center;">* * *</p> <p>G. The nursing facility shall register with the Department of State Police to receive notice of the registration, <del>or reregistration,</del> <u>or verification</u> of any <del>sex offender</del> <u>person required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 of the Code of Virginia</u> within the same or a contiguous zip code area in which the nursing facility is located pursuant to § 9.1-914 of the Code of Virginia.</p> <p>H. Prior to admission, each nursing facility shall <del>determine</del> <u>ascertain</u> if a potential resident is <del>a registered sex offender</del> <u>required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§9.1-900 et seq.) of Title 9.1 of the Code of Virginia</u> <del>when</del> <u>if</u> the potential resident is <del>anticipated to have a length of stay:</del></p> <ol style="list-style-type: none"> <li>1. <u>Is anticipated by the nursing facility to have a length of stay</u> <del>Greater</del> <u>greater</u> than three days; or</li> <li>2. In fact stays longer than three days.</li> </ol> <p style="text-align: center;">* * *</p> <p><b>INTENT:</b> The intent of the change is to describe the minimum requirements a nursing facility must meet in regards to the Sex Offender and Crimes Against Minors Registry.</p> <p><b>RATIONALE:</b> The rationale for the change is that the regulation should be consistent with Chapter 829 of the 2020 Acts of Assembly.</p> <p><b>LIKELY IMPACT:</b> The likely impact of the change is reduced confusion for nursing facilities about the minimum requirements regarding the Sex Offender and Crimes Against Minors Registry.</p>
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<p>371-180</p>	<p>N/A</p>	<p><b>12VAC5-371-180. Infection control.</b></p> <p style="text-align: center;">* * *</p> <p>E. During a declared public health emergency related to a communicable disease of public health threat, the nursing facility shall establish a protocol to allow residents to receive visits from a rabbi, priest, minister, or clergy of any religious denomination or sect consistent with guidance from the <del>Centers for Disease Control and Prevention</del> and the <del>Centers for Medicare and Medicaid Services</del> and subject to compliance with any executive order, order of public health, department guidance, or any other applicable federal or state guidance having the effect of limiting visitation.</p> <p style="text-align: center;">* * *</p>	<p><b>CHANGE:</b> The Board is proposing the following change:</p> <p><b>12VAC5-371-180. Infection control.</b></p> <p style="text-align: center;">* * *</p> <p>E. During a declared public health emergency related to a communicable disease of public health threat, the nursing facility shall establish a protocol to allow residents to receive visits from a rabbi, priest, minister, or clergy of any religious denomination or sect consistent with guidance from the <del>Centers for Disease Control and Prevention</del> <u>CDC</u> and the <del>Centers for Medicare and Medicaid Services</del> <u>CMS</u> and subject to compliance with any executive order, order of public health, department guidance, or any other applicable federal or state guidance having the effect of limiting visitation.</p> <p style="text-align: center;">* * *</p> <p><u>F. During a public health emergency related to COVID-19, a nursing facility shall establish a protocol to allow each resident to receive visits, consistent with guidance from the CDC and as directed by CMS and the board, which shall include:</u></p> <p><u>1.Provisions describing:</u></p> <ul style="list-style-type: none"> <li><u>a. The conditions, including conditions related to the presence of COVID-19 in the nursing facility and community, under which in-person visits will be allowed and under which in-person visits will not be allowed and visits will be required to be virtual;</u></li> <li><u>b. The requirements with which in-person visitors will be required to comply to protect the health and safety of the residents and staff of the nursing facility;</u></li> <li><u>c. The types of technology, including interactive audio or video technology, and the staff support necessary to ensure visits are provided as</u></li> </ul>
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			<p><u>required by this subsection; and</u></p> <p><u>d. The steps the nursing facility will take in the event of a technology failure, service interruption, or documented emergency that prevents visits from occurring as required by this subsection;</u></p> <p><u>2. A statement of the frequency with which visits, including virtual and in-person, where appropriate, will be allowed, which shall be at least once every 10 calendar days for each resident;</u></p> <p><u>3. A provision authorizing a resident or the resident's personal representative to waive or limit visitation, provided that such waiver or limitation is included in the resident's health record; and</u></p> <p><u>4. A requirement that the nursing facility publish on its website or communicate to each resident or the resident's authorized representative, in writing or via electronic means, the nursing facility's plan for providing visits to residents as required by this subsection.</u></p> <p><b>INTENT:</b> The intent of the change is to describe the minimum requirements a nursing facility must meet in regards to visitation during certain public health emergencies.</p> <p><b>RATIONALE:</b> The rationale for the change is that the regulation should be consistent with Chapters 10 and 11 of the 2020 Acts of Assembly, Special Session I.</p> <p><b>LIKELY IMPACT:</b> The likely impact of the change is reduced confusion for nursing facilities about the minimum requirements for visitation during a future public health emergency.</p>
