



Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12 VAC 5-381
Regulation title	Regulations for the Licensure of Home Care Organizations
Action title	This action will amend sections of the regulation pertaining to program processes and organization operation.
Date this document prepared	February 12, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The current regulation became effective in January, 2005. Since then, home care services have continued to burgeon, continuing as one of Virginia's fastest growing categories of medical care providers. Because of that growth and because of the current downturn in the state's budget, the board and the department's Office of Licensure and Certification (VDH/OLC) has determined that making necessary amendments to the regulations at this time will allow VDH/OLC to discharge its regulatory obligation in a more effective manner, while still providing the necessary patient protections mandated by law.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The regulation is promulgated under the authority of 32.1-162.12 of the Code of Virginia, which grants the Board of Health the legal authority to “prescribe such regulations governing the activities and services provided by home care organizations as may be necessary to protect the public health, safety, and welfare.” Therefore, this authority is mandated. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The “Regulation for the Licensure of Home Care Organizations” protects and promotes public health, safety and welfare through the establishment and enforcement of regulations that set minimum standards for the operation of organizations providing home-based care. Since the promulgation of the current regulation in 2005, however, VDH/OLC has become aware of requirements that need to be amended to provide better clarification of the regulation’s intent.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

VDH/OLC intends to amend sections pertaining to: (i) the licensure process to provide a better understanding of the section requirements for first time providers, (ii) add a section addressing allowable business locations, (iii) clarify the financial controls section so there is better understanding of what the requirements are for first time providers, (iv) ease or eliminate the requirements pertaining to the medical social services section, and (v) clarify the supervisory criteria in the personal care section to allow expansion and greater consumer access to needed personal care services. In addition, VDH/OLC believes there is provider community support for increasing service fees.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The regulation is directly mandated by law. The regulation honors the Departments' statutory charge and is the least burdensome alternative available for adequately addressing the mandate of the law.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to:

Carrie Eddy, Senior Policy Analyst,
VDH Office of Licensure and Certification
9960 Mayland Drive, Ste. 401
Richmond, VA 23233
Phone: (804) 367-2157
Fax: (804) 4502

Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The VDH/OLC has conferred with the Virginia Association of Home Care and Hospice in developing the needed changes to the current regulation being addressed by this regulatory action. In addition, OLC will broadly distribute the draft amendments during the required 60-day comment period, prior to seeking final promulgation of these changes..

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no direct impact on the family.