Form: TH- 01

Virginia Regulatory Town Hall

Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Department of Health (State Board of)
VAC Chapter Number:	12 VAC 5-230 through 260
Regulation Title:	State Medical Facilities Plan
Action Title:	Amend Chapter 12 VAC 5-230, Repeal Chapters 12 VAC 5-240 through 360
Date:	November 22, 2002

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of a new or amended regulation.

The Virginia Medical Care Facilities Certificate of Public Need (COPN) program, as mandated in Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia, was designed to promote comprehensive health planning to meet the health care needs of Virginia's citizens, while avoiding duplication of specified medical care services. The State Medical Facilities Plan, referred to as the SMFP, is the planning document adopted by the Board of Health and used by the department in considering the public need for those capital projects of medical care facilities that require COPN authorization by the State Health Commissioner. The regulated medical care facilities include most hospitals, nursing facilities, and outpatient facilities that provide surgery or certain diagnostic or therapeutic services as specified in the COPN law.

The current SMFP was promulgated in 1993 and has not been substantially revised since then. The goal of this revision effort is to develop a comprehensive document and to update current criteria with nationally accepted standards. To do this, it will be necessary to repeal chapters 12 VAC 5-240 through 360 as chapter 12 VAC 5-230 is being amended.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and web site addresses, if available, for locating the text of the cited authority must be provided.

The Department is proposing this revision of the current SMFP under:

1. Section 32.1-102.1 of the Code, which defines the SMFP as a planning document adopted by the Board of Health. In addition, section 32.1-102.3 of the Code states that "any decision to issue or approve the issuance of [a COPN] shall be consistent with the most recent applicable provisions of the [SMFP]."

2. The Board of Health's authority to promulgate regulations as granted under § 32.1-12 to adopt regulations necessary to carry out the provisions of the health laws of Virginia and under § 32.1-102.2 of the Code, which mandates promulgation of regulations to implement Virginia's Medical Care Facilities COPN law.

Sections 32.1-12, 32.1-102.1, 32.1-102.2, and 32.1-102.3 of the Code are available through the Virginia Department of Legislative Services LIS web site (http://leg1.state.va.us). No federal mandate underlies theses regulations.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

The SMFP "shall include, but not be limited to, (i) methodologies for projecting need for medical care facility beds and services; (ii) statistical information on the availability of medical care facilities and services; and (iii) procedures, criteria and standards for review of applications for projects for medical care facilities and services."

The SMFP consists of fourteen (14) regulations, or components, that provide the definitions, criteria and standards used in the review of the various classifications of medical care facilities and services regulated under the COPN law. The SMFP provides an objective basis for considering the need for projects subject to COPN regulation. Upon examination of the entire SMFP, it is clear that the fourteen separate components can be consolidated into one comprehensive document, and in so doing, eliminate redundancy and irregularities between the components. In addition, the various components have not been individually reviewed since first promulgated. It is clear that many of the criteria are in need of updating to reflect current national standards to assure desired patient outcomes and professional competency.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered and will be considered to meet the essential purpose of the action.

The SMFP is clearly and directly mandated by law. Promulgating the SMFP as a regulation is the only means available to support the plan with the force of law and preserve due process for applicants and all other parties involved. In addition, the plan as regulation helps ensure consistency of the criteria used in awarding a COPN. The proposed revision will fulfill the Department's statutory charge while honoring the principles of E.O. 21 (2002).