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Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation(s)	12VAC5-410
Regulation title(s)	Regulations for the Licensure of Hospitals in Virginia
Action title	Amend Regulations to Conform to Chapters 454, 565, 571 and 795 of the 2018 Acts of Assembly
Final agency action date	9/24/2018
Date this document prepared	9/24/2018

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

House Bill 226, enacted by the 2018 General Assembly and approved by the Governor on March 19, 2018 (identical to Senate Bill 222, approved by the Governor on March 30, 2018), amends and reenacts Va. Code §§ 32.1-127 and 54.1-2990, relating to medically or ethically inappropriate care not required. The two bills require that the Board of Health include in the Regulations for the Licensure of Hospitals that hospitals equipped to provide life-sustaining care establish a policy regarding the withholding of that care when it has been determined by the physician to be medically or ethically inappropriate for the patient. The policies must include a process for obtaining a second opinion regarding determination, as well as provisions for review and documentation by an interdisciplinary team of the determination that the care is inappropriate. Additionally, provisions must be in place that the patient, his agent, or the person authorized to make the

patient’s medical decisions in accordance with § 54.1-2986 are informed of the patient’s right to obtain his medical record, containing a written explanation of interdisciplinary team’s decision, and the right to obtain an independent medical opinion and afforded reasonable opportunity to participate in the medical review. The rights of the patient, the patient’s agent or the person authorized to make medical decisions for the patient to seek legal counsel and other legal remedies regarding the decision are preserved by the policy, as long as written notice is provided within 14 days of the determination that the proposed care is either medically or ethically inappropriate.

House Bill 886 (2018) requires the Board of Health to include in its regulations governing hospitals that every hospital which provides inpatient psychiatric services to establish a protocol that requires, for every refusal to admit a patient for whom there is a question of medical stability or medical appropriateness for admission due to a situation involving results of a toxicology screening, the on-call physician in the psychiatric unit to which the patient is sought to be transferred to participate in direct verbal communication, either in person or via telephone, with a clinical toxicologist or other person who is a Certified Specialist in Poison Information employed by a poison control center that is accredited by the American Association of Poison Control Centers to review the results of the toxicology screen and determine whether a medical reason for refusing admission to the psychiatric unit related to the results of the toxicology screen exists, if requested to do so by the referring physician.

House Bill 1088 (2018) and Senate Bill 725 (2018) both update the Emergency Services section of the hospital regulations. SB 725 requires hospitals to post notice of the existence of the human trafficking hotline to alert possible witnesses or victims of human trafficking to the availability of a means to report crimes or gain assistance in each emergency department and that it be readily visible to the public. HB 1088 requires that any licensed hospitals with an emergency department establish protocols to ensure that security personnel of the emergency department, if any, receive training appropriate to the populations served by the emergency department. The protocol may include training based on a trauma-informed approach in identifying and safely addressing situations involving patients and others who pose a risk of harm to themselves or others due to mental illness or substance abuse or who are experiencing a mental health crisis. Currently, 12VAC5-410-280 regulates emergency services and requires hospitals to make special training available for “emergency department personnel,” but not for “security personnel” in an emergency department. The Virginia Department of Health is utilizing this exempt action to amend the Regulations for the Licensure of Hospitals (12VAC5-410 et seq.) to reflect these new requirements.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Commissioner approved this Final Action regarding the Regulations for the Licensure of Hospitals in Virginia, on behalf of the State Board of Health while the board was not in session on September 24, 2018

**Periodic Review
Small Business Impact Review Report of Findings**

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the proposed stage, please indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended,

July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

A Periodic Review was not performed. This is a legislative mandate.

Commenter	Comment	Agency response