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<p>371-300</p>	<p>N/A</p>	<p><b>12VAC5-371-300. Pharmaceutical services.</b></p> <p style="text-align: center;">* * *</p> <p>E. Excluding cannabidiol oil and THC-A oil, no drug or medication shall be administered to any resident without a valid verbal order or a written, dated and signed order from a physician, dentist, podiatrist, nurse practitioner, or physician assistant, licensed in Virginia.</p> <p>F. Nursing facility employees who are authorized to possess, distribute, or administer medications to residents may store, dispense, or administer cannabidiol oil or THC-A oil to a resident who has:</p> <p style="padding-left: 40px;">1. Been issued a valid written certification for the use of cannabidiol oil or THC-A oil in accordance with subsection B of § 54.1-3408.3 of the Code of Virginia; and</p> <p style="text-align: center;">* * *</p>	<p><b>CHANGE:</b> The Board is proposing the following change:</p> <p><b>12VAC5-371-300. Pharmaceutical services.</b></p> <p style="text-align: center;">* * *</p> <p>E. Excluding <del>cannabidiol oil and THC-A</del> <u>cannabis</u> oil, no drug or medication shall be administered to any resident without a valid verbal order or a written, dated and signed order from a physician, dentist, podiatrist, nurse practitioner, or physician assistant, licensed in Virginia.</p> <p>F. Nursing facility employees who are authorized to possess, distribute, or administer medications to residents may store, dispense, or administer <del>cannabidiol oil or THC-A</del> <u>cannabis</u> oil to a resident who has:</p> <p style="padding-left: 40px;">1. Been issued a valid written certification for the use of <del>cannabidiol oil or THC-A</del> <u>cannabis</u> oil in accordance with subsection B of § 54.1-3408.3 of the Code of Virginia; and</p> <p style="text-align: center;">* * *</p> <p><b>INTENT:</b> The intent of the change is to match regulatory language to statutory language.</p> <p><b>RATIONALE:</b> The rationale for the change is that the regulation should be consistent with Chapter 1278 of the 2020 Acts of Assembly.</p> <p><b>LIKELY IMPACT:</b> The likely impact of the change is reduced confusion for nursing facilities about the correct terminology for cannabis oil.</p>
<p>371-410</p>	<p>N/A</p>	<p><b>12VAC5-371-410. Architectural drawings and specifications.</b></p> <p>A. All construction of new buildings and <u>all</u> additions, renovations, <u>or</u> alterations, <del>or repairs</del> of existing buildings for occupancy as a nursing facility shall conform to state and local codes, zoning ordinances, and the Virginia</p>	<p><b>CHANGE:</b> The Board is proposing the following change:</p> <p><b>12VAC5-371-410. Architectural drawings and specifications.</b></p> <p>A. All construction of new buildings and <u>all</u> additions, renovations, <u>or</u> alterations, <del>or repairs</del> of existing buildings for occupancy as a nursing facility shall conform to state and local codes, zoning</p>

		<p>Uniform Statewide Building Code (13VAC5-63).</p> <p>In addition, nursing facilities shall be designed and constructed consistent with Parts 1 and 2 and <del>section Chapter</del> <u>Chapter 3.1</u> of Part 3 of the <del>2018</del> Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, <u>2022 Edition of the (The Facility Guidelines Institute), as amended by the August 2022 Errata for Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2022 Edition (The Facilities Guidelines Institute) pursuant to § 32.1-127.001 of the Code of Virginia.</u></p> <p>B. ...The architect shall certify that the drawings and specifications were prepared to conform to the Virginia Uniform Statewide Building Code and be consistent with Parts 1 and 2 and <del>section Chapter</del> <u>Chapter 3.1</u> of Part 3 of the <del>2018</del> Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, <u>2022 edition of the (The Facility Guidelines Institute), as amended by the August 2022 Errata for Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2022 Edition (The Facilities Guidelines Institute).</u></p> <p style="text-align: center;">* * *</p>	<p>ordinances, and the Virginia Uniform Statewide Building Code (13VAC5-63).</p> <p>In addition, nursing facilities shall be designed and constructed consistent with Parts 1 and 2 and <del>section Chapter</del> <u>Chapter 3.1</u> of Part 3 of the <del>2018</del> Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, <u>2022 Edition of the (The Facility Guidelines Institute), as amended by the August 2022 Errata for Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2022 Edition (The Facilities Guidelines Institute) pursuant to § 32.1-127.001 of the Code of Virginia.