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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Barbers and Cosmetology
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC 41-60
VAC Chapter title(s)	Body-Piercing Regulations
Action title	General Review of Body-Piercing Regulations
Date this document prepared	October 11, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

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

The Board for Barbers and Cosmetology (“the Board”) intends to undertake a general regulatory review of the Body-Piercing Regulations. The regulation provides for the (i) licensure of body-piercers and ear-only body piercers; (ii) licensure of body-piercing salons and ear-only body piercing salons; and (iii) approval of body-piercing apprenticeship programs.

The goals of the action include:

1. Review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022);
2. Review to ensure the regulation complements current Virginia law and meets applicable federal requirements, if any;

3. Review to ensure the regulation is organized, clear, and understandable; and
4. Review to ensure the regulation provides minimal burdens on regulants while still protecting the public.

In addition, the review will ensure the regulation reflects current DPOR procedures and policies, along with any other changes determined to be necessary and appropriate.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

"CPR" means cardiopulmonary resuscitation.

"DPOR" means Department of Professional and Occupational Regulation.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The impetus for this regulatory action is Executive Directive Number One (2022), which directs Executive Branch entities under the authority of the Governor "...to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth."

This action is not the result of a mandate.

Legal Basis

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

The agency is Board for Barbers and Cosmetology.

Section 54.1-201 of the Code of Virginia provides, in part:

A. The powers and duties of regulatory boards shall be as follows:

1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.

5. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or

misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

Purpose

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

The General Assembly has charged the Board with the responsibility for regulating those who engage in the practice of body-piercing or ear-only body-piercing for compensation by requiring such individuals obtain a license in order to engage in these occupations.

As mandated by the General Assembly, the Board protects the public welfare, in part, by establishing through regulation (i) the minimum qualifications of applicants for certification or licensure, provided that all qualifications are necessary to ensure either competence or integrity to engage in the profession or occupation; (ii) minimum standards to assure continued competency and to prevent deceptive or misleading practices by practitioners; and (iii) requirements to effectively administer the regulatory system administered by the Board.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

These issues are not inclusive of all potential issues that may be addressed during development of the regulation.

Substance

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 Board formed a regulatory review committee composed of members of the Board to conduct a review of this regulation. The committee’s membership includes individuals who are licensed to practice each of the regulated disciplines falling under the Board’s jurisdiction (barbering, cosmetology, nail care, waxing, tattooing, body-piercing, and esthetics). Most of these committee members either own or operate schools, or previously owned or operated schools.

The regulatory review committee has performed a review of the regulation. The Board is expected consider the substantive changes detailed below. However, the Board may consider other changes prior to adoption of the proposed regulation.

Part I – General (18 VAC 41-60-10):

Definitions (18 VAC 41-60-10): Revising the section to specifically incorporate statutory terms from § 54.1-700 of the Code of Virginia that are used in the regulation. Currently, the section incorporates all

terms that are defined in this section of the Virginia Code, including many terms that are not used in the regulation. Adding a definition for the following terms or phrases: “reasonable hours.” Removing definitions for the following terms: “gratuitous services.”

Part II – Entry (18 VAC 41-60-20 et seq.):

Adding a new section – Gratuitous Services (18 VAC 41-60-15). The new section would provide clarification regarding the exemption from licensure in § 54.1-701(5) of the Code of Virginia for those who provide “gratuitous services.” The statute does not provide a meaning for the term “gratuitous services.” The new section would provide clarification as to what are considered gratuitous services.

General Requirements (18 VAC 41-60-20):

- Revising the provisions of subdivisions A.1 to clarify that an applicant only disclose prior disciplinary actions that pertain to services within the scope of practice for the license for which the individual is applying (i.e. body-piercing or ear-only body-piercing).
- Revising the provisions of subdivision A.1 to remove a requirement that an applicant disclose whether the applicant previously held a license in Virginia as a body-piercer. This requirement is not necessary.
- Revising the provisions of subdivision A.2 to allow applicants to provide a post office box address as a secondary address to a physical address. Currently, applicants are not permitted to provide a post office box address.
- Revising the provisions of subdivision A.4 to only require disclosure of felony convictions occurring within 10 years of the date of application. Currently, applicants must disclose felony convictions occurring within 20 years of the date of application.
- Revising the provisions of subdivision B.2 to remove the requirement that applicants who received training outside of Virginia that is substantially equivalent to Virginia training provide documentation of having completed training in CPR.
- Revising the provisions of subsection C to:
 - Remove from existing subdivision C.2 a requirement that an applicant for an ear-only body-piercing license disclose whether the applicant was previously licensed in any profession regulated by the Board. This requirement is not necessary.
 - Revise existing subdivision C.2 to clarify that an applicant only disclose prior disciplinary actions that pertain to services within the scope of practice for the license for which the individual is applying (ear-only body-piercing).
 - Revise existing subdivision C.3 to allow applicants to provide a post office box address as a secondary address to a physical address. Currently, applicants are not permitted to provide a post office box address.
 - Revise existing subdivision C.5 to only require disclosure of felony convictions occurring within 10 years of the date of application. Currently, applicants must disclose felony convictions occurring within 20 years of the date of application.

