



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	<u>12 VAC5-540</u>
Regulation title	RULES AND REGULATIONS FOR THE IDENTIFICATION OF MEDICALLY UNDERSERVED AREAS IN VIRGINIA
Action title	Updates for determining Medically Underserved Areas and support more timely and accurate computations
Date this document prepared	May 4, 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 regulations were last revised in 1991 and have not been reviewed since that time. The amended regulations would update the required data resources and specify how state facilities would be designated. The amendments would also correct information regarding scholarship programs that are affected by the designation.

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 Board of Health is authorized pursuant to § 32.1-122.5 of the *Code of Virginia*, to establish criteria to identify primary care medically underserved areas within the Commonwealth and specify the data calculations to be used to estimate the level of underservice. The Board of Health is also to include criteria to estimate need for medical services in state facilities operated

by the Departments of Corrections, Juvenile Justice, and Mental Health, Mental Retardation and Substance Abuse.

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 regulations require updating because certain state programs and private funding sources depend on the accuracy of the Virginia Medically Underserved Area designation process in awarding funds to health providers and to communities. All of the changes are in response to the availability of new data sources allowing more timely designation of underserved areas.

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.

The following changes are being recommended:

12VAC5-540-10. Authority.

In accordance with the provisions of § [32.1-122.5](#) of the Code of Virginia, the State Board of Health is required to establish criteria for determining medically underserved areas within the Commonwealth **and include in these criteria the need for medical care services in the state facilities operated by the Departments of Corrections, Juvenile Justice, and Mental Health, Mental Retardation and Substance Abuse Services**. The criteria are required to be quantifiable measures, sensitive to the unique characteristics of urban and rural jurisdictions.

12VAC5-540-20. Purpose.

The purpose of identifying medically underserved areas within the Commonwealth is to establish geographic areas in need of additional primary health care services. These areas may be selected by trained primary care physicians and other health professionals as practice sites in fulfillment of obligations that the physicians and other health professionals accepted in return for medical training and scholarship grant assistance. Each year of practice in a medically underserved area satisfies the repayment requirement of a year of scholarship support from the Virginia Medical Scholarship Program; **and the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program**. Additionally, these **Virginia** medically underserved areas (**VMUA**) will be eligible locations for practicing primary care physicians and other health professionals participating in the state ~~or federal~~ physician loan repayment programs. Further, these medically underserved areas may become eligible for assistance, state or federal, to establish primary care medical centers.

Part II
Designating **Virginia** Medically Underserved Areas

12VAC5-540-30. Criteria for determining medically underserved areas.

The following five criteria, as available, and as indicated, shall be used to evaluate and identify medically underserved areas throughout the Commonwealth of Virginia **and shall be reviewed and updated at a minimum five year interval:**

1. Percentage of population with income at or below 100% of the federal poverty level. The source for these data shall be the most recent available publication of the Bureau of the Census of the U.S. Department of Commerce- **or appropriate intercensorial estimates of poverty accepted by the Health Resources and Services Administration Shortage Designation Branch for federal health professional shortage area and medical underserved area designations.**
2. Percentage of population that is 65 years of age or older. The source for these data shall be the **Bureau of the Census of the U.S. Department of Commerce, or the latest estimates from the Weldon Cooper Center for Public Service at the University of Virginia, or the Economic Services Division of the Virginia Employment Commission.**
3. The primary care physician to population ratio. The source for these data shall be the Department of Family Practice of the Medical College of Virginia of Virginia Commonwealth University. **Virginia Department of Health Professions, Board of Medicine physician profile database. Primary care physicians are defined as board certified or self-designated generalist practitioners who practice family medicine, pediatrics, internal medicine, or obstetrics/gynecology.**
4. The four-year aggregate infant mortality rate. The source for these data shall be the **most recent four-year infant mortality data for each jurisdiction from the** Center of Health Statistics of the Virginia Department of Health.
5. The most recent ~~annual~~ **seasonally adjusted quarterly** civilian unemployment **rate for each jurisdiction.** The source for these data shall be **the** Information Services Division of the Virginia Employment Commission.

12VAC5-540-40. Application of the criteria.

C. Medical care services in state facilities operated by the Departments of Corrections, Juvenile Justice, Mental Health, Mental Retardation and Substance Abuse Services, and other state operated medical clinic facilities as well as State supported medical care facilities with a majority of their clinic patients either healthcare uninsured or below two times the Federal Poverty Level will be deemed a Virginia Underserved Healthcare Facility.

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 changes are required to make the regulations compatible with current medical and nursing scholarship regulations and to appropriately use new data sources that were not previously available.

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 will heed its public participation guidelines, 12 VAC 5-11 et seq.

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 comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Kathy Wibberly, 109 Governor Street Suite 1018, Richmond, Virginia 23219, email, kathy.wibberly@vdh.virginia.gov or fax 804-864-7440. 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.

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 agency is not using the participatory approach in the development of the proposal because the agency has authority to proceed without using the participatory approach.

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.

The Virginia Medically Underserved Area designation is designed to encourage the appropriate distribution and expansion of health care services into areas where Virginia citizens often lack access to health care. State and private funding programs and agencies use these underserved criteria to support family centered primary health care services throughout the Commonwealth. Because adverse health outcomes are a major source of educational and workforce absenteeism, improved access to health care supports not only family but social and economic wellbeing within the community.