



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Virginia Department of Health
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 5-391
<b>Regulation title</b>	Regulations for the Licensure of Hospice
<b>Action title</b>	This action is to implement House Bill 1965 (2007) regarding hospice facilities.
<b>Date this document prepared</b>	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

In response to HB1965(2007) amending the laws regarding hospice programs in Virginia, this action will establish standards for those hospice providers seeking to establish dedicated board and care facilities for diagnosed terminally ill consumers receiving hospice care, but who can no longer remain in their own homes. The standards to be developed will address patient care and safety, physical plant, maintenance and housekeeping, and emergency preparedness.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The regulation is promulgated under the authority of § 32.1-162.5 of the Code of Virginia, which grants the Board of Health the legal authority “to prescribe such regulation

governing the activities and services provided by hospices as may be necessary to protect the public health, safety and welfare.” Therefore, this authority is mandated. The passage of HB1965(CHAP0397, 2007) requires that sections of 12 VAC 5-391 be subsequently amended.

### Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

In 2003(HB1822), the hospice community was permitted to establish dedicated hospice facilities licensed as assisted living facilities. Such dual licensure has proven problematic for hospice providers with facilities currently licensed under that legislation. With the strengthening of the assisted living facility regulation in 2006, the disparity between assisted living and hospice philosophies became more apparent.

Enactment of HB1965 (CHAP0391, 2007) places oversight for hospice facilities with the Virginia Department of Health, the designated state oversight authority for hospice programs. The legislation establishes the continuity in hospice services provided in a patient’s home and a dedicated facility should the patient be unable to remain in their own home. Because of the change in statutory law, it is necessary to amend Part IV (12 VAC 5-391-440 et seq.) to expand the scope and breadth of the current standards addressing patient care and safety in hospice facilities, which currently do not offer adequate protections for medically fragile patients receiving care in the dedicated facilities.

### Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

The department intends to develop facility regulatory standards that replicate the patient safety and physical plant standards under which hospice facilities operated prior to the enactment of HB1965 (2007). Such facilities were dually licensed as an assisted living facility, a nursing facility or a hospital and subject to the physical plant, safety, and maintenance and housekeeping standards as contained in the proposed amendments. To achieve that goal, the department will expand the existing hospice facility standards established in 2005 as part of the comprehensive revision of Regulations for the Licensure of Hospices. At that time, the department promulgated only those facility standards deemed essential to insure basic patient care because of the requirements for concurrent licensure. The department will rely on national standards of care, the hospice facility regulations of other states, as well as Virginia’s other facility licensure standards when developing the proposed amendments.

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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The regulation is clearly and directly mandated by law. The regulation honors the Department's statutory charge and is the least burdensome alternative available for adequately addressing the mandate of the law.

## Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

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The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to:

Carrie Eddy  
Senior Policy Analyst  
Office of Licensure and Certification  
Virginia Department of Health  
9960 Mayland Drive, Ste. 401  
Richmond, Virginia 23233  
Tel: 804-367-2157  
Fax: 804-527-4502  
Email: [carrie.eddy@vdh.virginia.gov](mailto:carrie.eddy@vdh.virginia.gov)

Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will not be held.

## Participatory approach

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory*

*approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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The department intends to convene a work group of interested parties, stakeholders and patient/family advocates to discuss issues related to hospice facilities.

### Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.*

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There is no direct impact on the family. However, these standards address patient care and safety issues for diagnosed terminally ill consumers choosing the option of hospice facility living.