Examination Requirements and Fees (18 VAC 41-60-40): Revising the section to (i) remove a provision that failing to appear for a scheduled examination results in forfeiting of the examination fee, as this provision is unnecessary; (ii) removing a provision that the examination is administered by the Board or a designated testing services, as this provision is unnecessary; and (iii) removing a provision that examination records will be maintained for a maximum of five years, as this provision is unnecessary.

Salon License (18 VAC 41-60-80):

- Revising the provisions of subdivision A.1 to clarify that an applicant only disclose prior disciplinary actions that pertain to services within the scope of practice for the license for which the firm is applying (i.e. body-piercing or ear-only body-piercing).
- Revising the provisions of subdivision A.1 to remove a requirement that an applicant disclose whether the applicant or a member of the firm’s responsible management previously held a license

in Virginia as a body-piercing salon or ear-only body-piercing salon. This requirement is not necessary.

- Revising the provisions of subdivision A.2 to allow applicants to provide a post office box address as a secondary address to a physical address. Currently, applicants are not permitted to provide a post office box address.
- Revising the provisions of subdivision A.4 to only require disclosure of felony convictions occurring within 10 years of the date of application. Currently, applicants must disclose felony convictions occurring within 20 years of the date of application.
- Revising the provisions of subsection C to require that a licensed firm notify the Board within 30 days of a change of business entity (e.g. formation of a new firm, dissolution of an existing firm) and destroy the license. Currently, a firm is required to return the license to the Board within 30 days of a change of business entity.
- Adding a new subsection that provides the Board or its agents be allowed to inspect a licensed salon during reasonable hours for compliance with applicable statute and the Board's regulations.

Part III – Fees (18 VAC 41-60-90 et seq.):

Fees (18 VAC 41-60-90): Incorporating provisions from 18VAC 41-60-100, which specifies that fees are nonrefundable and shall not be prorated.

Refunds (18 VAC 41-60-100): Repealing this section as it is no longer necessary.

Part IV – Renewal and Reinstatement (18 VAC 41-60-110 et seq.):

Continuing Education Requirement (18 VAC 41-60-120): Revising the provisions of the section to remove a requirement that individual licensees complete continuing education on CPR in order to renew a license.

Part V – Body-Piercing Apprenticeship Programs (18 VAC 41-60-150 et seq.):

Applicants for Board Approval (18 VAC 41-60-150): Revising the provisions of subsection A to remove the requirement that a person seeking to enroll in an apprenticeship program complete training in CPR.

Body-Piercing Apprenticeship Curriculum Requirements (18 VAC 41-60-160): Revising the provisions of subdivision 4 to remove the requirement that apprenticeship curriculum include training in CPR.

Part VI – Standards of Practice (18 VAC 41-60-180 et seq.):

Grounds for License Revocation or Suspension or Probation; Denial of Application, Renewal, or Reinstatement; or Imposition of a Monetary Penalty (18 VAC 41-60-220):

- Revising the prohibited act in subdivision 1 to prohibit the inability to practice with skill or safety as a result of any mental or physical condition. Currently, this subdivision prohibits mental or physical incapability to practice.
- Revising the prohibited act in subdivision 11 to provide that failure to notify the Board within 30 days of any final disciplinary action taken against a license, registration, certificate, or permit by any local, state, or national regulatory body is prohibited.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

A goal of this regulatory action is to review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022). As the regulation is developed, the Board will consider potential alternatives to existing requirements that may be less burdensome or intrusive while still meeting the essential purpose of the regulation.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board formed a regulatory review committee composed of members of the Board to conduct a review of this regulation. The committee held multiple meetings between September 2022 and September 2023. These meetings included opportunities for public comment. The committee has received public comment from interested parties at several of these meetings.

The Board for Barbers and Cosmetology is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts 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://townhall.virginia.gov>.

Comments may also be submitted by mail, email or fax to:

Kelley Smith, Executive Director
Board for Barbers and Cosmetology

9960 Mayland Drive
Perimeter Center, Suite 400
Richmond, VA 23233
bchoplicensing@dpor.virginia.gov
866-245-9693 (fax)

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, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.