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Final Regulation Agency Background Document

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| Agency name | Virginia Board of Health |
| Virginia Administrative Code (VAC) Chapter citation(s) | 12VAC5-371-10 <i>et seq.</i> |
| VAC Chapter title(s) | Regulations for the Licensure of Nursing Facilities |
| Action title | Amend regulations to revise construction standards for nursing facilities |
| Date this document prepared | February 1, 2021 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 regulatory action is in response to a Petition for Rulemaking. The action will bring 12VAC5-371 into conformity with the provisions of Va. Code § 32.1-127.001, which states that “Notwithstanding any law or regulation to the contrary, the Board of Health shall promulgate regulations...for the licensure of...nursing homes that shall include minimum standards for the design and construction of...nursing homes [and] certified nursing facilities consistent with the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities issued by the American Institute of Architects Academy of Architecture for Health.” The American Institute of Architects Academy of Architecture for Health is now the Facility Guidelines Institute. The latest edition is the 2018 edition of the *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities*.

The regulation currently states that the Virginia Uniform Statewide Building Code takes precedence over the Guidelines for Design and Construction of Hospital and Health Care Facilities. The edition of the Guidelines currently listed in the regulation is outdated. This provision does not conform to the requirements of Va. Code § 32.1-127.001.

The Virginia Board of Health plans to amend section 12VAC5-371-410 pertaining to building and construction codes for nursing facilities. The purpose of the amendment is to update the references to the guidelines and specify the sections with which nursing facilities will be required to comply. It will also remove the language giving precedence to the Virginia Uniform Statewide Building Code.

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.

Board – Virginia Board of Health
Code – Code of Virginia
FGI – Facility Guidelines Institute
Guidelines- *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities.*

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.

The State Board of Health approved these final amendments to the Regulations for the Licensure of Nursing Facilities on December 12, 2019.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

The impetus is a Petition for Rulemaking and to conform the 12VAC5-371 to the Code of Virginia. Since the last stage, the FGI has published a 2018 edition of the Guidelines.

Legal Basis

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

The Board is promulgating this regulation under the authority of Va. Code § 32.1-12, which states, in relevant part, that “[t]he Board may make, adopt, promulgate and enforce such regulations and provide for reasonable variances and exemptions therefrom as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by it, the Commissioner or the Department” and Va. Code § 32.1-127, which states, in relevant part, that, “[t]he regulations promulgated by the board...[s]hall include minimum standards for (i) the construction and maintenance of hospitals, nursing

homes and certified nursing facilities to ensure the environmental protection and the life safety of its patients, employees, and the public; (ii) the operation, staffing and equipping of hospitals, nursing homes and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and certified nursing facilities, except those professionals licensed or certified by the Department of Health Professions; (iv) conditions under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence; and (v) policies related to infection prevention, disaster preparedness, and facility security of hospitals, nursing homes, and certified nursing facilities.”

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's intended to solve.

This regulatory action is in response to a Petition for Rulemaking. The action will bring the regulation into conformity with the provisions of Va. Code § 32.1-127.001, which states that “Notwithstanding any law or regulation to the contrary, the Board of Health shall promulgate regulations...for the licensure of...nursing homes that shall include minimum standards for the design and construction of...nursing homes[and] certified nursing facilities consistent with the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities issued by the American Institute of Architects Academy of Architecture for Health [now FGI].” The regulations currently state that the Virginia Uniform Statewide Building Code takes precedence over the Guidelines and the edition of the Guidelines listed in the regulation is outdated. This regulatory provision is contrary to the requirements of Va. Code § 32.1-127.001.

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.

VDH intends to amend section 410 of 12 VAC 5-371 to specify that nursing facilities shall be designed and constructed consistent with Parts 1 and 2 and section 3.1 of Part 3 of the 2018 edition of the Guidelines, and remove language which states the Virginia Uniform Statewide Building Code takes precedence over the Guidelines, thus bringing the regulation into compliance with the Code.

