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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)	12VAC5-408-10 *et seq.*
VAC Chapter title(s)	Certificate of Quality Assurance for Managed Care Health Insurance Plan Licensees
Action title	Repeal and Replace Regulations Following Periodic Review
Date this document prepared	September 15, 2023

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).

The intent of this regulatory action is to repeal the chapter governing certificates of quality assurance for licensed managed care health insurance plan (MCHIP) carriers and replace it with a new chapter due to the current chapter being outdated and in need of significant style and structure updates. The new chapter will 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. Further, the new chapter will be easier to administer by the department, will be more easily understood by regulated entities, and will address standards for network adequacy.

Public comment is sought on any issue relating to this regulation. This action may address comments received during the public comment period for this NOIRA and subsequent stages of this action.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

"Board" means the State Board of Health.

"MCHIP" means managed care health insurance plan.

"MCHIP licensee" means a health carrier subject to licensure by the Bureau of Insurance under Title 38.2 who is responsible for a managed care health insurance plan in accordance with Chapter 58 (§ 38.2-5801 et seq.) of Title 38.2.

"VDH" means the 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."

Executive Order 19 (2022) requires state regulations to undergo a periodic review every four years. This regulatory action is intended to implement the Board's decision in the chapter's most recent periodic review. Section 32.1-137.3 of the Code of Virginia requires the Board to adopt regulations governing the quality of care provided to covered persons by an MCHIP licensee and guidelines for administrative sanctions.

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 32.1-137.3 of the Code of Virginia requires the Board to promulgate regulations, consistent with Article 1.1 (§ 32.1-137.1 *et seq.*) of Chapter 5 of Title 32.1 of the Code of Virginia, governing the quality of care provided to covered persons by an MCHIP licensee and guidelines for administrative sanctions.

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 MCHIPs is necessary for the protection of public health, safety, and welfare because health insurance coverage plays a large role in the quality of care delivered to consumers of health care in the Commonwealth and effective regulation can expand access to and availability of care, particularly primary care. Section 32.1-137.3 of the Code of Virginia requires the Board to promulgate regulations, consistent with Article 1.1 (§ 32.1-137.1 *et seq.*) of Chapter 5 of Title 32.1 of the Code of Virginia, governing the quality of care provided to covered persons by an MCHIP licensee and administrative sanctions. Issues that may need to be addressed as the regulation is developed is ensuring that the regulations, including terminology used, are consistent with the actual practices of the regulated industry and standards for network adequacy. The Board may also address other issues that arise as a result of this regulatory action.

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.

The Board is considering the development of more specific standards for continuity of care and network accessibility and adequacy. The intention of the Board is to review and assess all regulatory language to ensure that it meets its responsibilities under Article 1.1 (§ 32.1-137.1 *et seq.*) of Chapter 5 of Title 32.1 of the Code of Virginia. The Board may consider other substantive changes in the development of the regulation in response to public comment.

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 quality of care provided to covered persons by an MCHIP licensee and administrative sanctions. Because extensive changes in style, structure, and content are needed, repealing and replacing the regulation is the least burdensome method to accomplish the essential purpose of this regulatory change.

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 of 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 Board 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 Rebekah Allen, Senior Policy Analyst, Virginia Department of Health, Office of Licensure and Certification, 9960 Mayland Drive, Suite 401, Henrico, VA 23233; email: regulatorycomments@vdh.virginia.gov; fax: (804) 527-4502. 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.