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

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| Agency name | Board of Medicine, Department of Health Professions |
| Virginia Administrative Code (VAC) citation | 18VAC85-20, 18VAC85-40, 18VAC85-50, 18VAC85-80, 18VAC85-101, 18VAC85-110 |
| Regulation title | Regulations Governing the: Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic Practice of Respiratory Care Practitioners Practice of Physician Assistants Licensure of Occupational Therapists Licensure of Radiologic Technologists and Radiologic Technologists-Limited Licensed Acupuncturists |
| Action title | Restricted volunteer license |
| Document preparation date | 6/22/06 |

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The adoption of an “emergency” regulation by the Board of Medicine is required to comply with amendments to Chapter 29 of Title 54.1, mandating the promulgation of regulations for issuance of restricted volunteer licenses as prescribed in the second third enactment clause of Chapter 881 of the 2006 Acts of the Assembly, which states: “That the Board of Medicine shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.”

The key provisions of the amended regulations include the fee for a restricted volunteer license and the continuing education required to renew such a license after the first biennial renewal.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe 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, 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 Board is mandated to promulgate regulations for restricted volunteer licenses by Chapter 881 of the 2006 Acts of the Assembly:

§ 54.1-2928.1. Restricted volunteer license.

A. The Board may issue a restricted volunteer license to a practitioner of the healing arts who:

- 1. Held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive;*
- 2. Is practicing within the limits of his license in accordance with provisions of § [54.1-106](#); and*
- 3. Attests to knowledge of the laws and regulations governing his branch of the healing arts in Virginia.*

B. A person holding a restricted volunteer license under this section shall not be required to complete continuing education for the first renewal of such a license. Subsequent renewals will require continuing education as specified by Board regulation.

C. If a practitioner with a restricted volunteer license issued under this section has not held an active, unrestricted license and been engaged in active practice within the past four years, he shall only practice his profession if a doctor of medicine or osteopathic medicine with an active, unrestricted Virginia license reviews the quality of care rendered by the practitioner with the restricted volunteer license at least every 90 days.

D. Such license may be renewed every two years in accordance with regulations promulgated by the Board.

E. A practitioner holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter, the regulations promulgated under this chapter, and the disciplinary regulations which apply to all such practitioners in Virginia.

F. The application fee and the biennial renewal fee for restricted volunteer license under this section shall be no more than one-half the renewal fee for an inactive license in the same branch of the healing arts.

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.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the action is compliance with a statutory mandate for the promulgation of regulations to establish a restricted volunteer license under the Board of Medicine for persons to practice without compensation in free clinics. Regulations set out the requirements for applying for such a license, the fees for application and renewal and the hours of continuing education necessary for the second renewal. The goal of the regulation was to establish minimal fees and continuing education requirements to facilitate and encourage practitioners who are retired or taking a break from active practice to obtain such a license and volunteer their services in a free clinic. At the same time, there was concern that practitioners maintain current knowledge and technique as necessary to serve patients in free clinics with the same degree of professionalism and skill as could be expected in other health care settings.

Substance

Please detail 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 why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

Chapter 20 – Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic

| Current section number | Proposed new section number | Current requirement | Proposed change and rationale |
|------------------------|-----------------------------|----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 22 | n/a | Sets fees for applicants and licensees | Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee. <i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i> |
| n/a | 226 | n/a | Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 30 hours, at least 15 of which must be Type 1 activities or courses offered by an accredited organization and no more than 15 hours of Type 2 hours that may be selected by the licensee. <i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for full licensure was reasonable. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i> |

Chapter 40 – Regulations Governing the Practice of Respiratory Care Practitioners

| Current section number | Proposed new section number | Current requirement | Proposed change and rationale |
|------------------------|-----------------------------|----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 35 | n/a | Sets fees for applicants and licensees | Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee. <i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i> |
| n/a | 67 | n/a | Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set |

