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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Health
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	12 VAC 5-220
<b>VAC Chapter title(s)</b>	Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations
<b>Action title</b>	Amend Regulations to Conform to Chapters 114, 135, and 325 of the 2025 Acts of Assembly
<b>Final agency action date</b>	8/6/2025
<b>Date this document prepared</b>	July 30, 2025

This information is required for executive branch review pursuant to 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. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to 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.*

Chapters 114 and 135 of the 2025 Acts of Assembly allows Critical Access Hospitals (CAHs) to use up to 10 of their beds as swing beds, calculated as an average over the CAH's fiscal year. If the fiscal year annual average swing bed occupancy exceeds 10 beds, the CAH must reduce the average occupancy to 10 beds or less in the following fiscal year. Any CAH that fails to reduce the average swing bed occupancy to 10 or less in the second fiscal year will no longer be allowed to calculate the 10-bed occupancy average on an annual basis and must calculate the 10-bed average on a daily basis until the 10-bed average has been met for two consecutive fiscal years.

Chapter 325 of the 2025 Acts of Assembly requires the Board of Health to promulgate regulations to allow the Commissioner to condition a Certificate of Public Need (COPN) for psychiatric services on the acceptance of Temporary Detention Orders by that facility (TDOs).

**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, internal staff review, 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.”*

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The mandate for this change is found in Chapters 114, 135, and 325 of the 2025 Acts of Assembly. The impetus for the legislation requiring these amendments was in direct response to report RD 883, titled “Recommendations of the State Health Services Plan Task Force, Report to the Secretary and the General Assembly” and posted to the Legislative Information page on December 3, 2024. That report included recommendations from the Task Force regarding expedited review of COPN applications related to inpatient psychiatric services.

**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) that the agency has “adopted final amendments” to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, “On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)].”*

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On August 6, 2025, the State Health Commissioner adopted final amendments to 12VAC5-220, Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations, on behalf of the State Board of Health while the Board was not in session.