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Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Board of Health
Virginia Administrative Code (VAC) citation(s)	12 VAC 5-220
Regulation title(s)	Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations
Action title	Amend Regulations to Conform to Chapters 136, 343, and 839 of the 2019 Acts of Assembly
Final agency action date	May 21, 2019
Date this document prepared	April 19, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please 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 136 and 343 of the 2019 Acts of Assembly require the Board of Health to promulgate regulations that “establish an exemption from the requirement for a certificate [of public need], for a period of no more than 30 days, for projects involving a temporary increase in the total number of beds in an existing hospital or nursing home when the Commissioner has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of hospital or nursing home beds.” Currently, increases in hospital or nursing home bed capacity require review as a project for a certificate of public need.

Chapter 839 (2019 Acts of Assembly) requires the Board to promulgate regulations that require every medical care facility subject to the requirements of Certificate of Public Need law whose certificate does not include conditions for charity care but opt to provide charity care to annually report the amount of charity care provided.

This exempt action is being utilized to conform the regulations (12VAC5-220) to the Code of Virginia.

Mandate and Impetus

Please 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, board decision, etc.). "Mandate" is defined as "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."

The mandate for this change is found in Chapters 136, 343, and 839 of the 2019 Acts of Assembly.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The State Health Commissioner approved this Final Action regarding the 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 on May 21, 2019.

**Periodic Review
Small Business Impact Review Report of Findings**

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the proposed stage, please indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, include 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.

This action is not being used to report the result of a periodic/small business impact review. Pursuant to § 2.2-4006(A)(4)(a) of the Code of Virginia, this action is exempt from Article 2 of the Administrative Process Act (§ 2.2-4000 et seq.), including § 2.2-4007.1 of the Code of Virginia.