



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Workers' Compensation Commission
<b>Virginia Administrative Code (VAC) citation</b>	16 VAC-30-50
<b>Regulation title</b>	Rules of the Virginia Workers' Compensation Commission
<b>Action title</b>	Amendment to Existing Regulations
<b>Date this document prepared</b>	October 18, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

#### SUMMARY OF THE PROPOSED REGULATION

The proposed amendment broadens the titles of Chapter 30-50-50 on "Filing Documents;" and Section 2 "Medical Reports" and corrects the Rule number (3) which was previously erroneously given to two consecutive rules.

The amendment adds definitions, more specifically identifies medical reports to be filed with the Commission, and clarifies permissible charges by medical providers for copies. It distinguishes between treating and non-treating medical providers for purposes of determining charges for medical records. Finally, it addresses permissible methods for providing copies of medical records to opposing parties.

**Legal basis**

*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., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

**STATEMENT OF BASIS, PURPOSE, SUBSTANCE AND ECONOMIC IMPACT**

Basis: The legal authority for amendment of the existing regulations is found in Title 65.2 of the Code of Virginia. The authority for the amendment is found in the general jurisdictional grant to the Commission in § 65.2-201, which requires it to make Rules.

**Purpose**

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

Purpose:

The primary purpose of this amended regulation is to add specificity to the Commission’s requirements with regards to the exchange of medical records, permissible fees for copying and identification of those records which shall be filed. By clarifying the Commission’s requirements, litigation over these issues will be reduced and efficiency of administration of the Act will be increased.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)*

The Commission, as part of its duties to administer the Workers’ Compensation Act and adjudicate issues and controversies related to the Act, has adopted Rules to carry out the provisions of the Act. The Amended Rule relates specifically to documents in the form of Agreements to be filed with the Commission and the discovery of and filing of relevant medical information with the Commission and costs associated therewith.

The changes to the regulation consist of three parts: definitions, filing reports, and copying charges. “Definitions” clarifies the meaning for purposes of this Rule of four terms.

“Filing Reports” clarifies (1) what type of reports are to be produced by healthcare providers, (2) what type of reports are filed with the Commission, and sanctions for non-compliance, (3) authorization for release of records, (4) provision of Attending Physician Reports, (5) provision of medical records to opposing counsel and methods for doing so.

“Copying charges” distinguishes between charges which may be made by treating and non-treating healthcare providers for medical records, and the specific charges that may be rendered.

**Issues**

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

A primary advantage of the amendments to the regulations is that they assist the Commission in administering the Act more efficiently. They clarify the records to be produced and filed by limiting the records to only those that are relevant to the worker’s specific injury. They define the terms “medical reports,” “healthcare provider,” “treating healthcare provider,” and “party” with reference to other Code sections, as appropriate, and within the specific context of workers’ compensation cases. They identify the appropriate methods for exchanging medical information. They set out the reimbursement to which healthcare providers are entitled for medical records, whereas the old rule used the term “nominal” as the standard for those charges. Finally, the amendments make a new distinction in terms of reimbursement rates between treating healthcare providers, who will receive a lower rate, and non-treating healthcare providers, who will receive the higher rates established in Virginia Code Section 8.01-413.

**Requirements more restrictive than federal**

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

**Localities particularly affected**

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

None.

**Public participation**

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency is 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to **[Gwen M. Taylor, Executive Officer to the Chair, Workers Compensation Commission, 1000 DMV Drive, Richmond Virginia 23220; telephone 804- 367- 2327 or 877-664-2566 x 2327; Fax # 877-262-3577; email gwen.taylor@vwc.state.va.us]**. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

Public hearings will be held and notice of the public hearings may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	None
<b>Projected cost of the regulation on localities</b>	None
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Health care providers, as defined by Virginia Code Section 32.1-127.1:03, employers, employees, and workers' compensation insurance carriers.
<b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	All entities involved with the workers' compensation system will be affected. Statistics are not available to enable us to be more specific.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	Health care businesses will need to determine whether requests for medical records refer to workers compensation claims (as opposed to other types of claims); if so, they will need to submit invoices with the fee schedule proposed by the Commission for medical records' copies; further, they will have to determine whether or not they are treating or non-treating health care providers to determine whether they should charge fees for records in accord with Virginia Code Section 8.01-413 or the amended regulation. To the extent that a specific health care provider charges less than previously, there will a savings for the insurer, employer or employee who requests those records. We do not keep statistics that would enable us to estimate these cost changes in any more detail.

**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.*

The Commission considered leaving the Rule as it is with an undefined “nominal” charge for copies. However, it was determined that a more specific definition of an acceptable fee would be more efficient, since less litigation over the issue would be required.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The Commission was unable to determine any other method to accomplish its objectives. At present we use the term “nominal” to refer to copying fees, and we place no limits on the amount of medical records to be filed with us. It was decided that by giving more guidance to the parties interacting with us, we could operate more efficiently. We would not have to review unnecessary records or resolve disputes over fees or other matters related to the provision of medical information. Our amended Rule establishes what we consider to be “nominal”.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Chelsea Miller	General questions about the process	By telephone, we offered to respond to all questions.
Michael Jurgensen	Comments about rates applicable to physicians	Telephone and in-person dialogue about both the substance and the process of the Rule change.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

None.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
16VAC30-50-50	same	(1) Agreements (2) Medical Reports and Charges  <u>Definitions</u> No definitions  <u>Filing reports</u> Originals or copies filed Required reports  Copies of reports to be provided to opposing party  Medical providers duty to provide records  No reference to HIPPA	No change  Definitions created for "medical reports"; "health care provider"; "treating health care provider"; and "party"--- to explain to whom and to what the amendment applies  No change Reports unrelated to the injury at issue are excluded---to limit unnecessary records  Method and payment for delivery addressed--to ensure the parties' access to records  Prepayment, delivery and medical authorization for records' release addressed--to clarify conditions of release of medical records Addresses fact that HIPPA does not apply to workers' compensation cases---to clarify different responsibility of health care

		<p><u>Copying charges</u> Nominal copying charge</p> <p><u>Narrative reports</u> Reasonable fee</p>	<p>providers in workers' compensation context</p> <p>Non- treating health care providers same as Virginia Code section 8.01-413; treating health care providers 10 cents for first 50 pages and 5 cents for additional pages; actual cost of films and EKGs not to exceed \$8 per film, 25 cents per page for microfilm or imaged records, actual mailing costs, and no charge for documentation required for bill payment----to set specific fees, decrease disputes and create predictable costs</p> <p>This was deleted from the Rule. We elected not to address fees for narrative reports in this Rule.</p>

Enter any other statement here