



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | Department of Corrections |
| Virginia Administrative Code (VAC) citation | 6 VAC15-40 |
| Regulation title | Minimum Standards for Jails and Lockups |
| Action title | Amend Minimum Standards for Jails and Lockups to correct TB testing and require compliance with Department of Justice PREA Standards |
| Date this document prepared | 4/25/13 |

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

Purpose

A correction will be made to 6VAC15-40-370 part 5 so that a jail will not be required to perform a TB skin test on an inmate entering the facility if it can be documented that the inmate has received a TB skin test within the past 12 months or has tested positive to the TB skin test at any time in the past.

Sections will be added to 6 VAC 15-40, *Minimum Standards for Jails and Lockups*, to certify compliance with Part 115 of Title 28 of the Code of Federal Regulations, *National Standards To Prevent, Detect, and Respond to Prison Rape*, which requires jails and lockups to comply with these standards as documented through audits conducted by Department of Justice accredited auditors.

Legal basis

Section 53.1-68 of the Code of Virginia mandates that the Board of Corrections prescribe regulations to govern the administration and operation of local correctional facilities.

Need

The existing regulation, 6VAC15-40-370 part 5, requires that "All inmates shall receive a tuberculosis (TB) skin test within seven days of admission to the facility." This requirement would result in excessive expense to the jail and discomfort to the inmate for unnecessary tests if the inmate is released from the jail and rearrested a short time later.

42 U.S.C. 15607(c) requires the Governor to certify that all Virginia facilities (including jails and lockups) are in compliance with Part 115 of Title 28 of the Code of Federal Regulations, *National Standards To Prevent, Detect, and Respond to Prison Rape*, as documented through audits conducted by Department

of Justice accredited auditors. This amendment to 6 VAC15-40 provides for certification to the Board of Corrections that each regulated jail and lockup is in compliance with the Federal PREA regulations.

Substance

Section 6VAC15-40-370 part 5 will be amended to read:

All inmates shall receive a tuberculosis (TB) skin test within seven days of admission to the facility *unless it can be documented that the inmate has received a TB skin test within the past 12 months or has tested positive to the TB skin test at any time in the past. In such cases, the facility's physician shall determine what actions, if any, are necessary to safeguard against the spread of the disease.*

Sections 1047 (Jails) and 1305 (Lockups) will be added to 6 VAC 15-40, *Minimum Operational and Supervision Standards for Local and Regional Jails and Lockups*, as follows:

The facility shall be in compliance with *National Standards To Prevent, Detect, and Respond to Prison Rape* (PREA standards) as established by the Department of Justice. The first certification shall be whenever scheduled by the Department of Justice within the 3 year rotational period from August 2013 through August 2016. All subsequent audits will be conducted within 36 months of the previous audit.

Compliance documentation will include certification of compliance from a Department of Justice accredited auditor.

Alternatives

There is no known alternative to reduce unnecessary tuberculosis (TB) skin test requirements.

42 U.S.C. 15607(c) requires the Governor to certify that all Virginia facilities are in compliance with the *National Standards To Prevent, Detect, and Respond to Prison Rape*. There is no known alternative than to amend 6 VAC15-40 to ensure compliance in all facilities.

Public participation

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) 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 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) 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, email, or fax to Jim Bruce, Virginia Department of Corrections, PO Box 26963, Richmond, VA 23261-6963, 804-887-8215, FAX 804-674-3017, email james.bruce@vadoc.virginia.gov. 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 not be held following the publication of the proposed stage of this regulatory action.

Family impact

This regulation has no know family impact.