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Periodic Review Report of Findings

Agency name	Virginia Board of Health
Virginia Administrative Code (VAC) citation	12VAC5-371
Regulation title	Regulations for the Licensure of Nursing Facilities
Date this document prepared	November 18, 2019

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"Board" means Virginia Board of Health.

Legal Basis

Please identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity'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 32.1-127 of the Code of Virginia requires the Board to adopt regulations that 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.

Alternatives

Please 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.

No alternative was considered because the General Assembly required the Board to adopt regulations governing the licensure of nursing homes and certified nursing facilities and promulgating regulation is the least burdensome method to accomplish this statutory mandate.

Public Comment

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

No public comments were received during the public comment period following the publication of the Notice of Periodic Review. The Board did not form an informal advisory group for the purposes of assisting in the periodic review.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary for the protection of public health, safety, and welfare because it requires nursing homes to meet minimum standards for personnel, clinical and nonclinical services, treatment of residents, and facility safety. These standards protect members of the public who utilize nursing home services. There is room for improvement on the clarity and understandability of the regulation.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The Board has decided to amend the regulation. Though no comments were received during the public comment period, the regulation has not undergone a comprehensive revision in nearly a decade and amendments are needed to improve consistency within the chapter and to incorporate statutory requirements.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to 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 the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

There is a continued need for the regulation as the Board is mandated to regulate nursing homes and certified nursing facilities, including the promulgation of regulations. The Board did not receive complaints or comments concerning the regulation from the public. The regulation is not complex. The regulation does not conflict with federal or state law or regulation. The regulation has been incrementally amended as changes to the Code of Virginia occurred; however, more comprehensive changes to the regulation are needed to reflect changes in the health care industry, technology, and economic conditions, including those that impact small businesses.