



Fast Track Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 85-20
Regulation title	Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic
Action title	Clarification of profile requirement
Document preparation date	11/22/04

This information is required for executive review (www.townhall.state.va.us/dbppages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dbppages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed action would incorporate the requirement for the practitioner to report any final disciplinary action taken by institutions or entities, which results in suspension or revocation of privileges or termination of employment. The requirement for reporting is currently stated in § 54.1-2910.1 (10) of the Code of Virginia, but its addition to regulation will ensure that practitioners are obligated to report within 30 days.

Statement of agency final action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On November 19, 2004, the Board of Medicine took action to amend 18 VAC 85-20-10 et seq., Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic through the fast-track regulatory process to amend section 280, establishing requirements for submission of information on the practitioner profile.

Legal basis

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

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. ...*

The specific statutory authority for requiring doctors to report certain information is:

§ 54.1-2910.1. Certain data required.

A. The Board of Medicine shall require all doctors of medicine, osteopathy and podiatry to report and shall make available the following information:

- 1. The names of the schools of medicine, osteopathy, or podiatry and the years of graduation;*
- 2. Any graduate medical, osteopathic, or podiatric education at any institution approved by the Accreditation Council for Graduation Medical Education, the American Osteopathic Association or the Council on Podiatric Medical Education;*

3. Any specialty board certification as approved by the American Board of Medical Specialties, the Bureau of Osteopathic Specialists of the American Osteopathic Association, the American Board of Multiple Specialties in Podiatry, or the Council on Podiatric Medical Education of the American Podiatric Medical Association;

4. The number of years in active, clinical practice as specified by regulations of the Board;

5. Any hospital affiliations;

6. Any appointments, within the most recent 10-year period, of the doctor to the faculty of a school of medicine, osteopathy or podiatry and any publications in peer-reviewed literature within the most recent five-year period and as specified by regulations of the Board;

7. The location and telephone number of any primary and secondary practice settings and the approximate percentage of the doctor's time spent practicing in each setting. For the sole purpose of expedited dissemination of information about a public health emergency, the doctor shall also provide to the Board any e-mail address or facsimile number; however, such e-mail address or facsimile number shall not be published on the profile database and shall not be released or made available for any other purpose;

8. The access to any translating service provided to the primary and secondary practice settings of the doctor;

9. The status of the doctor's participation in the Virginia Medicaid Program;

10. Any final disciplinary or other action required to be reported to the Board by health care institutions, other practitioners, insurance companies, health maintenance organizations, and professional organizations pursuant to §§ [54.1-2400.6](#), [54.1-2908](#), and [54.1-2909](#) that results in a suspension or revocation of privileges or the termination of employment or a final order of the Board relating to disciplinary action;

11. Conviction of any felony; and

12. Other information related to the competency of doctors of medicine, osteopathy, and podiatry, as specified in the regulations of the Board.

B. In addition, the Board shall provide for voluntary reporting of insurance plans accepted and managed care plans in which the doctor participates.

C. The Board shall promulgate regulations to implement the provisions of this section, including, but not limited to, the release, upon request from a consumer, of such information relating to a specific doctor. The Board's regulations shall provide for reports to include all paid claims in categories indicating the level of significance of each award or settlement; however, the specific numeric values of reported paid claims shall not be released in any individually identifiable manner under any circumstances.

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the action is to ensure that section 280 is inclusive of all reporting elements required by statute, including reports of suspension or revocation of privileges or the termination of employment. While the Code currently requires such reporting, the time limit of 30 days for reporting is found in section 280 of the regulations. Without the time period specified in regulation, there is no standard by which a practitioner could be held accountable for failure to report. By amending the regulations to include the reporting of disciplinary actions by a health care entity or organization, patients seeking information on doctors are better protected by having access to pertinent information about disciplinary actions or loss of privileges in a more timely manner.

Rationale for using fast track process

Please explain why the fast track process is being used to promulgate this regulation.

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from (1) 10 or more persons, (2) any member of the applicable standing committee of either house of the General Assembly or (3) any member of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast-track process is being used to promulgate the amendment because it is not a new requirement or obligation for licensees; it is already required in statute. Practitioners are already informed that they must report such disciplinary actions resulting in suspension, revocation or termination of employment. Therefore, the Board believes the change is mostly clarifying and reflective of current practice.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The proposed fast-track action amends 18VAC85-20-280 by adding the requirement for reporting of any final disciplinary or other action required to be reported to the board by health care institutions, other practitioners, insurance companies, health maintenance organizations, and professional organizations pursuant to §§ 54.1-2400.6, 54.1-2908, and 54.1-2909 that results in a suspension or revocation of privileges or the termination of employment.

Issues

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

There are no disadvantages to the public of this amendment; there are certainly advantages to the public in having requirements for reporting disciplinary actions, loss of privileges or dismissal from employment reported on the profile in a timely manner. Many citizens use the profile to review the practice history of a physician prior to seeing that practitioner or use the information to select a practitioner for care.

There are no disadvantages to the agency or the Commonwealth; the proposed regulation will clarify profiling regulations for consistency with the statute.

There are no other pertinent matters of interest.

Economic impact

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings or distribute notices by email. There are no ongoing expenditures related to this amendment; the field for reporting this information is already part of the profile system. As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.</p>		
<p>Projected cost of the regulation on localities</p>	<p>None</p>		
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The individuals who may be affected would be those practitioners required by statute to report information on the profile system.</p>		
<p>Agency’s best estimate of the number of such entities that will be affected</p>	<p>The actual number of entities that will be affected is unknown. The number of entities that could be potentially be affected are:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 80%;">Doctors of medicine & surgery</td> <td style="text-align: right;">28,535</td> </tr> </table>	Doctors of medicine & surgery	28,535
Doctors of medicine & surgery	28,535		

	Doctors of osteopathy & surgery Podiatrists	1,103 474
Projected cost of the regulation for affected individuals, businesses, or other entities	There is no projected cost; changes to the profile can be made by the practitioner on-line or by a call to the DHP Call Center at any time.	

Alternatives

Please describe any viable 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 alternative to the promulgation of a regulation is to continue to rely on the statutory language, which could be interpreted as meaning that any such action should be reported immediately. All the reporting requirements are stated in section 280 of the regulation and require reporting to the board within 30 days of an initial request or of a change in the information provided. Inclusion in the regulation with other required data elements is less confusing for licensees who can have requirements for the profile stated in one document.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes.

Current section number	Current requirement	Proposed change and rationale
280	Lists the 12 data elements or types of information that must be reported by practitioners within 30 days.	The proposed change would add a requirement to report <i>any final disciplinary or other action required to be reported to the board by health care institutions, other practitioners, insurance companies, health maintenance organizations, and professional organizations pursuant to §§ 54.1-2400.6, 54.1-2908, and 54.1-2909 that results in a suspension or revocation of privileges or the</i>

		<p><i>termination of employment.</i></p> <p>According to law, practitioners must report such actions on the profile. Inclusion of the statutory requirement in regulation will be clearer for licensees and also ensure that the report is made in a timely manner (within 30 days).</p>
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