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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)	12 VAC 5-405
VAC Chapter title(s)	Rules Governing Private Review Agents
Date this document prepared	August 9, 2024

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.

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.

This regulation was promulgated under the authority of §§ 32.1-12 and 32.1-138.15 of the Code of Virginia.

§ 32.1-12 of the Code of Virginia grants the Board the legal authority 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.

§ 32.1-138.15 of the Code of Virginia requires the Board to adopt regulations related to Private Review Agents that include (i) minimum qualifications to perform review, (ii) procedures which require the private review agent to provide the attending physician an opportunity to consult with a physician advisor prior to issuance of a final denial in any case in which there is an initial recommendation to deny coverage, (iii) guidelines regarding access to and confidentiality of patient-specific medical records and information, and (iv) fees that are sufficient to pay for the administrative costs associated with the regulation.

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.

No alternative was considered because the General Assembly required the Board to adopt regulations governing private review agents and amending the regulation is the least burdensome method to accomplish the statutory mandate.

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.

No public comments were received during the public comment period.

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 is necessary for the protection of public health, safety, and welfare because it establishes the process by which private review agents conduct their utilization review. The regulation requires updates to the form and style in order to make the language clear and understandable.

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 will amend these regulations to update the language to conform to the *Form, Style and Procedures Manual for Publication of Virginia Regulations* administered by the Virginia Registrar of Regulations in order to make the language clearer and more understandable, and to consider opportunities for regulatory reduction where possible.

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 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 mandated to regulate private review agents. The Board did not receive any comments concerning the regulation during the public comment period. The regulation is not complex, nor does it overlap, duplicate, or conflict with federal or state law of regulation. The regulation was last reviewed in 2015 and has not been updated since its promulgation in 1999. The Board is not aware of any private review agents that would meet the definition of a "small business."
