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Fast-Track Regulation
Agency Background Document

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC5-391-10 *et seq.*
VAC Chapter title(s)	Regulations for the Licensure of Hospice
Action title	Amend Regulation to Incorporate the 2022 FGI Guidelines
Date this document prepared	January 18, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 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.

Subsection B of § 32.1-162.5 of the Code of Virginia requires hospice facility regulations to include minimum standards for the design and construction of hospices that are consistent with the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities issued by the Facility Guidelines Institute (FGI). The regulatory change was prompted by the release of the 2022 edition of the FGI Guidelines for Design and Construction of Residential Health, Care, and Support Facilities. The amendments to the Regulation are to update the references of the 2018 FGI guidelines to the current edition, published in May of 2022.

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.

"Board" means the State Board of Health.

"FGI" means the Facility Guidelines Institute.

"FGI guidelines" means the Guidelines for Design and Construction of Residential Health, Care, and Support Facilities.

Statement of Final Agency Action

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 State Board of Health approved these Fast Track amendments to the Regulations for the Licensure of Hospice (12VAC5-391) on September 14, 2023.

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 the ORM procedures, "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."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Subsection B of § 32.1-162.5 of the Code of Virginia requires the Board to include minimum standards for design and construction of Hospice facilities consistent with the Hospice Care section of the current edition of the FGI Guidelines for Design and Construction of Hospital and Health Care Facilities.

The impetus of this regulatory action was the release of the 2022 edition of the FGI guidelines. This rulemaking is expected to be noncontroversial because the proposed amendments are non-discretionary, and only update the references to the FGI guidelines from the 2018 edition to the 2022 edition, therefore making it appropriate for the fast-track rulemaking process.

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.

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. Subsection A of § 32.1-162.5 of the Code of Virginia requires the Board to promulgate regulations governing the activities and services provided by hospices.

Subsection B of § 32.1-162.5 of the Code of Virginia requires the Board to include minimum standards for design and construction of Hospice facilities consistent with the Hospice Care section of the current edition of the FGI Guidelines for Design and Construction of Hospital and Health Care Facilities.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The rationale for the regulatory change is to ensure the regulations stay in compliance with the Code of Virginia § 32.1-162.5, requiring the Board to include minimum Hospice design and construction guidelines that are consistent with the current edition of the FGI guidelines. The regulatory change is essential to protect the health, safety, and welfare of the citizens of the Commonwealth because it standardizes space and equipment requirements and promotes safe practices and methods in planning, design, and construction. The goal of this regulatory change is to update the regulations to incorporate the 2022 edition. The problem this regulatory change is intended to solve is the out-of-date reference to the 2018 edition to ensure all facilities designing and constructing hospice facilities are adhering to the current version of the FGI guidelines.

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.

12VAC5-391-440
Updated the reference in subsection A from the 2018 edition to the 2022 edition of the FGI guidelines.

Documents Incorporated by Reference (12VAC5-391)
Updated the FGI guidelines from the 2018 edition to the 2022 edition. Added the web link to the Facility Guidelines Institute's website. Added December 2023 errata for the 2022 edition.

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.

This action is being used to conform 12VAC5-391-10 *et seq*. to the existing requirements in the Code of Virginia. The primary advantage to the public is that there will be a reduced confusion among the regulants regarding which edition of the FGI guidelines is the controlling edition. The primary advantage to the agency is conformity with the legal mandates set forth by the Code. There are no other pertinent matters of interest to the regulated community, government officials, or the public. There are no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

The requirements contained in the FGI guidelines may be more restrictive than federal requirements, specifically 42 CFR § 418.110; however, Chapters 177 and 222 of the 2005 Acts of Assembly (codified as subsection B of § 32.1-162.5 of the Code) mandated the minimum requirements be consistent with the current edition of the applicable FGI guidelines, so the Board does not have the discretion to be less restrictive.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies particularly affected.

Localities Particularly Affected

The Chesapeake Hospital authority may be affected if this entity were to construct a hospice facility. There are currently no projected costs, savings, fees, or revenues resulting from the regulatory change.

