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Proposed Regulation Agency Background Document

Agency name	State Board of Health
Virginia Administrative Code (VAC) Chapter citation(s)	12 VAC 5-371
VAC Chapter title(s)	Regulations for the Licensure of Nursing Facilities
Action title	Amend Regulation after Enactment of Chapters 166 and 180 of the 2025 Acts of Assembly
Date this document prepared	5/15/2026

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.

Chapters 166 and 180 of the 2025 Acts of Assembly authorize the State Health Commissioner to impose sanctions on nursing homes licensed in Virginia pursuant to the laws regulating medical care facilities and services. The Board of Health is required by Chapters 166 and 180 of the 2025 Acts of Assembly to promulgate regulations implementing the provisions of the act.

Chapters 166 and 180 of the 2025 Acts of Assembly specify additional, intermediate sanctions that the Commissioner may impose, the nursing home's continued responsibility for persons under its care, the use of funds remunerated in accordance with such sanctions, the criteria necessary for the commissioner to impose such sanctions, and additional provisions for the revocation of nursing facility licenses. These proposed regulatory amendments specify that certain sanctions shall not be imposed on a nursing facility for the same conduct that is sanctioned by the Centers for Medicare and Medicaid Services (CMS) and

that certain sanctions may not be imposed for violations deemed more severe than CMS Level 2 violations.

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.

"APA" means the Virginia Administrative Process Act, § 2.2-4000 et seq. of the Code of Virginia.

"Board" means the Virginia State Board of Health.

"Chapters 166 and 180" means Chapters 166 and 180 of the 2025 Acts of Assembly.

"CMS" means the Centers for Medicare and Medicaid Services.

"Commissioner" means the State Health Commissioner.

"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."

The State Board of Health is mandated by the provisions of Chapters 166 and 180 of the 2025 Acts of Assembly. The impetus for this change is Chapters 166 and 180 of the 2025 Acts of Assembly.

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.

This regulation is promulgated under the authority of §§ 32.1-12 of the Code of Virginia and Chapters 166 and 180 of the 2025 Acts of Assembly.

§ 32.1-12 of the Code of Virginia grants the Board 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."

Chapters 166 and 180 of the 2025 Acts of Assembly (§ 32.1-27.3) direct the Board of Health to promulgate regulations to implement the provisions of this act.

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 Board has determined that the regulations are essential to protect the health, safety, and welfare of citizens because the General Assembly enacted Chapters 166 and 180 requiring the Board to adopt regulations for establishing procedures for the implementation of sanctions on licensed nursing homes. The Board may address other potential issues as the regulation is developed and as can be raised during the public comment period.

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.

This regulatory action contains additional provisions for the Commissioner to impose sanctions on nursing facilities in the Commonwealth. The intention of the Board is to establish procedures for the implementation of sanctions by the Commissioner on any nursing home that is licensed pursuant to the laws regulating nursing facilities and services. This action and the provisions of the proposed regulations may be revised based on public comments received.

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.

- 1) The primary advantages of this proposed regulation to the public are the improvement in overall care quality for vulnerable residents in long term care facilities in the Commonwealth. There are no primary disadvantages to the public.
- 2) The primary advantages of this proposed regulation to agency and Commonwealth is additional authority by the agency and Commonwealth in holding long term care facilities that violate the Code of Virginia and the Virginia Administrative Code accountable. There are no primary disadvantages to the agency and the Commonwealth.
- 3) Primary advantages to the regulated community, government officials, and the public is the availability of intermediate sanctions to compel compliance that may be less severe than the Commissioner's existing sanction authority. There are no primary disadvantages to other pertinent matters of interest to the regulated community, government officials, and the public.

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.

Nothing in this proposed regulation exceeds federal requirements.

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 Department of Medical Assistance Services (DMAS) is to be reported to following the Commissioner's revocation or suspension of a license of any facility with an applicable Medicaid provider agreement.

Localities Particularly Affected

None

Other Entities Particularly Affected

Nursing facilities and industry organizations that represent the aforementioned facilities.

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

<i>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 c) whether any costs or revenue loss can be absorbed within existing resources.</i>	None
<i>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.</i>	None
<i>For all agencies: Benefits the regulatory change is designed to produce.</i>	None

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees, or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	None
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	None
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	None
Benefits the regulatory change is designed to produce.	None

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 establishing procedures for the implementation of sanctions on nursing homes pursuant to Chapters 166 and 180 of the 2025 Acts of Assembly.

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.

No alternative regulatory methods or options have been identified.

Periodic Review and 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 NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, 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, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This Proposed Regulation is not being used to announce a periodic review or a small business impact review.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

No comments were received during the Notice of Intended Regulatory Action public comment period ending 12/31/2025.

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.

The State Board of Health 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, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of 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 Geoff Garner, 9960 Mayland Drive, Suite 401 Henrico, VA, 23233, 804-367-2157, geoff.garner@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.