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 of the proposed regulatory action to the public are increased facility and construction safety protections in new nursing facilities. The primary disadvantage to the public associated with the proposed action is the increased cost some facilities may incur to construct their facility to comply with the regulations. This increased cost may be passed on to the patient. VDH does not foresee any additional disadvantages to the public. The primary advantage to the agency and the Commonwealth is the promotion of public health and safety. There are no disadvantages associated with the proposed regulations in relation to the agency or the Commonwealth.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There is no change in the information reported in the previous stage.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

There is no change in the information reported in the previous stage.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

The Board received no public comments on this action.

Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

| Current chapter-section number | New chapter-section number, if applicable | New requirement from previous stage | Updated new requirement since previous stage | Change, intent, rationale, and likely impact of updated requirements |
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| 12VAC5-371-410 | N/A | 12VAC5-371-410. Architectural drawings and specifications. A. All construction of new buildings and additions, renovations | 12VAC5-371-410. Architectural drawings and specifications. A. All construction of new buildings and additions, | CHANGE: The Board is proposing to update the reference for the design and construction standards to Parts 1 and 2 and section 3.1 of the |

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| | | <p>of alterations, or repairs of existing buildings for occupancy as a nursing facility shall conform to state and local codes, zoning and building ordinances, and the <u>Virginia</u> Uniform Statewide Building Code (<u>13VAC5-63</u>).</p> <p>In addition, nursing facilities shall be designed and constructed according to Part consistent with <u>Parts 1 and 2</u> and sections 4.1-1 through 4.2-8 3.1 and 3.2 of Part 4 3 of the 2010 2014 Guidelines for Design and Construction of <u>Residential Health, Care, and Support Facilities of the Facilities Facility</u> Guidelines Institute (formerly of the American Institute of Architects). However, the requirements of the Uniform Statewide Building Code and local zoning and building ordinances shall take precedence pursuant to § 32.1-127.001 of the Code of Virginia.</p> <p>B. Architectural drawings and specifications for all new construction or for additions, alterations or renovations to any existing building, shall be dated, stamped with license <u>professional</u> seal, and signed by the architect. The architect shall certify that the drawings and specifications were prepared to conform to building code requirements <u>the</u></p> | <p>renovations of alterations, or repairs of existing buildings for occupancy as a nursing facility shall conform to state and local codes, zoning and building ordinances, and the <u>Virginia</u> Uniform Statewide Building Code (<u>13VAC5-63</u>).</p> <p>In addition, nursing facilities shall be designed and constructed according to Part consistent with <u>Parts 1 and 2</u> and sections section <u>4.1-1 through 4.2-8 3.1 and 3.2</u> of Part 4 3 of the 2010 2014 2018 Guidelines for Design and Construction of <u>Residential Health, Care, and Support Facilities of the Facilities Facility</u> Guidelines Institute (formerly of the American Institute of Architects). However, the requirements of the Uniform Statewide Building Code and local zoning and building ordinances shall take precedence pursuant to § 32.1-127.001 of the Code of Virginia.</p> <p>B. Architectural drawings and specifications for all new construction or for additions, alterations or renovations to any existing building, shall be dated, stamped with license <u>professional</u> seal, and signed by the architect. The architect shall certify that the drawings and specifications were</p> | <p>2018 Guidelines for Design and Construction of Residential Health, Care, and Support Facilities and to remove the requirement to forward the architect's certification that was included in the proposed stage.</p> <p>INTENT: The intent of the updated requirements is to meet the statutory requirement that mandates the regulation reflect the most recent edition of the FGI Guidelines and to reduce the regulatory burden on nursing home applicants and licensees.</p> <p>RATIONALE: The rationale of the updated requirements is that the regulation should conform to and not conflict with the Code of Virginia and that submission of the architect's certification is unnecessary as architectural drawings and specifications are included as part of a nursing facility's certificate of public need application.</p> <p>LIKELY IMPACT: The likely impact of the updated requirements is improved clarity on what FGI Guidelines that facilities must comply with and the reduction of duplicative architectural submissions.</p> |
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| | | <p>Virginia Uniform Statewide Building Code and be consistent with Parts 1 and 2 and sections 3.1 and 3.2 of Part 3 of the 2014 Guidelines for Design and Construction of Residential Health, Care, and Support Facilities of the Facility Guidelines Institute. The certification shall be forwarded to the OLC.</p> <p>C. Additional approval may include a Certificate of Public Need.</p> <p>D. Upon completion of the construction, the nursing facility shall maintain a complete set of legible "as built" drawings showing all construction, fixed equipment, and mechanical and electrical systems, as installed or built.</p> | <p>prepared to conform to building-code requirements the Virginia Uniform Statewide Building Code and be consistent with Parts 1 and 2 and [sections section] 3.1 [and 3.2] of Part 3 of the [2014 2018] Guidelines for Design and Construction of Residential Health, Care, and Support Facilities of the Facility Guidelines Institute. [The certification shall be forwarded to the OLC.]</p> <p>C. Additional approval may include a Certificate of Public Need.</p> <p>D. Upon completion of the construction, the nursing facility shall maintain a complete set of legible "as built" drawings showing all construction, fixed equipment, and mechanical and electrical systems, as installed or built.</p> | |
| <p>12VAC5-371-420</p> | | <p>12VAC5-371-420. Building inspection and classification. (Repealed.) All buildings shall be inspected and approved as required by the appropriate building regulatory entity. Approval shall be a Certificate of Use and Occupancy indicating the building is classified for its proposed licensed purpose.</p> | <p>12VAC5-410-420. Building inspection and classification. (Repealed) [All buildings shall be inspected and approved as required by the appropriate building regulatory entity. Approval shall be a Certificate of Use and Occupancy indicating the building is classified for its proposed licensed purpose.]</p> | <p>CHANGE: The Board is proposing to restore the requirement for a Certificate of Use and Occupancy to be obtained.</p> <p>INTENT: The intent of the updated requirements is to create the most efficient way for a facility to demonstrate compliance.</p> <p>RATIONALE: The rationale of the updated requirements is since</p> |

