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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | State Board of Health |
| Virginia Administrative Code (VAC) Chapter citation(s) | 12VAC5-381-10 <i>et seq.</i> |
| VAC Chapter title(s) | Regulations for the Licensure of Home Care Organizations |
| Action title | Amend the Regulation after Enactment of Chapter 470 (2021 Acts of Assembly, Special Session I) |
| Date this document prepared | June 16, 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

Chapter 470 of the 2021 Acts of Assembly, Special Session I amended Code of Virginia § 32.1-162.12 to direct the State Board of Health to promulgate regulations for home care organizations that govern the delivery of personal care services shall provide for supervision of home care attendants providing personal care services by a licensed nurse through use of interactive audio or video technology. This regulatory action will be used to amend 12VAC5-381-10 *et seq.* to address remote supervision of personal care services by home care organizations.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“Board” means the State Board of Health.

“HCO” means home care organization.

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Section 32.1-162.12 of the Code of Virginia requires the Board to adopt regulations for HCOs as may be necessary to protect the public health, safety, and welfare. Chapter 470 (2021 Acts of Assembly, Special Session I) amended this section to also require the Board to adopt regulations addressing supervision of home care attendants providing personal care services by a licensed nurse through use of interactive audio or video technology.

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.

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 32.1-162.12 requires the Board to adopt regulations governing the activities and services provided by HCOs

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

By enacting § 32.1-162.12, the General Assembly required the Board to adopt regulations governing the activities and services provided by HCOs, as may be necessary to protect the public health, safety, and welfare. Section 32.1-162.12 further requires such regulations to address supervision of home care attendants providing personal care services by a licensed nurse through use of interactive audio or video technology.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

This regulation contains requirements for the licensure of HCOs, including the provision of personal care services. Existing sections that address personal care services will be amended to address supervision of home care attendants providing personal care services by a licensed nurse through use of interactive audio or video technology.

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 HCOs and amending the regulation is the least burdensome method to accomplish the purpose of this action.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

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, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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.

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