



Virginia  
Regulatory  
Town Hall

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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Virginia Department of Health
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 5-371-410 and 420
<b>Regulation title</b>	Regulations for the Licensure of Nursing Facilities
<b>Action title</b>	Revising the construction standards for nursing facilities
<b>Date this document prepared</b>	8/2/2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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.*

This regulatory action is taken in response to a Petition for Rulemaking. This action will bring the regulations into conformance with the provisions of §32.1-127.001 of the Code of Virginia, which was enacted in 2005. The Code section states that "Notwithstanding any law or regulation to the contrary," the Board of Health shall promulgate regulations for the licensure of hospitals and nursing homes that include minimum standards for design and construction that are consistent with the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities issued by the American Institute of Architects Academy of Architecture for Health (the Guidelines). However, the regulations currently state that the Virginia Uniform Statewide Building Code takes precedence over the Guidelines. That regulatory provision is contrary to the requirements of §32.1-127.001.

The department plans to amend regulatory sections 410 and 420 of chapter 371 pertaining to building and construction codes for nursing facilities. The purpose of the amendment will be to specify that nursing facilities shall comply with Part 1 and section 4.1 and 4.2 of the Guidelines, and the Guidelines take precedence over the Virginia Uniform Statewide Building Code. The department further intends to specify in the regulations that entities licensed as of the effective date of the amendments may continue to be licensed in their current buildings. However, all new construction, renovation, modification, structural revision, etc of any space within a nursing facility will require full compliance with this provision for the entire area of the modified space.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

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The regulation is promulgated under the authority of §32.1-127 of the Code of Virginia which grants the Board of Health the legal authority to promulgate nursing facility regulations "in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established in matters of public health and safety."

## 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.*

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The department is responsible for regulating medical care facilities and related services and recognizes the need to update the nursing facility regulations to better reflect national standards of care for individuals receiving services in Virginia's 278 nursing facilities. The Facilities Guideline Institute, and its Guideline, is nationally recognized as the authority regarding the design and construction of medical care facilities. Therefore, the department is incorporating the Guideline by reference for the nursing facility licensure regulations.

## Substance

*Please detail any changes that will be proposed. Be sure to define all acronyms. 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.*

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The department intends to amend the regulations to specify that nursing facilities shall comply with Part 1 and Section 4.1 and 4.2 of the Guidelines and that the Guidelines take precedence over the Virginia Uniform Statewide Building Code. The department further intends to specify in the regulations that entities licensed as of the effective date of the amendments may continue to be licensed in their current buildings. However, all new construction, renovation, modification, structural revision, etc of any space within a nursing facility will require full compliance with this provision for the entire area of the modified space. No acronyms were used in developing the amendment or this document.

## 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.*

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The amendment is clearly and directly mandated by law.

## Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including 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.*

*Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to;

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

The department considers this amendment to be straightforward; therefore a panel will not be used for its development.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

## 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.*

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There is no direct impact on the family or the family structure as a result of this amendment.