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| | | | | <p>localities would require a facility to obtain a Certificate of Use and Occupancy prior to opening, having this certificate is the most efficient way for a facility to demonstrate compliance with building codes.</p> <p>LIKELY IMPACT: There is no likely impact as a result of the updated requirements because it merely restores what the Board had proposed to remove.</p> |
| <p>DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-371)</p> | | <p>DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-371)</p> <p>Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2014 Edition, Facilities Guideline Facility Guidelines Institute (formerly of the American Institute of Architects Academy of Architecture), 2010 Edition, http://www.fgigu.org</p> <p>Guidelines for Preventing Health Care-Associated Pneumonia, 2003, MMWR 53 (RR03), Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention Prevention and Control of Influenza, MMWR 53 (RR06), Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention</p> | <p>DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-371)</p> <p>Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, [2014 2018] Edition, Facilities Guideline Facility Guidelines Institute (formerly of the American Institute of Architects Academy of Architecture), 2010 Edition, http://www.fgigu.org</p> <p>Guidelines for Preventing Health Care-Associated Pneumonia, 2003, MMWR 53 (RR03), Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention Prevention and Control of Influenza, MMWR 53 (RR06), Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention</p> | <p>CHANGE: The Board is proposing to update the reference for the design and construction standards to reference the 2018 Guidelines for Design and Construction of Residential Health, Care, and Support Facilities.</p> <p>INTENT: The intent of the updated requirements is to meet the statutory requirement that mandates the regulation reflect the most recent edition of the FGI Guidelines.</p> <p>RATIONALE: The rationale of the updated requirements is that the regulation should conform to and not conflict with the Code of Virginia.</p> <p>LIKELY IMPACT: The likely impact of the updated requirements is improved clarity on what FGI Guidelines that facilities must comply with.</p> |

Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. 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. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