Other Entities Particularly Affected

Those entities interested in constructing, renovating, or altering a hospice facility will be affected by this regulatory change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and	There are no projected costs, savings, fees, or revenues resulting from the regulatory change.

c) whether any costs or revenue loss can be absorbed within existing resources	
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no projected costs, savings, fees, or revenues resulting from the regulatory change.
For all agencies: Benefits the regulatory change is designed to produce.	The benefit of the regulatory change is that it fulfills the mandate from the Code of Virginia to update the regulation with the current version of the FGI guidelines.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	The Chesapeake Hospital Authority operates a licensed Hospice (Comfort Care Home Health & Hospice), however, they do not have a hospice facility. If this entity were to construct a facility, they would need to adhere to the 2022 FGI guidelines. There are no current projected costs, savings, fees, or revenues resulting from the regulatory change.
Benefits the regulatory change is designed to produce.	The benefit of the regulatory change is that entities will have a clear understanding of the FGI guidelines necessary to construct, renovate or alter a hospice facility.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	The entities likely to be affected by the regulatory change are entities who are constructing, renovating, or altering hospice facilities.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	The number of entities likely to be affected are the 88 licensed hospice facilities in Virginia, 20 of which are estimated to meet the definition of "small business". VDH is unable to quantify the number of entities that will construct a hospice facility, or the number of current facilities that will alter or renovate their facilities.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;	As a result of the mandate to comply with the 2022 edition of the applicable FGI guidelines, VDH anticipates that there may be a quantifiable indirect cost equal to a 0.2% increase in construction costs for a model facility that is multiple stories of non-combustible construction and a 0.4% increase in construction costs for a model facility that is a single story of combustible

b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	construction, based on projections developed by FGI. VDH is unable to quantify a cost due to the cost variance between potential projects.
Benefits the regulatory change is designed to produce.	The benefit of the regulatory change is that entities will have a clear understanding of the FGI guidelines necessary to construct, renovate or alter a hospice facility.

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.

There are no viable alternatives to the regulatory change. The Code of Virginia requires the regulations for hospice facilities to incorporate the current version of the FGI guidelines, and amending the regulatory language is the least burdensome method of achieving this requirement.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There are no alternative regulatory methods to achieve the statutory requirement in § 32.1-162.5 of the Code of Virginia.

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.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The State Board 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 and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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 Allen, Senior Policy Analyst for the Virginia Department of Health Office of Licensure and Certification, 9960 Mayland Drive, Suite 401, Henrico, VA 23233, (804) 367-2157, fax (804) 527-4502, and regulatorycomment@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.

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 proposed 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
391-440	N/A	The section requires hospice facilities to be designed and constructed according to section 3.2 of Part 3 of the 2018 Guidelines for Design and Construction of Residential Health, Care, and Support Facilities of the Facility Guidelines Institute.	**Change**: The amended language requires hospice facilities to be designed and constructed according to Part 1, Part 2, and Chapter 3.2 of Part 3 of the Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2022 Edition (The Facility Guidelines Institute), as amended by the December 2023 Errata for Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2022 Edition (The Facility Guidelines Institute). A few minor, non-substantive style and form changes were also made.

			Intent: The intent of this change is to remain in compliance with the Code mandate that requires the Board's Hospice regulation reference the most up-to-date version of the FGI guidelines. The intent of the style changes is to comply with the Registrar's *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code* **Rationale**: The rationale of this change is that the regulation will be in compliance with the mandate in the Code of Virginia. **Likely Impact**: The likely impact is that the regulatory requirement will be clearer for regulants.
Documents Incorporated by Reference (12VAC5-391)	N/A	2018 Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, The Facility Guidelines Institute.	**Change**: Errata for Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, The Facility Guidelines Institute, 2022 Edition, https://fgiguidelines.org/guidelines/errata-addenda/ (eff. 12/23). ~~2018~~ Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, The Facility Guidelines Institute~~.~~, 2022 Edition, https://fgiguidelines.org. **Intent**: The intent of this changes is to reference the correct document incorporated by reference in 12VAC5-391-440. **Rationale**: The rationale for this change is that the documents incorporated by reference section are required to be cited correctly and in accordance with the Style Manual administered by the Virginia Registrar. **Likely Impact**: The likely impact is that regulants will have a greater understanding of which version of the FGI guidelines are required to be adhered to.