</u></p> <p>B. ...The architect shall certify that the drawings and specifications were prepared to conform to the Virginia Uniform Statewide Building Code and be consistent with Parts 1 and 2 and <del>section Chapter</del> <u>Chapter 3.1</u> of Part 3 of the <del>2018</del> Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, <u>2022 edition of the (The Facility Guidelines Institute), as amended by the August 2022 Errata for Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2022 Edition (The Facilities Guidelines Institute).</u></p> <p style="text-align: center;">* * *</p> <p><b>INTENT:</b> The intent of the change is to update the design and construction guidelines to the recently published 2022 edition.</p> <p><b>RATIONALE:</b> The rationale for the change is that the regulation should be in conformity with the mandates in Chapters 177 and 222 of the 2005 Acts of Assembly.</p> <p><b>LIKELY IMPACT:</b> The likely impact of the change is reduced confusion about which edition of the FGI guidelines nursing facilities should reference.</p>
371-DIBR	N/A	<p><b>Documents Incorporated by Reference (12VAC5-371)</b></p> <p>Guidelines for Design and Construction of Residential</p>	<p><b>CHANGE:</b> The Board is proposing the following change:</p>

		<p>Health, Care, and Support Facilities, 2018 Edition, Facility Guidelines Institute <a href="http://www.fgiguideines.org">http://www.fgiguideines.org</a>.</p> <p><a href="#">Guidelines for Preventing Health-Care-Associated Pneumonia, 2003, MMWR 53 (RR-3), Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention.</a></p> <p><a href="#">Prevention and Control of Seasonal Influenza with Vaccines: Recommendations of the Advisory Committee on Immunization Practices — United States, 2020–21 Influenza Season, 2020, MMWR 69 (RR-8), Centers for Disease Control and Prevention.</a></p>	<p><b>Documents Incorporated by Reference (12VAC5-371)</b></p> <p><a href="#">Errata for Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, The Facilities Guidelines Institute, 2022 Edition, <a href="https://fgiguideines.org/guidelines/errata-addenda/">https://fgiguideines.org/guidelines/errata-addenda/</a> (eff. 8/2022).</a></p> <p><a href="#">Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, The Facilities Guidelines Institute, 2018 2022 Edition, Facility Guidelines Institute <a href="http://www.fgiguideines.org">http://www.fgiguideines.org</a>.</a></p> <p><del><a href="#">Guidelines for Preventing Health-Care-Associated Pneumonia, 2003, MMWR 53 (RR-3), Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention.</a></del></p> <p><del><a href="#">Prevention and Control of Seasonal Influenza with Vaccines: Recommendations of the Advisory Committee on Immunization Practices — United States, 2020–21 Influenza Season, 2020, MMWR 69 (RR-8), Centers for Disease Control and Prevention.</a></del></p> <p><a href="#">Intervals Between PCV13 and PPSV23 Vaccines: Recommendations of ACIP, MMWR 64 (15), 2015, CDC.</a></p> <p><a href="#">Prevention and Control of Seasonal Influenza with Vaccines: Recommendations of the Advisory Committee on Immunization Practices — United States, 2022–23 Influenza Season, MMWR 71 (1), 2022, CDC.</a></p> <p><a href="#">Prevention of Pneumococcal Disease Among Infants and Children — Use of 13-Valent Pneumococcal Conjugate Vaccine and 23-Valent Pneumococcal Polysaccharide Vaccine: Recommendations of ACIP, MMWR 59 (RR-11), 2010, CDC.</a></p> <p><a href="#">Updated Recommendations for Prevention of Invasive Pneumococcal Disease Among Adults Using the 23-Valent Pneumococcal Polysaccharide Vaccine (PPSV23), MMWR 59 (34), 2010, CDC.</a></p>
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			<p><a href="#"><u>Use of 13-Valent Pneumococcal Conjugate Vaccine and 23-Valent Pneumococcal Polysaccharide Vaccine Among Adults Aged &gt;65 Years: Recommendations of ACIP, MMWR 63 (37), 2014, CDC.</u></a></p> <p><a href="#"><u>Use of 13-Valent Pneumococcal Conjugate Vaccine and 23-Valent Pneumococcal Polysaccharide Vaccine Among Adults Aged &gt;65 Years: Updated Recommendations of ACIP, MMWR 68 (46), 2019, CDC.</u></a></p> <p><a href="#"><u>Use of 13-Valent Pneumococcal Conjugate Vaccine and 23-Valent Pneumococcal Polysaccharide Vaccine for Adults with Immunocompromising Conditions: Recommendations of ACIP, MMWR 61 (40), 2012, CDC.</u></a></p> <p><a href="#"><u>Use of 13-Valent Pneumococcal Conjugate Vaccine and 23-Valent Pneumococcal Polysaccharide Vaccine Among Children Aged 6–18 Years with Immunocompromising Conditions: Recommendations of ACIP, MMWR 62 (25), 2013, CDC.</u></a></p> <p><a href="#"><u>Use of 15-Valent Pneumococcal Conjugate Vaccine and 20-Valent Pneumococcal Conjugate Vaccine Among U.S. Adults: Updated Recommendations of ACIP — United States, MMWR 71 (4), 2022, CDC.</u></a></p> <p><b>INTENT:</b> The intent of these proposed changes is to ensure documents incorporated by reference are current and accurate.</p> <p><b>RATIONALE:</b> The rationale behind these proposed changes is that nursing facilities should be held to current standards and guidelines.</p> <p><b>LIKELY IMPACT:</b> The likely impact of these proposed changes is improved resident health and safety at nursing facilities.</p>
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