A public hearing will be held following the publication of this 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.

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 the existing VAC Chapter(s) and the proposed regulation. If the 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
12VAC5-371-90		Administrative sanctions	Change: 1. Changing the catchline of the section from "Administrative Sanctions" to "Sanctions". 2. Stylistic changes throughout including changing "department" to "commissioner" to maintain consistency in the regulations. 3. Addition of DMAS notification and licensure reinstatement requirements provided by Chapters 166 and 180 following (B) (3). 4. Removal of reasons

		that may be considered for the imposition of administrative sanctions. 5. Addition of newly authorized sanctions, including a civil monetary penalty of \$500 per violation per day and license probation. 6. Addition of provisions restricting the Commissioner's ability to impose civil monetary penalties and probation. 7. Addition of provision clarifying that a nursing facility sanctioned under this section shall retain responsibility for the health, safety, and welfare of persons in their care. Intent: 1. Broaden the section catchline. 2. Comply with the requirements of the <i>Virginia Register of Regulations Form, Style, and Procedure Manual for the Publication of Virginia Regulations</i>. 3. Include code requirement that the Commissioner notify DMAS in the event of a relevant nursing home license suspension or revocation. 4. Move existing criteria for existing sanctions to a newly created section within Chapter 371 for consistency and clarity of the regulations. 5. Add the new sanctions, including the schedule of civil monetary penalties (\$500 per violation per day) and license probation to comply with requirements of Chapters 166 and 180. 6. Adding restrictions to comply with the requirements of Chapters 166 and 180. 7. Adding clarifying provision about nursing facility responsibility to comply with Chapters 166 and 180. Rationale: 1. The addition of new sanctions broadens the scope of the Section, which necessitates a broader title. 2. Compliance with the <i>Virginia Register of Regulations Form, Style, and Procedure Manual for the Publication of Virginia Regulations</i> is necessary for the clarity and uniformity of the regulations and required by the APA. 3. Chapters 166 and 180 include provisions that the Board promulgate regulations that include DMAS notification of certain license suspensions or revocations, which is required by these regulations within 48 of the revocation or suspension of such license. 4. This regulation creates a new Section (12VAC5-371-91) to provide for the criteria in which sanctions may be imposed. These
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			existing criteria for existing sanctions were moved to the new section for clarity and readability. 5. Specifically including the sanctions available to the commissioner authorized by Chapters 166 and 180, and adding conditions in which the new sanctions may be considered, as well as including the schedule of civil monetary penalties as \$500 per violation per day, not to exceed \$10,000 satisfies the requirements of Chapters 166 and 180. 6. Restating specific provisions included in Chapters 166 and 180 helps ensure compliance with the Code of Virginia. 7. Restating specific provisions included in Chapters 166 and 180 helps to ensure compliance with the Code of Virginia. Likely Impact: The agency believes that the changes outlined above will likely result in increased compliance from nursing facilities in the Commonwealth subject to these regulations, increased clarity and readability of the regulations, and regulatory compliance with the requirements of Chapters 166 and 180.
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If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
12VAC5-371-91	Criteria for the imposition of sanctions	None	Change: This new section provides the criteria necessary for the Commissioner to impose sanctions outlined in 12VAC5-371-90. Intent: The intent is to provide clear instruction on which nursing facility violations may result in the commissioner imposing specific types of sanctions. Rationale: By clearly indicating types of noncompliance and the sanctions that may be imposed as a result of such noncompliance, the agency and regulants are instructed as to which disciplinary actions

			may be taken in compliance with the regulations and the Code of Virginia. Likely Impact: The agency believes that the addition of this section will likely result in increased compliance from nursing facilities in the Commonwealth subject to these regulations, increased clarity and readability of the regulations, and regulatory compliance with the requirements of Chapters 166 and 180.
12VAC5-371-92	Administrative procedures for sanctions.	None	Change: Establishing procedures for the Commissioner to follow when imposing civil penalties on nursing homes as required by Chapters 166 and 180, which includes requirements to be satisfied before new sanctions may be imposed including provisions for a plan of correction and a letter of intent from the Commissioner to a nursing facility. This section also includes additional remedies that the Commissioner and a nursing facility may pursue, including informal fact finding conferences. Intent: Providing the Commissioner and regulants with procedural direction when imposing sanctions on nursing homes pursuant proposed regulation. Rationale: By clearly indicating administrative procedures for sanctions, the agency and regulants are instructed of the administrative procedures that must be taken in compliance with the regulations and the Code of Virginia or that are available. Likely Impact: The agency believes that the addition of this section will likely result in

			increased compliance from nursing facilities in the Commonwealth subject to these regulations, increased clarity and readability of the regulations, and regulatory compliance with the requirements of Chapters 166 and 180.
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If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage