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

<b>Agency name</b>	Virginia Board of Health
<b>Virginia Administrative Code (VAC) citation(s)</b>	12VAC 5-412
<b>Regulation title(s)</b>	Regulations for Licensure of Abortion Facilities
<b>Action title</b>	Amend the Regulation after Assessment and Receipt of Public Comment
<b>Date this document prepared</b>	July 25, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Subject matter and intent

*Please describe briefly the subject matter, intent, and goals of the planned regulatory action.*

This regulation governs the licensure of facilities that perform five or more first trimester abortions per month. This regulatory action seeks to assess all current regulation content and determine whether it should be amended or retained in its current form. This action may address comments received during the public comment period for this NOIRA and subsequent stages of this action, as well as comments received during the public hearing.

### Legal basis

*Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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’s overall regulatory authority.*

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Section 32.1-12 of the Code of Virginia gives the Board of Health 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 32.1-127 of the Code of Virginia requires the Board of Health to adopt regulations that include minimum standards for (i) the construction and maintenance of hospitals, nursing homes and certified nursing facilities to ensure the environmental protection and the life safety of its patients, employees, and the public; (ii) the operation, staffing and equipping of hospitals, nursing homes and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and certified nursing facilities, except those professionals licensed or certified by the Department of Health Professions; (iv) conditions under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence; and (v) policies related to infection prevention, disaster preparedness, and facility security of hospitals, nursing homes, and certified nursing facilities. For purposes of this requirement, facilities in which five or more first trimester abortions per month are performed shall be classified as a category of "hospital". (§ 32.1-127(B)(1))

### Purpose

*Please describe 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, please explain any potential issues that may need to be addressed as the regulation is developed.*

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By enacting § 32.1-127(B)(1), the General Assembly required the Board of Health to adopt regulations governing the licensure of facilities in which five or more first trimester abortions per month are performed. Section 32.1-127(A) requires such regulations to be in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established and recognized by medical and health care professionals and by specialists in matters of public health and safety. In order to ensure that such regulations remain essential to protect the health, safety, and welfare of citizens in accordance with § 32.1-127, it is necessary to assess all current regulation content and determine whether it should be amended or retained in its current form.

### Substance

*Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

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This regulation contains requirements for the licensure of facilities that perform five or more first trimester abortions per month, including provisions regarding design and construction of such facilities, staffing, service standards, and matters of administration. The intention of the Board of Health is to review and assess all regulatory language to ensure that it meets its responsibilities under § 32.1-127. Revisions to the regulation content may be proposed based on public comments received.

### Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.*

No alternative was considered because the General Assembly required the Board of Health to adopt regulations governing the licensure of facilities in which five or more first trimester abortions per month are performed and amending the regulation is the least burdensome method to accomplish the purpose of this action.

### 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. Please include one of the following choices: 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: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the 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: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and 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 **Ruthanne Risser, Acute Care Division Director, Virginia Department of Health, Office of Licensure and Certification, 9960 Mayland Drive, Suite 401 Richmond, VA 23233, phone number: 804-367-2156, fax number: 804-527-4502, and email: [regulatorycomment@vdh.virginia.gov](mailto:regulatorycomment@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 be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website

(<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.  
A panel will not be used.

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