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Periodic Review Report of Findings

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12VAC5-391
Regulation title	Regulations for the Licensure of Hospice
Date this document prepared	July 29, 2019

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

"Board" means the Virginia Board of Health.

Legal Basis

Please identify (1) the agency or other promulgating entity, 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 of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Section 32.1-12 of the Code of Virginia gives the Board the responsibility to make, adopt, promulgate, and enforce such regulations as may be necessary to carry out the provisions of Title 32.1 of the Code of Virginia. Section 32.1-162.5 of the Code of Virginia requires the Board to adopt regulations governing the activities and services provided by hospices as may be necessary to protect the public health, safety and welfare, including requirements for (i) the qualifications and supervision of licensed and nonlicensed

personnel; (ii) the standards for the care, treatment, health, safety, welfare, and comfort of patients and their families served by the program; (iii) the management, operation, staffing and equipping of the hospice program or hospice facility; (iv) clinical and business records kept by the hospice or hospice facility; (v) procedures for the review of utilization and quality of care; and (vi) minimum standards for design and construction.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

No alternative was considered because the General Assembly required the Board to adopt regulations governing the licensure of hospices and promulgating regulation, is the least burdensome method to accomplish this statutory mandate.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Brenda Clarkson, Virginia Association for Hospices and Palliative Care; Ernest Carnevale, CEO, Blue Ridge Hospice, Winchester Virginia; Pamela Barbour, Administrator Medi Home Health and Hospice; Chris Santarsiero, VITAS Healthcare; Brenda Mitchell, CEO of Crater Community Hospice; Sue Ranson, Good Samaritan Hospice; and Teri Humphries, Rockbridge Area Hospice via the Virginia Regulatory Town Hall	Request repeal of 12VAC5-391-330(B), "The medical director shall have admitting privileges at one or more hospitals and nursing facilities that provide inpatient service to the hospice program's patients."	The Board will utilize the comments provided during the regulatory review process to guide future program regulations.
Brenda Lindsay, RN, PhD, Administrator Mountain Regional Hospice via the Virginia Regulatory Town Hall	Since the hospitalist role came about in our local community around 2014, there are very few physicians left who admit to our one local hospital. I don't see how small, rural hospice agencies will be able to meet this regulation with the current lack of physicians in general. Thank you for the opportunity to express my opinion on behalf of	The Board will utilize the comments provided during the regulatory review process to guide future program regulations.

	myself, our IDG, and our Board of Directors.	
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An informal advisory group was not formed for the purposes of assisting in the periodic review.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary for the protection of public health, safety, and welfare because by requiring hospices to meet minimum standards for personnel, treatment, management, members of the public who utilize hospices receive acceptable care, safety, welfare, and comfort. There is room for improvement on the clarity and understandability of the regulation.

Decision

Please explain the basis for the rulemaking entity’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The Board has decided to amend the regulation. Public comments were all in opposition to 12VAC-391-330(B) and the Board has decided to repeal that subsection as repeal would not jeopardize the protection of public health, safety, and welfare.

Small Business Impact

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. Also, discuss why the agency’s decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

There is a continued need for the regulation as the Board is mandated to regulate hospices, including the promulgation of regulations. The Board has taken into account complaints and comments from the public regarding this regulation, specifically 12VAC-391-330(B). The regulation is not complex. The regulation does not conflict with federal or state law or regulation. The regulation has been incrementally amended as changes to the Code of Virginia occurred; however, more comprehensive changes to the regulation are needed to reflect changes in the health care industry, technology, and economic conditions, including those that impact small businesses. By choosing to amend this regulation, the Board is planning on reducing at least one barrier that small businesses may encounter when hiring a medical director.