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Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	Virginia Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12VAC5-416
VAC Chapter title(s)	Sexual Assault Survivor Treatment and Transfer Regulation
Action title	Promulgation of New Regulation to Implement Chapter 725 of the 2020 Acts of Assembly
Date this document prepared	May 11, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation.

Chapter 725 (2020 Acts of Assembly) creates Article 8 of Chapter 5 of Title 32.1 of the Code of Virginia, which requires the Board to promulgate regulations to effectuate the act, specifically the standards for review and approval of sexual assault survivor transfer plans, pediatric sexual assault survivor transfer plans, sexual assault survivor treatment plans, and pediatric sexual assault survivor treatment plans. As the requirement to have such plans extends to hospitals, clinics, and physician's offices, there is no already existing regulatory chapter that would best fit this mandate, so the Virginia Board of Health intends to promulgate a new regulatory chapter for these standards.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

"Board" means the Virginia Board of Health.

"PSAS" means pediatric sexual assault survivor.

"SAS" means a sexual assault survivor.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Chapter 725 (2020 Acts of Assembly) creates Article 8 of Chapter 5 of Title 32.1 of the Code of Virginia, which requires the Board to promulgate regulations to effectuate the act, Specifically, subsection A of § 32.1-162.15:4 of the Code of Virginia requires the Board to adopt regulations to establish standards for review and approval of SAS treatment plans. Section 32.1-162.15:5 of the Code of Virginia requires the Board to adopt regulations to establish standards for review and approval of SAS transfer plans and PSAS transfer plans. Subsection B of § 32.1-162.15:6 of the Code of Virginia requires the Board to adopt regulations to establish standards for the review and approval of PSAS treatment plans; subsection C of that same statute requires the Board to adopt regulations to establish standards for review and approval of PSAS transfer plans.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Subsection A of § 32.1-162.15:4 of the Code of Virginia requires the Board to adopt regulations to establish standards for review and approval of SAS treatment plans. Section 32.1-162.15:5 of the Code of Virginia requires the Board to adopt regulations to establish standards for review and approval of SAS transfer plans and PSAS transfer plans. Subsection B of § 32.1-162.15:6 of the Code of Virginia requires the Board to adopt regulations to establish standards for the review and approval of PSSA treatment plans; subsection C of that same statute requires the Board to adopt regulations to establish standards for review and approval of PSAS transfer plans. More generally, pursuant to § 32.1-12 of the Code of Virginia, the Board has the authority make, adopt, promulgate and enforce such regulations and provide for reasonable variances and exemptions therefrom as may be necessary to carry out the provisions of Title 32.1 of the Code of Virginia and other laws of the Commonwealth administered by it, the State Health Commissioner, or the Department of Health.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

By enacting Chapter 725 (2020 Acts of Assembly), the General Assembly required the Board to adopt regulations standards for review and approval of SAS transfer plans, PSAS transfer plans, SAS treatment plans, and PSAS treatment plans. In order to ensure that such regulations protect the health, safety, and welfare of citizens, it is necessary to assess relevant treatment and transfer protocols as well as current standards of practice to determine what should be included or incorporated into the regulatory text. The Board may also address other issues that arise as a result of this Notice.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

This regulation must contain the standards for review and approval of SAS transfer plans, PSAS transfer plans, SAS treatment plans, and PSAS treatment plans. Treatment plan standards must include forensic medical examination; information concerning the possibility of infection or sexually transmitted disease and accepted medical procedures and medications for the prevention or treatment of such infection; evaluations to determine the survivor of sexual assault's risk of infection; information regarding the possibility of pregnancy and emergency contraception; prescriptions of such medications as may be appropriate; information regarding the need for follow-up care; information about medical advocacy services provided by a rape crisis center; and referral for counseling and other support services. Transfer plan standards must include medical examination and such stabilizing treatment as may be necessary prior to the transfer; information about emergency contraception; and prompt transfer that would not unduly burden a SAS or PSAS. The intention of the Board is to ensure the regulatory language fulfills the Board's responsibilities under § Article 8 of Chapter 5 of Title 32.1 of the Code of Virginia. Revisions to the regulation content may be proposed based on public comments received.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

No alternative was considered because the General Assembly requires the Board to adopt regulations governing the review and approval of SAS transfer plans, PSAS transfer plans, SAS treatment plans, and PSAS survivor treatment plans.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: https://townhall.virginia.gov. Comments may also be submitted by mail, email or fax to Rebekah E. Allen, Senior Policy Analyst, Virginia Department of Health, Office of Licensure and Certification, 9960 Mayland Drive, Suite 401, Henrico, VA 23233; email: regulatorycomment@vdh.virginia.gov; fax: (804) 527-4502. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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