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Fast-Track Regulation
Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC85-50
VAC Chapter title(s)	Regulations Governing the Practice of Physician Assistants
Action title	Implementation of 2022 periodic review of Chapter 50
Date this document prepared	October 6, 2022; modified July 7, 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Pursuant to its periodic review of Chapter 50, the Board has adopted amendments to delete outdated or redundant provisions and clarify others consistent with current practice and to reduce barriers to licensure.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

PA = physician assistant
CE = continuing education

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The Board of Medicine voted to amend the Regulations Governing the Practice of Physician Assistants by fast-track action on October 6, 2022.

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."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The impetus for these amendments were the Board's 2022 periodic review of this chapter. These amendments are noncontroversial and appropriate for fast-track rulemaking because the changes delete or modify provisions that, as currently effective, are redundant of statutory requirements, are not related to physician assistants, are outdated, or are otherwise ineffectual.

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.

Regulations of the Board of Medicine are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be "[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system."

Virginia Code § 54.1-2951.1 requires the Board to promulgate regulations establishing requirements for licensure of physician assistants.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The rationale for the changes included in this action are the reduction of regulations, elimination of provisions redundant of statutory language, eliminations of provisions that are no longer needed, and to reduce barriers to licensure. The elimination of redundant provisions and reduction of barriers to licensure generally protect the health, safety, and welfare of citizens by ensuring a sufficient workforce of physician assistants with a reduction of barriers and reduction of redundant or outdated requirements. The goals the regulatory change is intended to solve is the elimination of redundant or outdated provisions from Chapter 50.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The changes delete redundant statutory provisions or useless directions in regulation, including provisions related to: unused definitions; public participation guidelines; reduced fees for previous years; minor edits; deletion of fees for voluntary out-of-state practice; CE requirement for restricted volunteer licenses; deletion of duplicate provision regarding volunteer restricted licenses; consolidate information related to informed consent for office-based procedures and subsequently eliminate redundant or extraneous language; and eliminate language related to vitamins and anabolic steroids.

Issues

Identify the issues associated with the regulatory change, 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 there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

1) There are no primary advantages or disadvantages to the public.]
2) There are no primary advantages or disadvantages to the agency or the Commonwealth.
3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. Any restraint on competition as a result of promulgating these regulations is a foreseeable, inherent, and ordinary result of the statutory obligation of the Board to protect the safety and health of citizens of the Commonwealth. The Board is authorized under § 54.1-2400 "[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 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 promulgated regulations do not conflict with the purpose or intent of Chapters 1 or 25 of Title 54.1.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected – none

Localities Particularly Affected – none

Other Entities Particularly Affected – none

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	The Department of Health Professions is a Special Fund agency. All operating costs for the regulatory boards are taken from fees for licensing and renewal of regulated professions. Although one $10 fee has been eliminated, that fee is so minimal and used so infrequently that its elimination will have virtually no effect on Board funds.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no costs to other state agencies.
For all agencies: Benefits the regulatory change is designed to produce.	There are no benefits to state agencies.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	No impact on localities.
Benefits the regulatory change is designed to produce.	No benefit to localities.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Current licensees and potential registrants for voluntary out of state licenses will be affected.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	The Board has no data regarding any potential applicants by endorsement or potential registrants for voluntary out of state licenses. As of June 30, 2022, there were 5,524 individuals licensed as physician assistants.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no costs to individuals, businesses, or entities.
Benefits the regulatory change is designed to produce.	Fewer redundant regulations and reduced regulatory burden.

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.

These are existing regulatory requirements. To remove or change them, the Board must amend the applicable regulations. There is no alternative.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

The amendments are necessary to reduce burdens on applicants and remove redundant or duplicative provisions, as stated above. 1) These amendments already reduce compliance requirements. 2) The amendments already reduce reporting requirements. 3) The amendments already simplify compliance. 4) There are no design or operational standards in the regulations, and the regulations do not apply to businesses. 5) The regulations do not apply to businesses.

