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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Optometry, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC105-20
Regulation title(s)	Regulations Governing the Practice of Optometry
Action title	Changes in continuing education hours
Date this document prepared	7/17/15

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*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The goal of the planned regulatory action is to require continuing education that improves the knowledge and skills of optometrists in managing patient care and their practices. The proposed action would: 1) allow optometrists to carry-over up to 50% of the hours (8) earned in excess of the 16 hours required for annual renewal to the next renewal year; 2) require that at least 50% of the hours (8) be taken in live or real-time interactive courses; 3) allow one hour per year of practice management; 4) require TPA-certified optometrists to have 50% of their hours (8) in coursework relating to ocular and general pharmacology, diagnostics and therapeutics or advanced clinical procedures; and 5) allow passage of the Continued Professional Development Examination in Optometry (CPDO) count for a portion of the annual CE requirement.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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’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 Optometry 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 mandate for continuing education is found in:

§ 54.1-3219. Continuing education.

As a prerequisite to renewal of a license or reinstatement of a license, each optometrist shall be required to take annual courses relating to optometry as approved by the Board. The courses may include, but need not be limited to, the utilization and application of new techniques, scientific and clinical advances and new achievements of research. The Board shall prescribe criteria for approval of courses of study and credit hour requirements. However, the required number of credit hours shall not exceed sixteen in any one calendar year. The Board may approve alternative courses upon timely application of any licensee. Fulfillment of education requirements shall be certified to the Board upon a form provided by the Board and shall be submitted by each licensed optometrist at the time he applies to the Board for the renewal of his license. The Board may waive individual requirements in cases of certified illness or undue hardship.

Purpose

Please describe 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, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of the proposed action is to improve the quality of continuing education experiences for optometrists to encourage coursework that will benefit the health and safety of their patients and ensure that they continue to be competent to incorporate newer techniques and technologies into their practices. In mandating continuing education for optometrists, the Code of Virginia specifies that “*The courses may include, but need not be limited to, the utilization and application of new techniques, scientific and clinical advances and new achievements of*

research.” The changes proposed are consistent with the intent of the law, but will allow for an hour of practice management to facilitate optometrists in the management of their businesses. Allowing optometrists to carry over up to 50% of the hours to the next renewal may encourage attention at more in-depth seminars and conferences that involve more than 16 hours of continuing education. To the extent those learning experiences are more valuable in improving knowledge about clinical advances and the utilization of newer techniques and technology, patients would benefit from more competent practitioners.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The proposed action would: 1) allow optometrists to carry-over up to 50% of the hours (8) earned in excess of the 16 hours required for annual renewal to the next renewal year; 2) require that at least 50% of the hours (8) be taken in live or real-time interactive courses; 3) allow one hour per year of practice management; 4) require TPA-certified optometrists to have 50% of their hours (8) in coursework relating to ocular and general pharmacology, diagnostics and therapeutics or advanced clinical procedures; and 5) allow passage of the Continued Professional Development Examination in Optometry (CPDO) count for a portion of the annual CE requirement.

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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

While the number of hours of continuing education required for renewal is set in the Code, the Board is mandated to “*prescribe criteria for approval of courses of study and credit hour requirements.*” Therefore, any change in the criteria for courses requires a regulatory action. There are no alternatives to achieve the intended purpose.

Public participation

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the 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: projected reporting, recordkeeping,

and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or at elaine.yeatts@dhp.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight 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 (<http://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. A regulatory panel will not be used as the amendments have already been drafted.