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Fast-Track Regulation
Agency Background Document

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC 5-220
VAC Chapter title(s)	Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations
Action title	Amend Regulations to Conform to Chapter 325 of the 2025 Acts of Assembly
Date this document prepared	8/29/2025

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 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.

Chapter 325 of the 2025 Acts of Assembly requires the Board of Health to promulgate regulations that establish an expedited review process for the following Certificate of Public Need (COPN) requests:

- A new branch of an existing psychiatric care facility within the same planning district.
- The addition of psychiatric beds not to exceed the greater of 10 beds or 10 percent of all beds at the facility.
- Relocation of psychiatric beds to an existing facility.
- Capital expenditures of $15 million or more by facilities other than general hospitals.

The act requires the expedited review process to include the following:

- Notice and opportunity for public comment;

- Review completed within 90 days;
- Four annual batch cycles for filing;
- Ability for the public to request a public hearing; and
- Criteria for removing an application from expedited review and subjecting it to the full review process.

This act is the result of legislation responding 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.

Acronyms and Definitions

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

"Board" means the State Board of Health.

"COPN" means a Certificate of Public Need.

"Commissioner" means the State Health Commissioner.

"OLC" means the Office of Licensure and Certification.

"VDH" or "department" means the Virginia Department of Health.

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)]."

On October 2, 2025, the State Board of Health adopted final amendments to the Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (12VAC5-220).

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."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The mandate and impetus for this regulatory action is Chapter 325 of the 2025 Acts of Assembly. This legislation is 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.

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.

§ 32.1-12 of the Code of Virginia grants the Board of Health the legal authority "to make, adopt, promulgate, and enforce such regulations…as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by it, the Commissioner, or the Department."

§ 32.1-102.2 of the Code of Virginia states that the Board shall promulgate regulations that are consistent with Article 1.1 of Chapter 4 of Title 32.1 of the Code of Virginia.

This action is authorized by Chapter 325 of the 2025 Acts of Assembly.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The rationale or justification for this change is that the regulation should be in conformity to the statutory provisions, specifically Chapter 325 of the 2025 Acts of Assembly. The specific reasons the regulatory change is essential to protect the health, safety, or welfare of citizens are that the COPN program ensures that the healthcare marketplace is not flooded with unneeded medical facilities or equipment, and that charity care is provided to indigent patients. Updating the regulations will accomplish the statutory mandate of creating an expedited review process. The goal of the regulatory change is compliance with the statutory mandates of Chapter 325 of the 2025 Acts of Assembly.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The following new substantive provisions and substantive changes to existing sections are proposed:

Section 280. Applicability

Add the following projects to be subject to the expedited review process:
1. Establishment of a new medical care facility by an existing medical care facility that has an existing certificate to provide psychiatric services provided such a new medical care facility is located in the same planning district as the existing medical care facility;
2. The addition of psychiatric beds at an existing medical care facility that has an existing certificate to provide psychiatric services, not to exceed 10 beds or 10 percent of all beds at the medical care facility,

whichever is greater, and provided that the applicant has not been awarded a certificate for the addition of psychiatric beds pursuant to this provision in the previous two-year period;
3. The relocation of psychiatric beds to an existing medical care facility that has had an existing certificate to introduce a psychiatric service for at least the previous 12 months and that is within the same planning district; and
4. Any capital expenditure of $15 million or more, not defined as reviewable in subdivisions 1 through 7 of § 32.1-102.1:3, by or on behalf of a medical care facility described in subsection A other than a general hospital.

Section 285. Ninety-Day Review Cycle

Add a new section titled 'Ninety-Day Review Cycle." Establish a batching schedule for the expedited review process.

Section 290. Application forms

Amend to clarify that the expedited review period shall begin on the first day of the applicable review cycle within which an application is determined to be complete and that if the application is not determined to be complete for the applicable batch cycle within 60 calendar days from the date of submission, the application may be refiled in the next applicable batch cycle.

Section 310. Action on application

Amend to clarify that any member of the public may request a public hearing on an expedited review project.

Section 310. Action on application

Amended to clarify that the expedited review process is 90 days.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage to VDH and the Commonwealth is that the regulations will be in compliance with Chapter 325 of the 2025 Acts of Assembly. There are no primary disadvantages to the public, VDH, or the Commonwealth. A pertinent matter of interest to the regulated community is that the batch cycle for COPN expedited review applications has been increased from 45 days from the start of the applicable batch review cycle to 90 days. This regulatory change allows the agency time to adequately review the request and make recommendations, as well as providing sufficient time for the public to make comment.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

The COPN program is only regulated at the state level, thus there are no applicable federal regulations.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

The three licensed nursing homes operated by the Department of Veterans Services, the licensed general hospital operated by Virginia Commonwealth University (VCU) Health Systems Authority, the general hospital operated by the University of Virginia (UVA) Medical Center, and any state agency wishing to begin a project that would require either a COPN or registration with the COPN program are particularly affected by this proposed regulatory change.

