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Fast-Track Regulation Agency Background Document

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC5-381
VAC Chapter title(s)	Regulations for the Licensure of Home Care Organizations
Action title	Fee Change for Home Care Organizations after Enactment of Chapter 172 (2022 Acts of Assembly)
Date this document prepared	August 8, 2022

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.

Chapter 172 (2022 Acts of Assembly) amended Code of Virginia § 32.1-162.9 to change home care organization licenses from an annual license to a three-year license. This act also mandated that the fee for renewal of a home care organization license shall be \$1,500 until such time as the Board of Health may amend or repeal regulations for the licensure of home care organizations. This regulatory action updates the fee amounts for both initial and renewal of home care organization licenses, updates the term of the license, and updates the method by which existing home care organizations communicate either changes to their licenses or their request for an exemption.

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” means the State Board of Health.

“HCO” means home care organization.

“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.

The State Board of Health approved this Fast Track Regulation for the Regulations for the Licensure of Home Care Organizations (12VAC5-381) at its quarterly meeting on September 22, 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.

Chapter 172 (2022 Acts of Assembly) amended Code of Virginia § 32.1-162.9 to change home care organization licenses from an annual license to a three-year license. This act also mandated that the fee for renewal of a home care organization license shall be \$1,500 until such time as the Board of Health may amend or repeal regulations for the licensure of home care organizations.

It is anticipated that this action will be noncontroversial and therefore appropriate for the fast-track process because the fee amount for the new three-year HCO licenses is the same amount on a per-year basis as what the regulations mandate for a one-year license (i.e., \$500 for the prior one-year license, now \$1,500 for a three-year license) and the vast majority of HCOs are already utilizing the forms created by VDH to communicate changes to their licenses or requests for an exemption.

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.

Code of Virginia § 32.1-12 gives the Board the responsibility 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. Code of

Virginia § 32.1-162.12 requires the Board to adopt regulations governing the activities and services provided by home care organizations.

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 the regulatory change is that VDH should maintain its revenue to support the HCO licensure program, the regulations should be consistent with statutes, and HCO licensees should provide consistent, complete information to VDH so VDH can efficiently and accurately process changes to licensing records. The regulatory change is essential to protect the health, safety, or welfare of citizens because VDH cannot provide adequate inspection and oversight for HCOs if it is losing funding equal to roughly three full-time HCO inspectors. The goal of the regulatory change is to preserve VDH's current fee revenue and to eliminate inconsistencies in receiving and processing license changes and exemption requests.

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.

12VAC5-381-40. License application; initial and renewal.
Amended to make HCO license terms to be three years instead of one.

12VAC5-381-70. Fees.
Amended to increase the fees for HCO license to \$1,500; amended to specify the written request for an exemption or license change needs to be on the relevant application.

FORMS (12VAC5-381).
Amended to include the exemption request application.

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 to the public is that the regulations will be consistent with the statutes and HCO licensees will have received clarification on written requests for a license change or exemption. The primary advantages to VDH or the Commonwealth is that VDH will not be losing approximately \$300,000 in revenue annually and the data received from HCO licensees about license changes or request for an exemption will be consistent and more likely to be complete. There are no primary disadvantages to the public, VDH, or the Commonwealth.

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 not applicable federal requirements.

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

None

Localities Particularly Affected

None

Other Entities Particularly Affected

Other entities particularly affected are current and prospective HCO licensees.

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:</p> <ul style="list-style-type: none"> 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>There are no project costs, savings, fees, or revenue increase resulting from the regulatory change. The fee amounts prescribed in this regulatory action would preserve the current yearly value of the license (\$500). While revenue may go up or down on an annual basis, depending on how many three-year licenses were due for renewal or new applications were received, the</p>
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	<p>revenue received over the life of an HCO license remains unchanged.</p> <p>Without this regulatory change, VDH is projecting it will lose \$300,000 annually, since currently the regulations prescribed a \$500 fee for an initial HCO license. Since that license's terms is now three years, VDH would be losing \$1,000 per license. Since approximately 300 new HCO applications are received every year, that totals \$300,000 annually.</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 projected costs, savings, fees, or revenues resulting from the regulatory change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>This regulatory action is designed to promote and ensure the health and safety of clients and patients who receive personal care services and skilled services from HCOS by ensuring VDH has adequate fee revenue to support sufficient staff to perform inspections and other oversight functions of HCOs and by ensuring consistent processes are followed by HCOs and VDH's staff to ensure integrity of licensing data.</p>

