Regulatory Review Package

Emergency Regulations

Board of Medicine
18 VAC 85-80-10 et seq.

1. Regulatory Review Package

a. Proposed emergency regulation - See attached.

b. Source of the legal authority to promulgate the contemplated regulation.

The proposed emergency regulations are being promulgated to comply with statutory provisions of SB 599 passed by the 1998 General Assembly. Senate Bill 599 (Chapter) has an enactment clause requiring the Board of Medicine to promulgate regulations to implement the act to be effective within 280 days of the enactment. (See attached copy of Chapter)

Rulemaking is mandatory in order for the Board to comply with statutory language in which it is stated that the Board shall promulgate regulations within 280 days of enactment.

c. Letter of assurance from the office of the Attorney General.

See attached.

d. Statement of necessity.

Promulgation of the Emergency Regulation, 18 VAC 85-40-10 et seq., is necessary to conform to statutory provisions of Chapter 557 of the 1998 Acts of the Assembly. In accordance with the Administrative Process Act, the "emergency situation" which exists is specified in § 9-6.14:4.1 (C)(5)(ii) of the Code of Virginia as one in which the agency is required by statutory law to have a regulation in effect within 280 days from the enactment of the law. The proposed regulations are not exempt from provisions of subdivision C of § 9-6.14:4.1.

e. Statement of changes which the regulations will implement.

18 VAC 85-40-10. A definition of an "accredited educational program" was added in order to specify the accrediting body for respiratory care programs recognized by the Board.

18 VAC 85-40-25. A new section was added to require licensees to furnish current name and address within 30 days of any change and to specify that notices mailed by the Board to the name and address on file shall be validly given.

18 VAC 85-40-40. Application requirements have been amended to state some of the current requirements that are found in other sections and to specify the documentation or verification necessary to become licensed as a respiratory care practitioner.

18 VAC 85-40-45. A new section is adopted to state the educational requirements as required by the statute. The requirements are those of the NBRC to sit for the entry level certification examination and to hold credentials as a CRTT or a RRT.

18 VAC 85-40-50. Amendments are adopted to clarify that an applicant who fails the national examination must meet the requirements of the NBRC for retaking that examination.

18 VAC 85-40-60. An amendment to the requirements for renewal of license will provide for evidence of at least 160 hours of active practice during the biennial renewal cycle, which is the minimal requirement for other licensed professions (such as occupational therapy or physical therapy) under the Board of Medicine.

18 VAC 85-40-65. The current regulation have no provision for reinstatement of an expired license regardless of length of expiration or lack of active practice. The new section will require the applicant for reinstatement of a license lapsed for more than two years to submit evidence of competency to practice – which may be active practice in another jurisdiction or hours of education.

18 VAC 85-40-70. An amendment is adopted to provide that active practice, as required for renewal of licensure, may include supervisory, administrative or consultative services related to the delivery of respiratory care.

18 VAC 85-40-80. The fee for late renewal of licensure was amended from $10 to $25 to be consistent with all other licensed professions under the Board of Medicine. Fees for reinstatement of a revoked license, for issuance of a duplicate license or a duplicate wall certificate were also added for consistency with other regulations and to recover costs incurred by the Board in the performance of these activities.

f. Statement of reasoning for the regulations.

The emergency regulations promulgated by the Board are essential to comply with the statutory mandate of §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia as amended by the 1998 General Assembly.

g. Statement on alternatives considered.

The Board did not consider alternatives to the promulgation of regulations as it was mandated to do so by the statute. It did adopt the least burdensome regulation consistent with the specific provisions of the statutes and with its concern for public health and safety.

On the effective date of the legislation, July 1, 1998, the Board revised its regulations to change from certification to licensure under an exemption from the APA. On advice from the Assistant Attorney General, § 9-6.14:4. (C) (4) was applicable and the amendments were exempt from Article 2 of the Administrative Process Act, as “necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved”. In making those amendments, the Board was not able to consider any changes which were discretionary and not strictly conforming to changes in the statute.

In the development of emergency regulations, the Advisory Board on Respiratory Therapy reviewed the qualifications for licensure, including education and examination and the requirements for renewal of

licensure. The regulations were reviewed for consistency with statutory provisions, with regulations for licensure of other professions under the Board of Medicine, and with national standards in respiratory care.

Licensure requirements.

In setting requirements for licensure, the Board chose to recognize credentials of a CRTT or a RRT from the National Board for Respiratory Care (NBRC), which requires graduation from an accredited program in respiratory care and passage of the entry level certification examination. If licensed or certified in another jurisdiction, the application would have to document practice activity and verify that no disciplinary action had been taken by that jurisdiction.

For applicants who have been licensed in other states but who have not actively practiced respiratory care for more than two years, the Advisory Board proposed a requirement for practice in a board-approved practicum under the supervision of a licensed respiratory care practitioner. The Board of Medicine was advised by its counsel that it did not have statutory authority to allow any unlicensed person to practice respiratory care, even if such care was delivered under direct supervision of a licensed practitioner. Therefore, that proposal was not adopted.

Likewise, the Advisory Board proposed provisions in regulation to allow for practice pending examination results by applicants who have completed all other requirements. Such practice is permitted by other health professionals, provided the student or applicant is supervised and clearly identified to the patient. Again, the Board was advised that there was not statutory authority to do so.

Renewal requirements.

As minimal evidence of continuing competency, the Board adopted a requirement for at least 160 hours of active practice during the biennial renewal cycle. For practitioners who do not renew their licenses or who are unable to meet the practice requirement for renewal, regulations have been adopted for reinstatement of a license which has been expired for more than two years. The Advisory Board had proposed a supervised practicum, similar to that required for other professions, but was advised that it did not have the authority to allow such unlicensed practice. Persons who have allowed their license to expire will have to submit some evidence of competency to practice – such as practice in another state or educational hours.

Fees.

The Board has adopted the same application and renewal fees for licensure as were in effect for voluntary certification. The fee for a late renewal was increased from $10 to $25 for each renewal cycle. Fees which are currently in place for other licensed professionals regulated by the Board were added. They include: $500 for reinstatement of a license revoked by the Board; $10 for a duplicate license; and $25 for a duplicate wall certificate.

Impact of fees on regulated entities:

The additional fees included in these emergency regulations are consistent with other fees within the Board of Medicine and are considered to be minimal and necessary to offset the costs associated with the activity. It is estimated that less than 10 licensees per year would be impacted by the increase from $10 to

$25 in the late fee or the new fee for providing a duplicate license. To date, the Board has not had any requests for a duplicate wall certificate or any persons whose license has been revoked.

2. Publication of a NOIRA to replace emergency regulations

The Board of Medicine hereby requests permission to publish a Notice of Intended Regulatory Action to replace the Emergency Regulations with permanent regulations. (NOIRA form to be submitted is attached.)