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Proposed Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC5-403
VAC Chapter title(s)	Certification of Doulas
Action title	Adopt regulations setting forth the requirements for doula certification
Date this document prepared	November 10, 2020

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.

The intent of the proposed action is to promulgate a new regulation to establish the requirements for use of "state-certified doula" and training and education requirements. During the 2020 General Assembly session, House Bill 687 (HB 687) amended the Code of Virginia to include section 32.1-77.1, which includes a subsection mandating the Board of Health to adopt regulations that set forth the requirements for use of the title "state-certified doula" and the training and education necessary to satisfy the requirements for certification by the Virginia Department of Health as a state-certified doula. HB 687 also required the establishment of a public registry of state-certified doulas.

Doulas are trained nonmedical professionals who provide critical physical, emotional, and informational support to pregnant women during antepartum, intrapartum, and postpartum periods. To ensure continuity and validity in the knowledge, skills and abilities of individuals promoting themselves as certified doulas, regulations defining the requirements for certification are required. The primary goal of this regulation is to establish the minimum requirements to be considered a certified doula in Virginia

based on the core competences for doula certification used by national organizations and community based organizations in Virginia. This regulation will also outline the minimum standards required of the entity, approved by the Board, responsible for confirming state-certified doulas, approving the training and education to meet doula certification requirements and maintaining a registry of state-certified doulas available to the general public.

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.

VDH – Virginia Department of Health or the Department

Board – Virginia Board of Health

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 Executive Order 14 (as amended, July 16, 2018), "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."

The mandate for this regulatory change comes from HB 687 from the 2020 General Assembly session, which directs the Board to adopt regulations that set forth the requirements for the use of the title "state-certified doula" and the training and education necessary to satisfy the requirements for certification by the Department as a state-certified doula.

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 State Board of Health is authorized to make, adopt, promulgate and enforce regulations by Section 32.1-12 of the Code of Virginia.

Section 32.1-77.1 of the Code of Virginia requires the Board to adopt regulations that set forth the requirements for the use of the title "state-certified doula" and the training and education necessary to satisfy the requirements for certification by the Department as a state-certified doula.

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.

The purpose of this regulation is to be in compliance with the Code of Virginia and to provide standardized doula certification requirements in the Commonwealth of Virginia. Certification requirements for state-certified doulas shall reflect national best practices pertaining to community-based doula training and certification. Individuals practicing as state-certified doulas will have attained the required training, through entities approved by the Board of Health, to provide coaching, outreach, and navigation services to Virginia's most hard-to-reach pregnant women to ensure that disadvantaged populations are equipped with the knowledge to receive the most appropriate medical and social supports to meet their needs. A standardized doula certification model is also beneficial to supporting and maintaining the doula workforce. This regulatory action will ensure that the content is clearly written.

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.

This new regulation will include definitions for community-based and state-certified doulas, as well as other relevant terminology. The regulation will outline the minimum training and education requirements for state-certified doulas based on the core competences for doula certification used by national organizations and community based organizations in Virginia. In addition, the regulation will describe the minimum standards required of the entity, approved by the Board, responsible for confirming state-certified doulas, approving the training and education to meet doula certification requirements and maintaining a registry of state-certified doulas available to the general public.

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 advantage of the proposed regulatory action to the public is the establishment of statewide doula certification requirements and a public registry. Currently, anyone can identify as a certified doula because the Commonwealth of Virginia has no central repository or public registry that identifies certified doulas or that collects data on the number of doula practicing in the state. Establishing minimum training and education criteria for state certification of doulas based on national standards and best practices will provide assurance to the public that state-certified doulas have met those requirements. A certifying body approved by the Board of Health will verify that doulas practicing in the Commonwealth have completed the required training to attain certification and provide doula care to pregnant women. Healthcare providers, community-based organizations and payers may be assured of standardized training requirements when vetting this critical workforce. The public registry will include all doulas certified in Virginia and will make identification of state-certified doulas easier and more accessible to the public. One disadvantage associated with this regulatory action to the public is the potential costs to applicants seeking to become a state-certified doula as they will likely incur an application fee. Another potential issue regarding standardizing doula certification requirements is that the regulation may present a perceived barrier to doulas who are currently practicing without certification. This regulation will be written to ensure that these individuals are not prohibited from continuing to practice.

A primary advantage of the proposed regulatory action to the Commonwealth is that the action supports development of the doula workforce, for which the need aligns with research supporting the benefits of emotional support provided by support personnel, such as doulas, on labor outcomes. The March of Dimes' July 2018 position statement, Statement on Doulas and Birth Outcomes, outlines evidence and

guidance in support of doula care. Specifically, the March of Dimes supports increased access to doula care as one tool to help improve birth outcomes and reduce the higher rates of maternal morbidity and mortality among women of color in the United States; advocates for all payers to provide coverage for doula services; and recognizes the importance of increased training, support and capacity development for doulas, including doulas from racially, ethnically, socioeconomically and culturally diverse communities. There are no other known disadvantages to the public associated with this regulatory change.

The Department of Medical Assistance Services is conducting a rate study for potential Medicaid reimbursement of doula services. If funding is authorized and approved by the General Assembly based on findings of the rate study, individuals will need to satisfy doula state-certification requirements in order to receive Medicaid reimbursement for doula services. Therefore, this regulatory action is a pertinent matter of interest to all parties vested in those efforts.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "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 Department of Medical Assistance Services may be particularly affected by the regulatory change.