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 projected costs, savings, fees or revenues resulting from the regulatory change for localities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>This regulatory action is designed to promote and ensure the health and safety of clients and patients who receive personal care services and skilled services from HCOS by ensuring VDH has adequate fee revenue to support sufficient staff to perform inspections and other oversight functions of HCOs and by ensuring consistent processes are followed by HCOs and VDH's staff to ensure integrity of licensing data.</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>The individuals, businesses, or other entities likely to be affected by the regulatory change include persons seeking services from an HCO; licensed HCOs; and persons or entities seeking licensure to operate an HCO.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of</p>	<p>As of July 1, 2022, there are approximately 1,580 licensed HCOs in Virginia, the vast majority of</p>

<p>the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> 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>which are believed to be small businesses. VDH does not collect, nor has any HCO voluntarily supplied, data about whether an HCO is independently owned and operated or whether an HCO employs fewer than 500 employees.</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> <ul style="list-style-type: none"> 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>All persons or entities seeking licensure to operate an HCO would incur a fee of \$1,500 per application for an initial license whose term is three years; VDH anticipates that for nearly all applicants, this would be a one-time cost.</p> <p>All licensed HCOs would incur a cost of at least a \$1,500 fee per application for a renewed HCO license whose term is three years in length</p> <p>VDH believes that any administrative costs for reporting changes to an HCO and requesting an exemption by using the prescribed form would be incidental to their existing administrative costs, as the regulations already prescribe these to be communicated in writing. VDH anticipates that the time and HCO takes to write a freeform communication to VDH is equal to the time that an HCO would take to complete a written form.</p> <p>VDH does not predict any projected costs for purchases of equipment or services resulting from the regulatory change for licensed HCOs and persons or entities seeking licensure to operate an HCO.</p> <p>VDH does not anticipate any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>This regulatory action is designed to promote and ensure the health and safety of clients and patients who receive personal care services and skilled services from HCOS by ensuring VDH has adequate fee revenue to support sufficient staff to perform inspections and other oversight functions of HCOs and by ensuring consistent processes are followed by HCOs and VDH's staff to ensure integrity of licensing data.</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 home care organizations and amending the regulation is the least burdensome method to accomplish the purpose of this action. The requirements proposed in this action are not more burdensome or more costly than what the regulations already require.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

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.

In developing the proposed regulations, the Board considered that the affected industry consists primarily of small businesses. Providing a small business exemption would result in the overwhelming number of HCOs being exempt from the requirements, just as establishing performance standards or less stringent requirements specific to small business would have the effect of lowered standards and requirements in nearly every case. Consequently, there are no other alternative regulatory methods to minimizing the adverse impact on small businesses that the Board could utilize without being inconsistent with health, safety, environmental and economic welfare in accomplishing the objectives of the General Assembly mandates.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

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; 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.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
381-40	N/A	<p>12VAC5-381-40. License application; initial and renewal.</p> <p>A. The OLC provides prelicensure consultation and technical assistance regarding the licensure process. The purpose of such consultation is to explain the regulation and the survey process. Prelicensure consultations are arranged after a completed initial application is on file with the OLC.</p> <p>B. Licensure applications are obtained from the OLC. The OLC shall consider an application complete when all requested information and the appropriate fee, stated in 12VAC5-381-70, is submitted. If the OLC finds the application incomplete, the applicant will be notified in writing.</p> <p>C. The activities and services of each applicant and licensee shall be subject to an inspection by the OLC to</p>	<p>CHANGE: The Board is proposing the following change:</p> <p>12VAC5-381-40. License application; initial and renewal.</p> <p>A. The OLC provides prelicensure consultation and technical assistance regarding the licensure process. The purpose of such consultation is to explain the regulation and the survey process. Prelicensure consultations are arranged after a completed initial application is on file with the OLC.</p> <p>B. Licensure applications are obtained from the OLC. The OLC shall consider an application complete when all requested information and the appropriate fee, stated in 12VAC5-381-70, is submitted. If the OLC finds the application incomplete, the applicant will be notified in writing.</p> <p>C. The activities and services of each applicant and licensee shall be subject to an inspection by the OLC to determine if the organization is in compliance with the provisions of this chapter and state law.</p> <p>D. A completed application for initial licensure must be submitted at least 60 days prior to the organization's planned opening date to allow the OLC time to</p>

