

Virginia Regulatory Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Virginia Department of Health
VAC Chapter Number:	12 VAC 5-220 through 320, 340, and 360
Regulation Title:	Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations State Medical Facilities Plan
Action Title:	Promulgating a permanent regulation to replace an emergency regulation
Date:	January 6, 2000

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of a new or amended regulation.

Amendments to the Code of Virginia (Code) reduce the scope of the Certificate of Public Need Program (COPN) and reduce the time taken to issue decisions on regulated projects. The amendments to the Code also support the State Health Commissioner's consideration of the special needs of rural localities when making decisions on Certificate of Public Need (COPN) projects by emphasizing the need to consider barriers to health care access for populations in rural areas when weighing the relative cost and benefits of proposed projects. Because the amendments to the law affect the COPN program and the State Medical Facilities Plan (SMFP), amendment to the COPN regulation and the SMFP are necessary.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the

legal authority identified above should be explained. Full citations of legal authority and web site addresses, if available, for locating the text of the cited authority must be provided.

The enactment clauses of Senate Bill 1282 (SB1282), House Bill 2369 (HB2369), and House Bill 2543 (HB2543) of the 1999 session of the General Assembly mandated the implementation of the “provisions of [each] act within 280 days of the date of enactment,” which occurred on March 29, 1999. The Department responded to this directive by promulgating an emergency regulation that became effective on January 3, 2000. The Administrative Process Act, specifically section 9-6.14:4.1 C 5 of the Code, states that emergency regulations may not exceed 12 months in duration. If an agency determines to continue regulating the subject matter governed by the emergency regulation, a regulation to replace the emergency regulation shall be promulgated. Because section 32.1-102.2 of the Code requires permanent changes to the COPN program and the SMFP, the Department must now take action to convert the emergency regulation to a permanent regulation.

In addition, the Board of Health has the authority to promulgate regulations granted under Section 32.1-12 of Title 32.1 of the Code.

Sections 9-6.14:4.1 C 5, 32.1-12, 32.1-102.1, 32.1-102.1:1, and 32.1-102.3 of the Code are available through the Virginia Department of Legislative Services LIS web site (<http://leg1.state.va.us/lis.htm>). Section 32.1 –102.2 and 32.1-102.6, effective on October 1, 1999 are not available electronically. However, they are available through Volume 5A of the Code.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

Specifically, the changes to the COPN regulation:

1. Amend the definition of “project” eliminating the requirement for COPN authorization of equipment replacement and substitute an equipment registration requirement;
2. Establish a new fee schedule;
3. Add a definition of “rural” for consideration of rural areas in determining the need for proposed projects; and
4. Establish deadlines for final decisions on COPN projects which, if not met, would result in application fee refunds and deemed approval of projects

The amendments to the SMFP establish specific criteria for determining need in rural areas, giving due consideration to distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care and provide for weighted calculations of need based on the barriers to health

care access in rural areas. The amendments also permit the issuance of a COPN when it is determined that the most recent applicable provisions of the SMFP are not relevant to the rural locality's needs.

The authority to promulgate the proposed regulations is mandated in the Code, a result of the passage of SB 1282, HB2369, and HB 2543 of the 1999 session the General Assembly. Therefore, this action is mandatory.

The Department does not expect there to be any additional issues related to the changes required by the law that will need to be addressed as the permanent regulations are promulgated.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered and will be considered to meet the essential purpose of the action.

As stated previously, the authority to promulgate the amendments to the regulations is mandatory in the Code, a result of the passage of SB 1282, HB2369, and HB 2543 of the 1999 session the General Assembly. Promulgation of the amendments to the regulations are the only means available for the Board of Health to comply with the clear directive of the law. The amended regulation honors the Department's statutory charge and are the least burdensome alternative available for adequately addressing the mandate of the law.