Localities Particularly Affected

No localities will be particularly affected.

Other Entities Particularly Affected

Doulas who currently practice or who wish to practice as a state-certified doula in Virginia will be particularly affected.

Economic Impact

Pursuant to § 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 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>The regulatory change has no economic impact on VDH.</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>This regulatory change has no economic impact on other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>This regulatory change is intended to improve the birth outcomes of pregnant women and infants in Virginia through community-based doula services. This change is also intended to eliminate the maternal and infant mortality racial disparities across the Commonwealth.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>This regulatory change has no economic impact on localities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>This regulatory change is intended to improve the birth outcomes of pregnant women and infants in Virginia through community-based doula services. This change is also intended to eliminate the maternal and infant mortality racial disparities across the Commonwealth.</p>

Impact on Other Entities

<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>Doulas who currently practice or wish to practice as a state-certified doula in Virginia.</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>This number is unknown as Virginia does not currently have a central repository to collect data on the number of doulas practicing in the state. This regulatory action will establish a public registry, which will provide this information once implemented.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p>	<p>The projected cost for each affected individual is \$100 per application for doula state-certification.</p>

<p>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	
<p>Benefits the regulatory change is designed to produce.</p>	<p>The regulatory change is designed to establish minimum standards for community-based doulas practicing as state-certified doula in Virginia. Community-based doulas provide support services that have been shown to positively impact birth outcomes. This change is intended to improve the birth outcomes of pregnant women and infants in Virginia through community-based doula services. This change is also intended to eliminate the maternal and infant mortality racial disparities across the Commonwealth.</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 to this regulatory action was considered, as the Code of Virginia addresses the need for regulations pertaining to doula certification.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B 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.

§32.1-77.1 granted the Board of Health authority to establish requirements for use of the title “state-certified doula” and to establish training and education requirements for state-certified doulas. VDH researched other state certification regulations to inform the process of adopting regulations for the certification of doulas in Virginia. VDH staff convened multiple stakeholder workgroup meetings to receive input and feedback on the proposed regulations and the curriculum requirements for doula training and education. The stakeholder workgroup included representation from the following

organizations: ABP Doula Training Center, Ancient Roots Midwifery and Doula Care LLC, Birth in Color RVA, Birth Sisters of Charlottesville, Central Virginia Doulas, DONA International, Early Impact Virginia, Families Forward Virginia, March of Dimes, Medical Society of Virginia, New Life Doula Services, Office of Delegate Lashrecse Aird, Office of Delegate Marcia Price, Office of the Secretary of Health and Human Resources, Urban Baby Beginnings, Virginia Certification Board, Virginia Department of Health, Virginia Department of Medical Assistance Services, Virginia Department of Social Services, Virginia Hospital and Healthcare Association, Virginia Midwives Alliance, and Virginia Neonatal Perinatal Collaborative. There are no other applicable regulations to consolidate that impact establishing requirements for use of the title “state-certified doula” or establishing training and education requirements for certification as a state-certified doula. Small businesses may not be exempted as a category because doula services for pregnant women must be managed equitably by their providers, regardless of business size, to assure optimal outcomes. There are no viable alternatives to the proposed regulatory action to achieve the necessary regulatory changes.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This form is not being used to report the result of a periodic review or a small business impact review.

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.

No public comments were received following publication of the NOIRA stage.

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.

The Virginia Department of Health is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of 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 Robin Buskey, P.O. Box 2448, Richmond, VA 23218, robin.buskey@vdh.virginia.gov, and 804-864-7652. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Detail of Changes

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

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

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

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
10	Defines terms used throughout the regulations	Not applicable.	The section defines terms used in the provision of doula services and the certification of doulas. The requirements will have minimal impact on VDH and state staff.
20	Describes use of the title state-certified doula	Not applicable.	This section describes which individuals can use the title state-certified doula and the requirements that must be satisfied. The likely impact of the requirements is clarity and distinction between state-certified doulas and other doulas to members of the public when reading the regulatory chapter.
30	Describes the qualifications for a state-certified doula	Not applicable.	This section describes the training qualifications required for individuals wanting to become a state-certified doula and the training exemptions for individuals who have already

			attained a doula certification. The impact of these requirements will likely result in clarity to members of the public regarding minimum applicant qualifications.
40	Describes the standards for certifying bodies	Not applicable.	This section describes the minimum standards for the entity approved by the Board of Health that will certify doulas, approve continuing education for the recertification of doulas and establish a public registry of state-certified doulas. The requirements are intended to establish the minimal criteria and responsibilities of the certifying entity.
50	Describes the curriculum requirements	Not applicable.	This section outlines the topics included in the doula training curriculum and provides a breakdown of the minimum hours required within the training categories. The requirements are intended to provide clarity regarding required training topics specific to community-based doulas.
60	Describes the continuing education requirements	Not applicable.	This section describes the minimum continuing education requirements for recertification of doulas. The requirements are intended to make the distinction between initial doula certification requirements and recertification requirements.
70	Describes exemption from state-certified doula requirements	Not applicable.	This section includes language that exempts individuals who wish to practice as a doula but do not wish to obtain a state-certified doula certification. The impact of this requirement exemption is intended to assure individuals who are currently practicing as doulas in the state that they may continue to do so.