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

<b>Agency name</b>	Virginia Department of Health
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	12 VAC 5 - 217
<b>VAC Chapter title(s)</b>	Regulations of the Patient Level Data System
<b>Action title</b>	Amend Regulation to conform to Chapter 552 Item 307(D1) of the 2021 Acts of Assembly Special Session I
<b>Date this document prepared</b>	July 22, 2021

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). Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

Chapter 552 of the 2021 Acts of Assembly Special Session I Item 307(D1) requires inpatient hospitals to report the admission source of any individuals meeting the criteria for voluntary or involuntary psychiatric commitment as outlined in § 16.1-338, 16.1-339, 16.1-340.1, 16.1-345, 37.2-805, 37.2-809, or 37.2-904, Code of Virginia, to the Board of Health (“the Board”). The Board shall collect and share any and all data regarding the admission source of individuals admitted to inpatient hospitals as a psychiatric patient, pursuant to Va.Code § 32.1-276.6, with the Department of Behavioral Health and Developmental Services (DBHDS) through the addition of a new legal status field. The new field will be included in the patient-level data that DBHDS receives from Virginia Health Information (VHI.) The existing list of information from that Code section does not include criteria for voluntary or involuntary psychiatric

commitment, accordingly the creation of a new legal status field is required. The Board is using this action to conform to the requirements in Item 307 (D1).

**Acronyms and Definitions**

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

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DBHDS – Department of Behavioral Health and Developmental Services  
VHI – Virginia Health Information

**Mandate and Impetus (Necessity for Emergency)**

*Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:*

- a) Indicate whether the Governor’s Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

*As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change*

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Ch. 552 of the 2021 Acts of Assembly Special Session I Item 307(D1) requires inpatient hospitals to report the admission source of any individuals meeting the criteria for voluntary or involuntary psychiatric commitment as outlined in § 16.1-338, 16.1-339, 16.1-340.1, 16.1-345, 37.2-805, 37.2-809, or 37.2-904, Code of Virginia, to the Board of Health. The Board shall collect and share any and all data regarding the admission source of individuals admitted to inpatient hospitals as a psychiatric patient, pursuant to § 32.1-276.6, Code of Virginia, with the Department of Behavioral Health and Developmental Services through the addition of a new legal status field. The new field will be included in the patient-level data that DBHDS receives from VHI. The existing list of information from that Code section does not include criteria for voluntary or involuntary psychiatric commitment, accordingly the creation of a new legal status field is required. The Board is using this action to conform to the requirements of Item 307(D1).

Item 307(D2) requires the Department of Health to promulgate regulations within 280 days from enactment of Chapter 552 of 2021 Special Session I. Use of an emergency regulatory action is required in order to meet that legislatively-mandated deadline.

**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 or Acts and 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.*

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The Code of Virginia § 32.1-12 gives the Board the responsibility to make, adopt, promulgate, and enforce such regulations as may be necessary to carry out the provisions of Va. Code § 32.1. Va. Code § 32.1-276.6(A) requires the Board to establish and administer an integrated system for collection and analysis of data which is used by consumers, employers, providers, purchasers of health care and state government. Section 32.1-276.6(B) of the Code of Virginia requires that every inpatient hospital shall submit to the Board patient level data where applicable and included on the standard claim forms: (1) hospital identifier; (2) attending physician identifier; (3) operative physician or oral and maxillofacial surgeon identifier; (4) payor identifier; (5) Employer identifier as required on standard claims forms; (6) Patient identifier (all submissions); (7) Patient sex, race (inpatient only), date of birth (including century indicator), street address, city or county, zip code, employment status code, status at discharge, and birth weight for infants (inpatient only); (8) Admission type, source (inpatient only), date and hour, and diagnosis; (9) Discharge date (inpatient only) and status; (10) Principal and secondary diagnoses; (11) External cause of injury; (12) Co-morbid conditions existing but not treated; (13) Procedures and procedure dates; (14) Revenue center codes, units, and charges as required on standard claims forms; and (15) Total charges.

### 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.*

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The Board is required by Va. Code § 32.1-276.2 to establish effective health care data analysis and reporting initiatives to improve the quality and efficiency of health care, foster competition among health care providers, and increase consumer choice with regard to health care services in the Commonwealth, and that accurate and valuable health care data can best be identified by representatives of state government and the consumer, provider, insurance, and business communities.

The goal of the regulatory change is to conform the provisions of 12VAC5-217-20 to the requirements in Chapter 552 Item 307(D1) of the 2021 Acts of Assembly Special Session I.

### Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

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12VAC5-217-10: A new legal status field is added to include the provision of information required by Chapter 552 Item 307(D1) of the 2021 Acts of Assembly Special Session I. This is defined to include codes for the legal status of voluntary or involuntary psychiatric admissions.

### Issues

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

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This action is being used to conform the regulations to the provision of Chapter 552 of the 2021 Special Session I 307(D1). The advantage to the public and the Commonwealth is that the regulations are in compliance with legislative changes enacted by the 2021 General Assembly and will provide helpful information regarding inpatient psychiatric admissions. There are no disadvantages to individual private citizens or businesses not subject to the regulation, the agency, or the Commonwealth. The primary disadvantages to the regulated community are the projected costs of implementing the requirements of the regulations and additional workflows required to complete the new field.

### 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.*

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Initiation of this regulatory action is the least burdensome method identified to conform to the Regulations for Inpatient Data Reporting to Chapter 552 Item 307(D1) of the 2021 Acts of Assembly Special Session I.

### Periodic Review and Small Business Impact Review Announcement

*If you wish to use this regulatory action to conduct, and this Emergency/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.*

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The Virginia Department of Health 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 Mike Sarkissian, 109 Governor Street, 4<sup>th</sup> Floor, Richmond VA 23219, (804) 229-0517, michael.sarkissian@vdh.virginia.gov. 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.

## Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the emergency regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
20			<p><b>Change:</b> 16. Legal Status.  <u>Enter the legal status of the admission. Legal status applies to voluntary or involuntary psychiatric admissions of minors and adults.</u>                      1= §16.1-338 Parental admission of minors &lt; 14 and nonobjecting minors 14 years of age or older                      2=§16.1-339 Parental admission of objecting minor 14 years of age or older                      3=§16.1-340.1 Involuntary TDO (minor)                      4=§16.1-345 Involuntary commitment (minor)                      5=§37.2-805 Voluntary admission (adult)                      6=§37.2-809 Involuntary TDO (adult)                      7=§37.2-904 Sexually violent predators (prisoners or defendants)</p> <p><b>Intent:</b> The intent of these changes is to conform to Chapter 552 of 2021 Special Session I Item 307(D1).</p> <p><b>Rationale:</b> The patient-level discharge data submitted to VHI do not currently include the patient’s legal status. Collecting this information will DHBDS to study the distribution of involuntary psychiatric admissions throughout the community hospital system, with the goal of developing strategies to</p>

			<p>alleviate the high census at state psychiatric hospitals.</p> <p><b>Likely Impact:</b> It is expected that inpatient hospitals will implement operational changes and develop new workflows to enter the legal status for a voluntary or involuntary psychiatric admission through the legal status field.</p>

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

**Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace**

<b>New chapter-section number</b>	<b>New requirements to be added to VAC</b>	<b>Other regulations and laws that apply</b>	<b>Change, intent, rationale, and likely impact of new requirements</b>