Virginia Regulatory Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	Department of Health (State Board of Health)
VAC Chapter Number:	12 VAC 5-407
Regulation Title:	Regulations for the Submission of Health Maintenance Organization Quality of Care Performance Information
Action Title:	Adoption of Regulations requiring the Submission of Quality of Care performance Information by Health Maintenance Organizations
Date:	January 31, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form,Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed regulations will address the annual submission by health maintenance organizations of the National Committee for Quality Assurance's Health Plan Employer Data and Information Set as required by Chapter 897 of Section 31.2 of the Code of Virginia.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Sections 32.1-276.3, 32.1-276.4, 32.1-276.5 and 32.1-276.8 of the Code of Virginia (as amended by Senate Bill 533, 2000 Act of Assembly, c. 897) grants the mandatory authority for the regulations.

Section 32.1-276.4 requires the State Health Commissioner to contract with a non-profit organization to "collect, compile, and publish Health Employer Data and Information Set (HEDIS) information or reports or other quality of care or performance information sets approved by the Board pursuant to 32.1-276.5, and submitted by health maintenance organizations or other health care plans."

Section 32.1-276.5 of the Code requires that HMOs "shall annually submit to the Commissioner, to make available to consumers who make health benefit enrollment decisions, audited data consistent with the latest version of the Health Employer Data and Information Set (HEDIS), as required by the National Committee for Quality Assurance, or any other quality of care or performance information set as approved by the Board. The Commissioner, at his discretion, may grant a waiver of the HEDIS or other approved quality of care or performance information set upon a determination by the Commissioner that the health maintenance organization has met Board-approved exemption criteria. The Board shall promulgate regulations to implement the provisions of this section."

This section also requires that the Commissioner make available to consumers the HMO data. The State Board of Health is required to evaluate biennially the impact and effectiveness of the data collected.

Section 32.1-276.8 of the Code grants the Board of Health the authority to prescribe a tiered-fee structure based on the number of enrollees for each health maintenance organization to cover the costs of collecting and making available the data.

The Office of the Attorney General has certified that the Board has authority to promulgate the proposed regulations.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

For Virginia consumers who make health insurance decisions, it is often difficult to obtain information about the quality of health maintenance organizations (HMO). The proposed regulations will require the annual submission of quality of care data to the State Health Commissioner by HMOs. The quality of care data will be published via the internet by VHI, Inc.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The proposed regulatory action will detail the quality performance measures required of HMOs, the process for submission of data, the tiered-fee structure, and the criteria for exemption by the Commissioner. The decision on the appropriate performance measures will represent a consensus of insurance brokers, HMOs, small and large employers, consumer advocates, and agency health policy staff with expertise in managed care and HEDIS.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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, please include a sentence to that effect.

The primary advantage to the public is that these regulations permit the implementation of the legislation requiring the publication of quality performance information about HMOs licensed in Virginia. This information is useful to consumers or businesses wishing to compare the quality performance of HMOs. The only potential disadvantage to consumers or businesses would be if the compliance with these regulations were to prove sufficiently burdensome to the HMOs to cause an increase in premiums. The advantages to the Department of Health in publishing this information is that it reinforces VDH's role in monitoring the quality of health plans. The only possible disadvantage is that the fees paid by the HMOs for this initiative will likely not be

applied to VDH's cost, primarily staff time, in the administration of this initiative. There are no other anticipated disadvantages to the public or the Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

The fiscal impacts associated with these regulations include:

a) Approximately $7,000 in initial implementation costs for the agency and approximately $2,000 per year for ongoing operational expenses; i) the fund source is Special Revenues and the fund detail is 0200; ii) the budget activity is Public Health Data Collection and Analysis and the Program/Subprogram is Regulation of Health Care Facilities (56100300); and iii) the initial implementation cost is the only non-recurring expenditure.
b) There is no anticipated costs to the localities.
c) The entities affected by these regulations are commercial health maintenance organizations (HMOs) licensed in Virginia.
d) The current number of commercial HMOs with active Virginia licenses is 22.
e) The legislation stipulates that the fees that HMOs are required to pay cannot exceed $3000. The costs that must be covered by the fees will include $250 per HMO for data submission and data cleaning; the charge of $3500 from the National Committee for Quality Assurance for developing the data files, and the cost to Virginia Health Information, Inc. to publish the data. The HMO fees will be prorated according to the number of enrollees in the HMO.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

These regulations implement a heretofore nonexistent program, so they do not involve changes in regulatory law. They do, however, carry out legislation designed to require the reporting of the health-related information called for in the legislation. Currently, HMOs are not required to provide quality information and data for publication; after the regulations are implemented, they will be.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The proposed regulations are clearly and directly mandated by law. No other alternatives are feasible or appropriate.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No public comments were received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The agency has strived to draft these regulations to be as clear and comprehensible as possible.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The agency will initiate a review and re-evaluation of the regulations within three years of their effective date.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulations have no direct bearing on the rights of parents in regard to their children. The regulations may, however, encourage the assumption of personal responsibility and responsibility for family insofar as they facilitate the selection of a family health insurance plan. The proposed regulations will have no impact on marital commitment. The impact of the proposed regulations on disposable family income may be somewhat negative if generating the information required of the HMOs proves burdensome to the degree that insurance premiums are increased. The Board has attempted to prevent the imposition of any excessive burden in the development of these regulations.