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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Boards of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC85-50
Regulation title(s)	Regulations Governing the Practice of Physician Assistants
Action title	Practice with a patient care team physician
Date this document prepared	8-7-19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

Amendments are adopted to 18VAC85-50 to comply with changes to the Code (Chapters 92 and 137 of the 2019 Acts of the Assembly) that eliminated practice by a physician assistant under the *supervision* of a physician or podiatrist and replaced the relationship between the two to one of practice in collaboration and consultation with a *patient care team physician or podiatrist.*

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

N/A

Mandate and Impetus (Necessity for Emergency)

Please explain why this rulemaking is an emergency situation in accordance with Virginia Code § 2.2-4011 A and B. In doing so, please either:

a) *Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.*
b) *Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, please also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.

The Board of Medicine is complying with the second enactment of HB1952 and SB1209 of the 2019 General Assembly, which specified:

2. That the Board of Medicine shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

An "emergency" exists because the Board is required to have regulations in effect within 280 days of enactment or by November 25, 2019.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which 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:*
>
> *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 for this action is found in *§§ 54.1-2900, 54.1-2951.1 through 54.1-2952.1, 54.1-2953, and 54.1-2957 of the Code of Virginia*.

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this regulatory action is compliance with statutory changes delineating the practice of a physician assistant. The amendments are consistent with the requirement for a practice agreement between or among the parties and the responsibility of the patient care team physician or podiatrist for the health, safety, and welfare of patients who receive care.

Substance

Please describe any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians.

In every section of this chapter, there are amendments to change the terminology from "supervising physician" to "patient care team physician (or podiatrist)" and to change "supervision" to "collaboration and consultation" as the practice relationship.

In addition, the following amendments were necessary:

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
10	Sets out definitions used in the chapter	Words and terms defined in 54.1-2900 that are applicable to the chapter and this regulatory action are added. Amendments to terms defined in the chapter are necessary for consistency with their current usage. The term "supervision" is deleted because it is no longer applicable.
35	Sets out fees for licensure and renewal	The fee for submission of a new protocol is deleted as it is no longer required to submit a PA protocol.
110	Sets out responsibilities of the physician or podiatrist	Subdivision 4 is added for consistency with the Code (§ 54.2-2952) which specifically states: *A patient care team physician or patient care team podiatrist shall be available at all times to collaborate and consult with physician assistants.*
115	Sets out responsibilities of the physician assistant	Subsection A is amended to eliminate the language stating that the practice agreement "is approved and on file with the board." *It is no longer a requirement for practice agreements between a PA and physician or podiatrist to be submitted to the Board for approval, so that language is outdated.* Likewise, subsection B is amended to eliminate the phrase "who has registered with the board" because it is not required for a physician to register in order to have a practice agreement with a PA.

		Subdivision 3 of subsection D is eliminated because the requirement is specifically eliminated in the Code in subsection D of § 54.2-2952.
130	Sets out qualifications for approval of prescriptive authority	The requirement for the practice agreement to be approved by the Board is deleted, as it is no longer required. The requirement to "submit evidence of successfully passing of the NCCPA exam" is deleted because passage of that exam is necessary in order to be initially licensed; the language in this section is outdated and not necessary.
140	Sets out the approved drugs and devices	The requirement for the practice agreement to be submitted for authorization is deleted, as it is no longer required.

Issues

Please 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) There are no advantages or disadvantages to the public apart from those in the statutory language in Chapter 29 of Title 54.1. The changes do not substantially alter the practice model for physician assistants and physicians as they are currently employed.
2) There are no particular advantages or disadvantages to the agency.
3) Other matters.
   The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to "*To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 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.*" Any restraint on competition as a result of promulgating this regulation is a foreseeable result of the statute, which sets out the definitions and practice requirements for practice with a patient care team physician or podiatrist.

Alternatives

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

There are no viable alternatives to the proposed regulatory action, which is conforming to statutory provisions for physician assistants.

Public Participation

The Board of Medicine is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board 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) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

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://www.townhall.virginia.gov. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Elaine Yeatts, Senior Policy Analyst; 9960 Mayland Drive, Henrico, VA 23233; elaine.yeatts@dhp.virginia.gov; FAX (804) 527-4434. 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 the proposed stage of this regulatory action, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (https://www.townhall.virginia.gov) and on the Commonwealth Calendar website (https://www.virginia.gov/connect/commonwealth-calendar). Both oral and written comments may be submitted at that time.