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.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board of Medicine is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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 to Erin Barrett, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233; by email to erin.barrett@dhp.virginia.gov; by fax to (804) 527-4434. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or

agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
50-10	Definition of "group practice"	Deleted. This term is not used in Chapter 50.
50-30	Instructs individuals to review 18VAC85-11 for information regarding involvement of the public in development of regulations for the Board of Medicine.	Deleted. This is a reference to another existing chapter of the regulations of the Board of Medicine. Regulations do not need to contain a reference.
50-35(2)	The last sentence includes a reduced fee for 2021.	Deleted. The time stated for the fee reduction has passed.
Part II	Requirements for practice as a physician assistant	Deletion of the apostrophe s after physician in the title of Part II.
50-56	Renewal of license.	In (B), the word "physician" is added before "assistant" in the last sentence. This corrects a term error.
50-59(4)	Requires an applicant for voluntary out-of-state practice to pay the Board $10.	Deletion of this fee. The fee itself costs more administratively to collect than the amount. This provision is not used frequently, so the loss of $10 will not negatively impact the Board's funds.
50-61	This section governs requirements for restricted volunteer licenses.	(D) is deleted. It required individuals renewing restricted volunteer licenses to obtain 50 hours of continuing education per biennium. Physician assistants with active Virginia licenses have no continuing education requirements in Chapter 50. It makes no sense to impose a continuing education requirement on restricted volunteer licenses.
50-101	Requirements for a practice agreement.	The word "physician" is added before "assistant" in subsection (A). This corrects a term error.
50-115(B)	Responsibilities of the physician assistant	In subsection (B), the phrase "supervise the activities of" is replaced with "collaborate or consult with." This is a change that should have been made following the passage of HB2039 in the 2021 General Assembly Session, but was inadvertently omitted.
50-116	Volunteer restricted license for certain physician assistants.	Repealed. This is redundant of 50-61.
50-178	(A) and (B) require certain communications with patients	(B) is deleted. (A) is amended to include "in understandable terms" to the

	regarding diagnoses and treatment.	description of how a practitioner informs a patient or his legally authorized representative of medical diagnoses, prognosis, and prescribed treatment or plan of care. This amendment includes the non-repetitive information contained in (B), thereby keeping the intent of (B) while allowing the deletion of otherwise redundant language.
50-180	50-180(A) requires that recommendations for the use of vitamins, minerals, or food supplements be documented by the practitioner and based on, essentially, therapeutic purposes. 50-180(B) states that vitamins, minerals, or food supplements shall not be sold, dispensed, or recommended in doses that would be contraindicated based on the individual patient's overall medical conditions and medications. 50-180(C) states that the practitioner shall conform to the standards of his branch of the healing arts in using or recommending vitamins, minerals, or supplements.	Deletion. These regulations were promulgated in Chapter 20 in 1989 and added here in 2005. This regulation has never been amended in Chapter 50 since it was added in 2005. The Board determined that this regulation was promulgated to address a specific problem in the 1980s that is no longer relevant. Any recommendation that a patient obtain and/or use vitamins, minerals, or supplements should already be documented in any medical record. The improper recommendation for use of those substances could still be the basis for disciplinary action under Virginia Code § 54.1-2915(A)(3) or (13). Maintenance of appropriate patient records is addressed under 18VAC85-50-177.
50-181	50-181(A) states that a practitioner shall not prescribe amphetamine for the purpose of weight reduction or control. 50-181(B) sets out requirements for prescribing controlled substances for the purpose of weight reduction or control. 50-181(C) states that a physician assistant or nurse practitioner can prescribe certain substances for weigh reduction or control if authorized in a practice agreement.	This regulation can be deleted. The requirements in this regulation are part of the standard practice of care. The Board can discipline practitioners for any of the conduct prohibited in this regulation without the need for a specific regulation governing this conduct. The only changes made to this regulation in the last 15 years include changing terminology and allowances around physician assistants and nurse practitioners. The substance of this regulation was added wholesale from an identical regulation included in Chapter 20.
50-182	50-182 states that anabolic steroids shall not be sold, prescribed or administered except for accepted therapeutic purposes.	Deletion. Similar to the vitamins and supplements regulation, this text was originally promulgated in 1989 in Chapter 20. Since no controlled substance may be prescribed, administered, or sold except for accepted therapeutic purposes, this regulation is unnecessary in the present era.