

Virginia Regulatory Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Virginia Department of Health
VAC Chapter Number:	12 VAC 5-371 and 12 VAC 5-410
Regulation Title:	Regulations for the Licensure of Nursing Facilities Regulations for the Licensure of Hospitals
Action Title:	Promulgating a permanent regulation from an emergency regulatory action
Date:	December 9, 1999

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.

An amendment to Section 32.1-102.2 of the Code of Virginia (Code) requires the State Health Commissioner to “condition” the initial or renewal of a nursing facility or hospital license on whether the applicant has complied with any agreement to provide a level of care at a reduced rate to indigents or accepted patients requiring specialized care as a result of the granting of a Certificate of Public Need (COPN). Since the amendment affects the licensure of nursing facilities and hospitals, amendment to the licensure regulations is required, specifically 12 VAC 5-371-40 and 12 VAC 5-410-70 respectively. Amendments to the regulations ensure that nursing facilities and hospitals are held accountable for meeting the conditions of the issued COPN and are providing the additional services as agreed upon by the provider when accepting the COPN.

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 second enactment clause of Senate Bill 1282 (SB1282) and House Bill 2369 (HB2369) of the 1999 session of the General Assembly mandated the implementation of the “provisions of [each] act within 280 days of the date of enactment,” which occurred on March 29, 1999. The Department responded to this directive by promulgating emergency regulations that became effective on December 31, 1999. The Administrative Process Act, specifically section 9-6.14:4.1 C 5 of the Code, states that emergency regulations may not exceed 12 months in duration. If an agency determines to continue regulating the subject matter governed by the emergency regulation, a regulation to replace the emergency regulation shall be promulgated. Because section 32.1-102.2 of the Code requires the conditioning of initial and renewal licenses for nursing facilities and hospitals, the Department must now take action to convert the emergency regulations to permanent regulations.

In addition, the Board of Health has the authority to promulgate regulations granted under Section 32.1-12 of Title 32.1 of the Code.

Sections 9-6.14:4.1 C 5 and 32.1-12 of the Code are available through the Virginia Department of Legislative Services LIS web site (<http://leg1.state.va.us/lis.htm>). Section 32.1 –102.2, effective on October 1, 1999 is not available electronically. However, it is available through Volume 5A of the Code.

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.

Specifically, nursing facilities and hospitals must attest in the licensure application that they have complied with the COPN conditioning agreement. In addition, the granting of a renewal license is contingent upon the up-to-date payment of any civil penalties owed as a result of the willful refusal, failure, or neglect to honor the conditions established by the issued COPN.

The authority to promulgate the amendments to the regulations is mandated in Section 32.1-102.2 of the Code, a result of the passage of SB 1282 and HB2369 of the 1999 session the General Assembly. Therefore, this action is mandatory.

The Department does not expect there to be any additional issues related to the conditioning of the license application that will need to be addressed as the permanent regulations are promulgated.

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.

As stated previously, the authority to promulgate the amendments to the regulations is mandated in Section 32.1-102.2 of the Code, a result of the passage of SB 1282 and HB2369 of the 1999 session the General Assembly. Promulgation of the regulations is the only means available for the Board of Health to comply with the clear directive of the law. The proposed regulations honor the Department's statutory charge and are the least burdensome alternative available for adequately addressing the mandate of the law.