		<p>determine if the organization is in compliance with the provisions of this chapter and state law.</p> <p>D. A completed application for initial licensure must be submitted at least 60 days prior to the organization's planned opening date to allow the OLC time to process the application. An incomplete application shall become inactive six months after it is received by the OLC. Applicants must then reapply for licensure with a completed application and application fee. An application for a license may be withdrawn at any time.</p> <p>E. Licenses are renewed annually. The OLC shall make renewal applications available at least 60 days prior to the expiration date of the current license.</p> <p>F. It is the home care organization's responsibility to complete and return a renewal application to assure timely processing. Should a current license expire before a new license is issued, the current license shall remain in effect provided a complete and accurate application was filed on time.</p>	<p>process the application. An incomplete application shall become inactive six months after it is received by the OLC. Applicants must then reapply for licensure with a completed application and application fee. An application for a license may be withdrawn at any time.</p> <p>E. Licenses are renewed annually <u>triennially</u>. The OLC shall make renewal applications available at least 60 days prior to the expiration date of the current license.</p> <p>F. It is the home care organization's responsibility to complete and return a renewal application to assure timely processing. Should a current license expire before a new license is issued, the current license shall remain in effect provided a complete and accurate application was filed on time.</p> <p>INTENT: The intent of this regulatory change is to mirror the language of Chapter 172 (2022 Acts of Assembly).</p> <p>RATIONALE: The rationale for this regulatory change is that the regulations should be consistent with the statutes.</p> <p>LIKELY IMPACT: The likely impact of this regulatory change will be reduced confusion for current and prospective HCO licensees, as the language in the statutes and regulations will be consistent with one another.</p>
381-70	N/A	<p>12VAC5-381-70. Fees.</p> <p>A. The OLC shall collect a fee of \$500 for each initial and renewal license application. Fees shall accompany the licensure application and are not refundable.</p> <p>B. An additional late fee of \$50 shall be collected for an organization's failure to file a renewal application by the date specified.</p>	<p>CHANGE: The Board is proposing the following change:</p> <p>12VAC5-381-70. Fees.</p> <p>A. The OLC shall collect a fee of \$500 <u>\$1,500</u> for each initial and renewal license application. Fees shall accompany the licensure application and are not refundable.</p> <p>B. An additional late fee of \$50 shall be collected for an organization's failure to file a renewal application by the date specified.</p>

		<p>C. A processing fee of \$250 shall be collected for each reissuance or replacement of a license and shall accompany the written request for reissuance or replacement.</p> <p>D. A one time processing fee of \$75 for exemption from licensure shall accompany the written exemption request.</p>	<p>C. A processing fee of \$250 shall be collected for each reissuance or replacement of a license and shall accompany the written request <u>application</u> for reissuance or replacement.</p> <p>D. A one time processing fee of \$75 for exemption from licensure shall accompany the written exemption request <u>application</u>.</p> <p>INTENT: The intent of this regulatory change is to preserve VDH's current fee revenue and to ensure HCOs are providing consistent information when making changes to their licenses or request an exemption.</p> <p>RATIONALE: The rationale for this regulatory change is that (i) presently an HCO license is worth \$500 a year and increasing the fee for initial and renewed HCO license to \$1,500 is consistent with that valuation, as HCO licenses have three year terms instead of one year terms; and (ii) requiring HCOs to provide the minimum necessary data to process license changes or exemption request in a form ensures that HCOs are more likely to provide all necessary information in one attempt.</p> <p>LIKELY IMPACT: The likely impact of this regulatory change will be the continued financial health of the HCO licensure program and VDH staff being able to more efficiently and accurately process licensure change notifications and exemption requests into an HCO's licensing record.</p>
FORMS	N/A	<p>FORMS (12VAC5-381)</p> <p>Application for Home Care Organization Licensure (rev. 4/2021)</p> <p>Renewal Addendum for Licenses Expiring July 31, 2021 (eff. 4/2021)</p>	<p>CHANGE: The Board is proposing the following change:</p> <p>FORMS (12VAC5-381)</p> <p>Application for Home Care Organization Licensure (rev. 4/2021)</p> <p>Renewal Addendum for Licenses Expiring July 31, 2021 (eff. 4/2021)</p> <p><u>Application for Exemption from Home Care Organization Licensure (eff. 9/2010)</u></p>

			<p>INTENT: The intent of this regulatory change is to update the FORMS section to reference all current forms.</p> <p>RATIONALE: The rationale for this regulatory change is that forms standardize the information being provided to VDH by HCO licensees.</p> <p>LIKELY IMPACT: The likely impact of the new requirements is consistency in the information and data being received by VDH.</p>
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