



Virginia  
Regulatory  
Town Hall

[townhall.virginia.gov](http://townhall.virginia.gov)

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

<b>Agency name</b>	Virginia Department of Health
<b>Virginia Administrative Code (VAC) citation</b>	12VAC5-230
<b>Regulation title</b>	State Medical Facilities Plan
<b>Action title</b>	Update the regulatory chapter following periodic review
<b>Date this document prepared</b>	August 21, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

To fulfill the statutory mandate to review regulations and to protect the citizens of the Commonwealth the Department conducted a periodic review of 12VAC5-230 et seq. "State Medical Facilities Plan" pursuant to Executive Order (EO) 17 (2014). As a result of this review, the Department determined it was necessary to use the regulatory process to amend these regulations. It is necessary to amend these regulations to update definitions within the regulations related to cardiac catheterization and update the occupancy standard utilized for determining the need for new nursing home beds.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

The regulation is promulgated under the authority of Section 32.1-102.2 of the Code of Virginia. Section 32.1-102.2 of the Code of Virginia requires the Board promulgate regulations which establish concise procedures for the prompt review of applications for certificates of public need consistent with Article 1.1

of Chapter 4 of Title 32.1. Section 32.1-102.2 of the Code of Virginia further requires the Board to promulgate regulations which establish specific criteria for determining need in rural areas, giving due consideration to distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care in such areas.

**Need**

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

---

Regulations to implement the State Medical Facilities Plan are essential to protect the health of citizens as the Department has determined that excess capacity or underutilization of medical facilities are detrimental to both cost effectiveness and quality of medical services in Virginia; the Department seeks to promote the availability and accessibility of proven technologies through planned geographical distribution of medical facilities; the Department seeks to promote the development and maintenance of services and access to those services by all Virginians who need them without respect to their ability to pay; the Department seeks to encourage the conversion of facilities to new and efficient uses and the reallocation of resources to meet evolving community needs; and the Department discourages the proliferation of services that would undermine the ability of essential community providers to maintain their financial viability.

**Substance**

*Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

---

This regulatory action will update an existing regulatory chapter in order to correct several definitions in relation to cardiac catheterization as well as the occupancy standard utilized for determining the need for new nursing home beds.

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

---

There are no other viable alternatives other than the intended regulatory action to carry out the Board's statutory mandate to promulgate regulations which establish concise procedures for the prompt review of applications for certificates of public need consistent with Article 1.1 of Chapter 4 of Title 32.1 and regulations which establish specific criteria for determining need in rural areas, giving due consideration to distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care in such areas. The regulations are mandated by Section 32.1-102.2 of the Code of Virginia. This statutory requirement provides little regulatory flexibility.

**Public participation**

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

*Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency’s contact if you’re interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Susan Horn, Policy Analyst, 9960 Mayland Drive Suite 401, Richmond, Virginia 23233, phone: 804-367-2157, and email: susan.horn@vdh.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight 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.

**Family impact**

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The Board has assessed the impact the proposed regulatory action will have on the institution of the family and family stability. The Board anticipates no impact to the family or family stability.

**Periodic review and small business impact review report of findings**

*If this NOIRA is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010),*

*e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

*In addition, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, 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.*

---

No public comments were received during the recent Periodic Review of the regulatory chapter. The regulation meets the criteria set out in Executive Order 17 (2014) as the regulation is necessary for the protection of public health, safety and welfare and is clearly written and easily understandable. There is a continued need for the regulation as the regulation is required by § 32.1-102.2 of the Code of Virginia. The Department has not received complaints from the public concerning the regulation. The regulatory chapter is written as simply as possible. The regulation does not overlap, duplicate or conflict with any federal or state law or regulation. The regulation was reviewed and evaluated during the recent Periodic Review held from April 22, 2013 until May 14, 2013. This NOIRA shall address factors which have changed in the area affected by the regulation.