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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC5-408-10 <i>et seq.</i>
VAC Chapter title(s)	Certificate of Quality Assurance of Managed Care Health Insurance Plan Licensees
Date this document prepared	October 17, 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*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Board" means the State Board of Health.

"Covered person" means an individual residing in the Commonwealth who is entitled to health care services or benefits provided, arranged for, paid for, or reimbursed pursuant to an MCHIP under Title 38.2 of the Code of Virginia.

"MCHIP" means managed care health insurance plan.

"VDH" means the Virginia Department of Health.

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 or 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.

Section 32.1-12 of the Code of Virginia 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. Section 32.1-137.3 of the Code of Virginia requires the Board to promulgate regulations, consistent with Article 1.1 (§ 32.1-137.1 *et seq.*) of Chapter 5 of Title 32.1 of the Code of Virginia, governing the quality of care provided to covered persons by an MCHIP licensee.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

Amending 12VAC5-408-10 *et seq.* was considered as an alternative to repealing the chapter and replacing it with a new chapter. Because extensive changes in style, structure, and content are needed, repealing and replacing the chapter is the least burdensome alternative available to achieve the purpose of the regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency's response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Committer	Comment	Agency response
Lauren Bates Rowe for the Medical Society of Virginia	<p>The Medical Society of Virginia (MSV) respectfully submits comments to amend 12 VAC 5- 408 of the Code of Virginia. MSV represents nearly 11,000 physician, medical student and physician assistant members and aims to make Virginia the best place to practice and receive medical care.</p> <p>MSV's proposed amendments aim to address physician concerns that the current process diverts time and resources away from patient care. For MSV's comments related to the current periodic review of the Certificate of Quality Assurance of MCHIP Licensees, MSV refers the department to comments submitted previously as part of a petition for</p>	<p>The Board approved a Fast-Track action to amend 12VAC5-408-170 to conform the regulations to Chapter 703 of the 2018 Acts of Assembly, which addresses the credentialing process. Further consideration of MSV's comment will be incorporated in the development of the chapter that will replace 12VAC5-408-10 <i>et seq.</i></p>

	<p>rulemaking on January 11, 2016 regarding 12 VAC 5-408 of the Virginia Code, which have been attached to a separate email to Erik Bodin.</p> <p>Thank you for your consideration of our proposed amendments. MSV appreciates the department's continued work to ensure the credentialing process leads to enhanced quality and patient outcomes. Please see a separate email to Erik Bodin for all relevant attachments.</p>	
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation of quality of care provided to covered persons by an MCHIP licensees is necessary for the protection of public health, safety, and welfare because health insurance coverage and adequate health care provider networks maintained by MCHIP licensees plays a large role in the quality of care delivered to consumers of health care in the Commonwealth and effective regulation can expand access to and availability of care, particularly primary care. There is room for improvement on the clarity and understandability of the regulatory language.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The Board intends to repeal 12VAC5-408-10 *et seq.* and replace it with a new chapter. 12VAC5-408-10 *et seq.* has not been comprehensively reviewed and updated in nearly 20 years. The healthcare delivery system, particularly reimbursement and insurance coverage, has changed significantly over that time. For the Board to have an effective regulatory framework to accomplish the goals set in Article 1.1 (§ 32.1-137.1 *et seq.*) of Chapter 5 of Title 32.1 of the Code of Virginia, a significant overhaul is necessary. The most efficient method to make the regulations more clearly written and easily understandable, consistent with the Code of Virginia and the Virginia Register of Regulation's *Form, Style and Procedure Manual for Publication of Virginia Regulations*, and changes in the industry is to repeal 12VAC5-408-10 *et seq.* and replace it with a new chapter.

Small Business Impact

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.

There is a continued need for the regulation as the Board is required by § 32.1-137.3 of the Code of Virginia to promulgate regulations governing the quality of care provided to covered persons by an MCHIP licensee. The topic of provider credentialing and what constitutes an adequate provider network has been the subject of many comments informally directed to VDH staff. Much of the complexity of administering the regulation comes from the fact that it is outdated and not clearly written. There is some overlap with federal regulations for plans that are offered on the Affordable Care Act health exchanges regarding network adequacy requirements; however, not all MCHIPs in the Commonwealth are operated on the exchange, so state-level oversight is needed. The regulation has not been sufficiently evaluated in nearly 20 years, during which time the health insurance industry has changed considerably. The Board estimates that very few, if any, of the regulated MCHIP licensees qualify as small businesses.
