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Fast-Track Regulation
Agency Background Document

Agency name	Board of Long-Term Care Administrators, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC95-15
VAC Chapter title(s)	Regulations for Delegation to an Agency Subordinate
Action title	Promulgation of regulation formerly included in Chapter 20
Date this document prepared	12/27/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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.

The Board has adopted regulations for delegation of informal fact-finding to an agency subordinate pursuant to its authority set forth in § 54.1-2400(10). Previously, regulations for such delegation were found in section 471 of Chapter 20 (Nursing Home Administrators), but that section was repealed in the most recent periodic review with the intent of promulgating a new chapter that would be applicable to cases for all professions under the authority of the Board.

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.

N/A

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.

On December 17, 2019, the Board of Long-Term Care Administrators adopted 18VAC95-15-10 et seq., Regulations Governing Delegation to an Agency Subordinate.

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 Executive Order 14 (as amended, July 16, 2018), "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."

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

The impetus for the regulatory change was the periodic review of Chapter 20 begun in 2017. It was recommended that the section on delegation to an agency subordinate (471) be repealed in Chapter 20 and the provisions place in a new chapter so they would be applicable to all disciplinary cases under the authority of the Board and not just to persons regulated under that chapter.

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 are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6), which provides the Board of Long-Term Care Administrators 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 (§ 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. ...

10. To appoint a special conference committee, composed of not less than two members of a health regulatory board or, when required for special conference committees of the Board of Medicine, not less than two members of the Board and one member of the relevant advisory board, or, when required for special conference committees of the Board of Nursing, not less than one member of the Board and one member of the relevant advisory board, to act in accordance with § 2.2-4019 upon receipt of information that a practitioner or permit holder of the appropriate board may be subject to disciplinary action or to consider an application for a license, certification, registration, permit or multistate licensure privilege in nursing. The special conference committee may (i) exonerate; (ii) reinstate; (iii) place the practitioner or permit holder on probation with such terms as it may deem appropriate; (iv) reprimand; (v) modify a previous order; (vi) impose a monetary penalty pursuant to § 54.1-2401, (vii) deny or grant an application for licensure, certification, registration, permit, or multistate licensure privilege; and (viii) issue a restricted license, certification, registration, permit or multistate licensure privilege subject to terms and conditions. The order of the special conference committee shall become final 30 days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the 30-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 2.2-4020, and the action of the committee shall be vacated. This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings in accordance with § 2.2-4019, upon receipt of information that a practitioner may be subject to a disciplinary action. The recommendation of such subordinate may be considered by a panel consisting of at least five board members, or, if a quorum of the board is less than five members, consisting of a quorum of the members, convened for the purpose of issuing a case decision. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board.

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's intended to solve.

Delegation of non-standard of care cases to an agency subordinate may improve the completion rate for adjudication of cases that come before the Board. Delegation of cases that do not involve patient harm may facilitate the adjudication of more serious cases and enable the Board to take action that protects the health, safety and welfare of patients and residents in long-term care facilities.

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.

Regulations in Chapter 15 will set out provisions for: (i) making the decision of whether to delegate an informal fact-finding proceeding to an agency subordinate; (ii) determining the types of cases that may be delegated; and (ii) the criteria for an agency subordinate.

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. The cases to be heard by an agency subordinate would likely be those that do not involve violations of standard of care.
2) The primary advantage to the Board is the possibility of facilitating the adjudication of disciplinary cases; there are no disadvantage. Delegation to an agency subordinate is authorized but not required.
3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under 54.1-2400 to "*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.*" Any restraint on competition that results from this regulation is in accord with the General Assembly's policy as articulated in § 54.1-100.

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 regulations.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "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

Pursuant to § 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 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	As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners or entities for necessary functions of regulation. All notifications will be done electronically. There are no on-going expenditures.
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.	None
For all agencies: Benefits the regulatory change is designed to produce.	Potential to expedite and facilitate adjudication of certain types of cases.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

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.	Nursing home administrators and assisted living administrators for whom there is probable cause that a violation of law or regulation may have occurred.
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	There are 936 nursing home administrators licensed and 656 assisted living administrators in Virginia. Since they are licensed as individual

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.	practitioners, there is no estimate of the number who are small businesses. In the first quarter of FY20, the Board had 96 open cases. It closed 25 cases but had 20 new cases opened. The Board is not currently delegating any cases to an agency subordinate.
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 affected entities.
Benefits the regulatory change is designed to produce.	Potential to facilitate closure of open cases more expeditiously.

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.

In order to exercise the authority granted in § 54.1-2400(10), the Board is required to set criteria for delegation to an agency subordinate. Such criteria must be determined by regulation, so the Board has adopted the least burdensome alternative consistent with its statutory responsibility to protect the health and safety of the public.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B 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.

There is no alternative regulatory methods for establishing the criteria for an agency subordinate.

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.

As required by § 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 Long-Term Care Administrators, Department of Health Professions 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 or email to Elaine Yeatts at elaine.yeatts@dhp.virginia.gov or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (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.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
10	Sets forth the provision for the decision to delegate in accordance with § 54.1-2400 (10) of the Code of Virginia. The board may delegate an informal fact-	This section is identical to subsection A of section 471 in Chapter 20, which was repealed in the promulgation of regulations pursuant to	The intent is to promulgate a new chapter so all provisions relating to delegation of an informal fact-finding proceeding would be applicable to all licensees and persons

	finding proceeding to an agency subordinate once the determination has been made that there is probable cause that a practitioner may be subject to a disciplinary action.	the periodic review of Chapter 20, effective March 6, 2019. Section 471 had been in effect since June 29, 2005.	registered for training under the Board's authority.
20	Sets out the cases that may not be delegated to an agency subordinate to include violations of standards of care, except as may otherwise be determined by the executive director in consultation with the board chair.	This section is similar to subsection B of section 471. In the old subsection, the authority for making an exception to delegation of non-standard of care cases was given to a special conference committee. In this subsection in the new Chapter 15, the authority rests with the executive director of the Board in consultation with the Board chair.	The intent in changing the authority to make an exception for a standard of care case is to make it feasible for such an exception. If the decision must be made by a special conference committee, the committee must be physically convened. In that situation, the committee should just hear the case rather than delegating to a subordinate. The provisions of this subsection are similar to other boards (Nursing, Counseling, Dentistry) that allow exceptions to be made by the president of the board or the executive director.
30	Subsection A provides that an agency subordinate authorized may include current or former board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals. Subsection B requires the executive director to maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated. Subsection C authorizes the executive director to make the selection of the agency subordinate who is deemed appropriately	This section is identical to subsection C of section 471 in Chapter 20, which was repealed in the promulgation of regulations pursuant to the periodic review of Chapter 20, effective March 6, 2019.	The intent is to keep the same criteria for an agency subordinate that were in place before the repeal of 18VAC95-20-471.

	qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.		