Localities Particularly Affected

The County of Bedford, Lee County Hospital Authority, and Chesapeake Hospital Authority may be particularly affected by this proposed regulatory change since Bedford operates a nursing home and the two hospital authorities operate a licensed general hospital each and would be particularly affected by this proposed regulatory change. Additionally, any locality wishing to begin a project that would require either a COPN or registration with the COPN program would be particularly affected by this proposed regulatory change.

Other Entities Particularly Affected

Any entity wishing to begin a project that would require either a COPN or registration with the COPN program are particularly affected by this proposed regulatory change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and	VDH is unaware at this time of any monetized costs or savings for VDH that are a result of this regulatory change.

c) whether any costs or revenue loss can be absorbed within existing resources	
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	VDH is unaware at this time of any monetized costs or savings that are a result of this regulatory change for other state agencies.
For all agencies: Benefits the regulatory change is designed to produce.	VDH is unaware at this time of any monetized costs or savings that are a result of this regulatory change on all agencies.

Impact on Localities

See Table 2 of the ORM Economic Impact form.

Impact on Other Entities

See Tables 1a, 3, and 4 of the ORM Economic Impact form.

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.

See Table 1C of the ORM Economic Impact Form.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

This regulatory action is required by Chapter 325 of the 2025 Acts of Assembly. As such, no alternative regulatory methods were identified.

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.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

VDH is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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, Henrico, VA 23233, 804-875-1089, (804) 527-4502, 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.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
12VAC5-220-280	N/A	Provides current applicability for expedited review.	**CHANGE:** This section is being amended to add COPN projects that are subject to expedited review as provided by Chapter 325 of the 2025 Acts of Assembly **INTENT:** The intent is to include the project types that are now subject to the expedited review process. **RATIONALE:** The rationale for this change is the mandate from Chapter 325 of the 2025 Acts of Assembly.

<table>
<tr><td></td><td></td><td></td><td>LIKELY IMPACT: The likely impact of this change is that there may be more applications for expedited review projects.</td></tr>
<tr><td>N/A</td><td>12VAC5-220-285</td><td>N/A</td><td>CHANGE: The Board is proposing the following expedited review batch group schedule.

<table>
<tr><th>Batch Group</th><th>Due Date for Complete Applications</th><th colspan="2">Review Cycle Begins Ends</th></tr>
<tr><td>A</td><td>February 5</td><td>Feb. 10</td><td>May 10</td></tr>
<tr><td>B</td><td>May 7</td><td>May 12</td><td>Aug. 9</td></tr>
<tr><td>C</td><td>August 6</td><td>Aug. 11</td><td>Nov. 8</td></tr>
<tr><td>D</td><td>November 5</td><td>Nov. 10</td><td>Feb. 7</td></tr>
</table>

INTENT: The intent is to establish batch review cycles for expedited review applications

RATIONALE: The rationale for this change is the mandate from Chapter 325 of the 2025 Acts of Assembly.

LIKELY IMPACT: The likely impact of this change is clearer understanding by applicants of when they need to submit completed applications to VDH for expedited review projects.</td></tr>
<tr><td>12VAC5-220-290</td><td>N/A</td><td>Provides processes for applications</td><td>CHANGE: The Board is proposing minor style and form changes, increasing the time that the department and regional health planning agency must provide recommendation to the Commissioner from 40 to 60 days, and clarifies that the expedited batch cycle review procedures related to the expedited review period.

INTENT: The intent is to clarify that the expedited review period shall begin on the first day of the applicable review cycle within which an application is determined to be complete and that if the application is not determined to be complete for the applicable batch cycle within 60 calendar days from the date of submission, the application may be refiled in the next applicable batch cycle.</td></tr>
</table>

			RATIONALE: The rationale for this change is the mandate from Chapter 325 of the 2025 Acts of Assembly. **LIKELY IMPACT:** The likely impact of this change is more clarification on when to apply for an expedited review project and the applicable process for doing so.
12VAC5-220-300	N/A	Provides rights of persons affected by the review of a project under the expedited review process	**CHANGE:** Authorizes any member of the public to request a public hearing for an expedited application. **INTENT:** The intent is to clarify that a member of the public may request a public hearing for an expedited application. **RATIONALE:** The rationale for this change is the mandate from Chapter 325 of the 2025 Acts of Assembly. **LIKELY IMPACT:** The likely impact of this change is that some members of the public may request a public hearing.
12VAC5-220-310	N/A	Provides timeframes for decisions by the Commissioner for expedited reviews	**CHANGE:** The Board is proposing to change the expedited review timeline from 45 to 90 days **INTENT:** The intent is to clarify the timeline for expedited review applications is 90 days. **RATIONALE:** The rationale for this change is the mandate from Chapter 325 of the 2025 Acts of Assembly. **LIKELY IMPACT:** The likely impact of this change is clarification on the expedited review application timeline.