| Current chapter-section number | New chapter-section number, if applicable | Current requirements in VAC | Change, intent, rationale, and likely impact of updated requirements |
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| 12VAC5-410-371 | N/A | <p>12VAC5-371-410. Architectural drawings and specifications. A. All construction of new buildings and additions, renovations or alterations of existing buildings for occupancy as a nursing facility shall conform to state and local codes, zoning and building ordinances, and the Uniform Statewide Building Code.</p> <p>In addition, nursing facilities shall be designed and constructed according to Part 1 and sections 4.1—1 through 4.2—8 of Part 4 of the 2010 Guidelines for Design and Construction of Health Care Facilities of the Facilities Guidelines Institute (formerly of the American Institute of Architects). However, the requirements of the Uniform Statewide Building Code and local zoning and building ordinances shall take precedence.</p> <p>B. Architectural drawings and specifications for all new construction or for additions, alterations or renovations to any existing building, shall be dated, stamped with licensure seal and signed by the architect. The architect shall certify that the drawings and specifications were prepared to conform to building code requirements.</p> | <p>CHANGE: The Board is proposing the following updated requirements:</p> <p>12VAC5-371-410. Architectural drawings and specifications. A. All construction of new buildings and additions, renovations or alterations, or repairs of existing buildings for occupancy as a nursing facility shall conform to state and local codes, zoning and building ordinances, and the Virginia Uniform Statewide Building Code (13VAC5-63).</p> <p>In addition, nursing facilities shall be designed and constructed according to Part consistent with Parts 1 and 2 and section 4.1-1 through 4.2-8 3.1 of Part 4 3 of the 2010 2018 Guidelines for Design and Construction of Residential Health, Care, and Support Facilities of the Facilities Facility Guidelines Institute (formerly of the American Institute of Architects). However, the requirements of the Uniform Statewide Building Code and local zoning and building ordinances shall take precedence pursuant to § 32.1-127.001 of the Code of Virginia.</p> <p>B. Architectural drawings and specifications for all new</p> |

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| | | <p>C. Additional approval may include a Certificate of Public Need.</p> <p>D. Upon completion of the construction, the nursing facility shall maintain a complete set of legible "as built" drawings showing all construction, fixed equipment, and mechanical and electrical systems, as installed or built.</p> | <p>construction or for additions, alterations or renovations to any existing building, shall be dated, stamped with license professional seal, and signed by the architect. The architect shall certify that the drawings and specifications were prepared to conform to building code requirements the Virginia Uniform Statewide Building Code and be consistent with Parts 1 and 2 and section 3.1 of Part 3 of the 2018 Guidelines for Design and Construction of Residential Health, Care, and Support Facilities of the Facility Guidelines Institute.</p> <p>C. Additional approval may include a Certificate of Public Need.</p> <p>D. Upon completion of the construction, the nursing facility shall maintain a complete set of legible "as built" drawings showing all construction, fixed equipment, and mechanical and electrical systems, as installed or built.</p> <p>INTENT: The intent of the updated requirements is to meet the statutory requirement that mandates the regulation reflect the most recent edition of the FGI Guidelines.</p> <p>RATIONALE: The rationale of the updated requirements is that the regulation should conform to and not conflict with the Code of Virginia.</p> <p>LIKELY IMPACT: The likely impact of the updated requirements is improved clarity on what FGI Guidelines that facilities must comply with.</p> |
| <p>DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-371)</p> | <p>N/A</p> | <p>DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-371). Guidelines for Design and Construction of Health Care Facilities, Facilities Guideline</p> | <p>CHANGE: The Board is proposing the following updated requirements:</p> |

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| | | <p>Institute (formerly of the American Institute of Architects Academy of Architecture), 2010 Edition.</p> <p>Guidelines for Preventing Health Care-Associated Pneumonia, 2003, MMWR 53 (RR03), Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention.</p> <p>Prevention and Control of Influenza, MMWR 53 (RR06), Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention.</p> | <p>DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-371)</p> <p>Guidelines for Design and Construction of Residential Health Care, and Support Facilities, 2018 Edition, Facilities Guideline Facility Guidelines Institute (formerly of the American Institute of Architects Academy of Architecture), 2010 Edition, http://www.fgiguilines.org</p> <p>Guidelines for Preventing Health Care-Associated Pneumonia, 2003, MMWR 53 (RR03), Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention</p> <p>Prevention and Control of Influenza, MMWR 53 (RR06), Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention</p> <p>INTENT: The intent of the updated requirements is to meet the statutory requirement that mandates the regulation reflect the most recent edition of the FGI Guidelines.</p> <p>RATIONALE: The rationale of the updated requirements is that the regulation should conform to and not conflict with the Code of Virginia.</p> <p>LIKELY IMPACT: The likely impact of the updated requirements is improved clarity on what FGI Guidelines that facilities must comply with.</p> |
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