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Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC5-391
VAC Chapter title(s)	Regulations for the Licensure of Hospice
Action title	Amend Regulations following Periodic Review
Date this document prepared	February 7, 2025

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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

This regulation governs the licensure of hospices. This regulatory action seeks to amend regulations following periodic review to make updates to conform the regulatory language to the Code of Virginia, the Virginia Register of Regulation's *Form, Style and Procedure Manual for Publication of Virginia Regulations*, and changes in the regulated industry. This regulatory chapter has not been comprehensively revised in over a decade.

The goal of this regulatory action will be to protect the health and safety of the public with a regulation that is clear and easy to understand and implement by both regulants and the Virginia Department of Health (VDH). The Virginia Department of Health intends to achieve this goal through extensive and comprehensive adjustments to the current regulations. 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.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

"APA" means the Virginia Administrative Process Act, § 2.2-4000 *et seq.* of the Code of Virginia.

"Board" means Virginia Board of Health.

"VDH" means Virginia Department of Health.

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."

Section 32.1-162.5 of the Code of Virginia requires the Board to adopt regulations that include, but not be limited to, the 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; and v) procedures for the review of utilization and quality of care. This regulatory action seeks to amend regulations following periodic review to make updates to conform the regulatory language to the Code of Virginia, the Virginia Register of Regulation's *Form, Style and Procedure Manual for Publication of Virginia Regulations*, and changes in the regulated industry.

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. Section 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.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The regulation of hospices is necessary for the protection of public health, safety, and welfare. By enacting § 32.1-162.5(A), the General Assembly required the Board to adopt regulations governing the licensure of hospices. In order to ensure that such regulations remain essential to protect the health, safety, and welfare of citizens in accordance with § 32.1-162.5. This regulatory action seeks to amend the regulation to conform the regulatory language to the Code of Virginia, the Virginia Register of Regulation's *Form, Style and Procedure Manual for Publication of Virginia Regulations*, and changes in the regulated industry. The Board may also address other issues that arise as a result of this Notice, including those that arise during the periodic review.

Substance

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

This regulation contains requirements for the hospices, including provisions regarding staffing, service standards, and matters of administration. The intention of the Board is to review and assess all regulatory language to ensure that it meets its responsibilities under § 32.1-162.1 *et seq.* of the Code of Virginia. Revisions to the regulation content may be proposed based on public comments received.

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.

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

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the

Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

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, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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 Val Hornsby, 9960 Mayland Drive, Suite 401, Richmond, VA, 23233, 804-367-2102, 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.

A public hearing will be held following the publication of the proposed stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (https://townhall.virginia.gov) and on the Commonwealth Calendar website (https://commonwealthcalendar.virginia.gov/). Both oral and written comments may be submitted at that time.