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| | | | <p>out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 10 hours of continuing education as approved and documented by a sponsor recognized by the American Association for Respiratory Care (AARC) or in courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 CME credit within the last biennium.</p> <p><i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for renewal of a full license was reasonable. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i></p> |
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Chapter 50 – Regulations Governing the Practice of Physician Assistants

| Current section number | Proposed new section number | Current requirement | Proposed change and rationale |
|------------------------|-----------------------------|----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 35 | n/a | Sets fees for applicants and licensees | <p>Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee.</p> <p><i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i></p> |
| n/a | 61 | n/a | <p>Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 50 hours of continuing education during the biennial renewal period with at least 25 hours in Type 1 and no more than 25 hours in Type 2 as acceptable to the National Commission on Certification of Physician Assistants (NCCPA).</p> <p><i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for renewal of full licensure was reasonable. Renewal as a physician</i></p> |

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| | | | <i>assistant requires evidence of current certification by the National Commission on Certification of Physician Assistants, which requires a total of 100 hours every two years. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i> |
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Chapter 80 – Regulations Governing the Practice of Occupational Therapists

| Current section number | Proposed new section number | Current requirement | Proposed change and rationale |
|------------------------|-----------------------------|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 26 | n/a | Sets fees for applicants and licensees | Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee. <i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i> |
| n/a | 73 | n/a | Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 10 hours of continuing education during the biennial renewal period with at least five hours of Type 1 and no more than five hours of Type 2. <i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for full licensure was reasonable. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i> |

Chapter 101 – Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited

| Current section number | Proposed new section number | Current requirement | Proposed change and rationale |
|------------------------|-----------------------------|----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 25 | n/a | Sets fees for applicants and licensees | Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee. <i>The fees for a restricted volunteer license are consistent</i> |

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| | | | <i>with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i> |
| n/a | 153 | n/a | <p>Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 12 hours of Category A continuing education as acceptable to and documented by the ARRT within the last biennium for radiologic technologists. A radiologic technologist-limited must attest to having completed 6 hours of Category A continuing education within the last biennium that corresponds to the anatomical areas in which the limited licensee practices. Hours must be acceptable to and documented by the American Registry of Radiologic Technologists (ARRT) or by any other entity approved by the board for limited licensees whose scope of practice is podiatry or bone densitometry.</p> <p><i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for full licensure was reasonable. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i></p> |

Chapter 110 – Regulations Governing the Practice of Licensed Acupuncturists

| Current section number | Proposed new section number | Current requirement | Proposed change and rationale |
|------------------------|-----------------------------|----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 35 | n/a | Sets fees for applicants and licensees | <p>Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee.</p> <p><i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i></p> |
| n/a | 161 | n/a | <p>Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 20 hours of continuing education acceptable to the National Certification Commission for Acupuncture and</p> |

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| | | | <p>Oriental Medicine (NCCAOM), obtained within the last biennium.</p> <p><i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for full licensure was reasonable. Renewal as a licensed acupuncturist requires evidence of current certification by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), which requires a total of 40 hours every two years. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i></p> |
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Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

There were no viable options to the adoption of regulations; it was mandated by legislation (HB1487) passed by the 2006 General Assembly. Qualifications for a restricted volunteer license and for practice with such a license were all specified in § 54.1-2928.1 of the Code of Virginia.

The Board had some discretion in setting fees for holding such a license, but the fee was limited by the Code to no more than ½ of the fee for an inactive license. The Board was also required to establish the requirement for continuing education for a practitioner who wishes to continue renewing a restricted volunteer license after one renewal cycle. While patients are being treated at free clinics and there is no compensation allowed for the licensee, the Board determined that some evidence of continuing competency was essential and adopted a requirement equal to half the hours of continuing education for full licensure. There was some concern that half the hours may not be adequate, but a practitioner who has not engaged in active practice for four or more years must have the quality of his care reviewed by a doctor with an active license at least every 90 days. With such oversight in place, the reduced hours of continuing education was deemed reasonable.

Family impact

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

Since there are families that receive medical care through the free clinics in Virginia, the availability of restricted volunteer licenses may encourage some practitioners to volunteer their service thus increasing the supply of qualified medical personnel in those facilities.