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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC 5-391
VAC Chapter title(s)	Regulations for the Licensure of Hospices
Date this document prepared	August 7, 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*.

Acronyms and Definitions

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

"Board" means the State Board of Health.

"Commonwealth" means the Commonwealth of Virginia

"VDH" means the Virginia Department of Health

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 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.

Pursuant to Executive Order 19 (2022) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia which requires regulations to be reviewed every four years, this regulation is undergoing a periodic review.

§ 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.

§ 32.1-162.5 of the Code of Virginia requires the Board to promulgate regulations, consistent with Article 7 (§ 32.1-162.1 *et seq.*) of Chapter 5 of Title 32.1 of the Code of Virginia, governing the licensure of hospices.

Alternatives to Regulation

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

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

The notice of periodic review of the Regulations for the Licensure of Hospices was published, and the public comment period opened on March 22, 2024. The comment period ended on May 13, 2024. One public comment was received.

Commenter	Comment	Agency response
LeadingAge Virginia	“Thank you for the opportunity to comment during the Periodic Review of 12 VAC 5-391, Regulations for the Licensure of Hospices. LeadingAge Virginia is conducting a comprehensive review of the regulation and believes it should be amended. Amendments are necessary throughout the regulation to 1) ensure hospice beneficiaries are served by high-quality providers. 2) avoid fraud, waste, and abuse. 3) provide technical changes to ensure it is clearly written and easily understood. 4) reduce unnecessary burdens that do not impact the quality of care.”	The Board notes the suggestion and will take this under consideration when amending 12VAC5-391.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, 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 it requires hospices to meet minimum standards for personnel, clinical and nonclinical services, treatment of patients, and facility safety. These standards protect members of the public who utilize hospice services. Improvements are needed to achieve greater clarity and readability of the regulations. Additionally, updates are needed to these regulations to include the most up-to-date clinical and industry practices.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The Board will amend the regulations to comply with the *Form, Style and Procedure Manual for Publication of Virginia Regulations* maintained by the Virginia Registrar of Regulations, update provisions to include current clinical and industry practices, and consider opportunities for regulatory reduction where possible.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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 applicable law, will minimize the economic impact of regulations on small businesses.

There is a continued need for the regulation as the Board is required by § 32.1-162.5 of the Code of Virginia to promulgate regulations governing the hospices. The Board received one comment concerning the regulation from the public. The regulation is of moderate complexity, which is not an unexpected outcome given the overall complexity of the healthcare industry. The regulation does not conflict with federal or state law or regulation. There are 80 licensed hospices in the Commonwealth of Virginia, 35 of which have self-reported that they are small businesses. VDH does not validate whether these self-reports are accurate. All licensed hospices in the Commonwealth are federally certified, so even in the absence of state hospice regulations, these hospices would have to comply with federal requirements which are as strict as or stricter than the Commonwealth's.