



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Board of Medicine, Department of Health Professions
VAC Chapter Number:	18 VAC 85-50-10 et seq.
Regulation Title:	Regulations Governing the Practice of Physician Assistants
Action Title:	Volunteer practice; Change in supervision requirements
Date:	6/27/02

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

Chapter 740 of the 2002 Acts of the Assembly mandates that the board promulgate regulations for an out-of-state practitioner to be exempt from licensure or certification to volunteer his services to a non-profit organization that has no paid employees and offers health care to underprivileged populations throughout the world. Regulations set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

Chapter 387 of the 2002 Acts of the Assembly mandates that the board promulgate regulations to implement provisions related to the supervision of a physician assistant and the protocol between the assistant and the physician. In accordance with the statute, regulations provide for continuous supervision but do not require the physical presence of the physician.

Enactment clauses in both chapters required the board to adopt emergency regulations, and it is the board's intent to replace those regulations with permanent regulations.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board 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 specific legal mandate to promulgate the regulation for the provision of voluntary health care services by out-of-state practitioners in clinics in underserved areas sponsored by nonprofit organizations is found in Chapter 740 of the 2002 Acts of the Assembly.

<http://leg1.state.va.us/cgi-bin/legp504.exe?021+ful+CHAP0740>

The specific legal authority to promulgate regulations for the supervision and evaluation of physician assistants is in second enactment clause of Chapter 387 of the 2002 Acts of the Assembly, which states: "That the Board of Medicine shall promulgate regulations to implement the provisions of this act within 280 days of its enactment."

<http://leg1.state.va.us/cgi-bin/legp504.exe?021+ful+CHAP0387>

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

Voluntary Practice

Chapter 740 of the 2002 Acts of the Assembly provides specific conditions under which a health care practitioner who is licensed in another state can provide free care in underserved areas of

Virginia. Statutory requirements include: 1) that they do not regularly practice in Virginia; 2) that they hold a current valid license or certificate in another U. S. jurisdiction; 3) that they volunteer to provide free care; 4) that they file copies of their licenses or certificates in advance with the Board; 5) that they notify the Board of the dates and location of services; and 6) that they acknowledge in writing that they will only provide services within the parameters stated in the application. The statute also provides specific requirements for the non-profit organization sponsoring provision of health care and allows the Board to charge a fee for each practitioner.

As provided in the law, the emergency regulations will insert requirements for a practitioner who wishes to volunteer under provisions of the act to file a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice; provide a complete list of professional licensure in each state in which he has held a license and a copy of any current license; provide the name of the nonprofit organization, the dates and location of the voluntary provision of services; pay a registration fee of \$10; and provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of the applicable section of the Code of Virginia.

As also provided by the statute, the Board has the right to deny practice to any person whose license or certificate has been previously revoked or suspended, who has been convicted of a felony, or who is otherwise found to be in violation of applicable laws or regulations. In order to protect the health, safety and welfare of the consuming public and to ensure that the care provided by out-of-state practitioners will be minimally competent, the Board will use the information garnered from the application and verification from other states to determine whether the practitioner meets the criteria set forth in the law.

Supervision of physician assistants

Chapter 387 requires the “continuous supervision” of physician assistants by physicians but states that the supervision requirement should not be construed to require the physical presence of the physician during all times and places of service delivery by the assistant. With that change in the Code, several changes in current regulation were necessary. First, a definition of “continuous supervision” was added to provide for on-going, regular communication with the assistant on the care and treatment of patients. Second, the current definition of “general supervision” was amended to provide for accessibility of the physician without a requirement that he can be physically present to the assistant. The requirements in section 115 for notification to the board if the physician assistant is to perform duties away from the supervising physician is deleted as inconsistent with the new law. Likewise, an amendment will eliminate the requirement for the supervising physician to delegate his responsibility if he is unable to “personally” supervise the activities of the assistant.

In addition, the law requires that the assistant and supervising physician(s) identify the assistant’s scope of practice, including the delegation of medical tasks as appropriate to the assistant’s level of competence, the relationship with and access to the physician, and an evaluation process for the assistant’s performance. Therefore, amendments to requirements for the written protocol between the assistant and supervisors are adopted to include a provision for an evaluation process. Current regulations require review of the record of services within 72 hours after care by the assistant; amended regulations delete that specific requirement and replace it with a

requirement that the evaluation process specify the time period for review, proportionate to the acuity of care and practice setting. Though not required to review a patient chart within 72 hours or to be physically present while the assistant is rendering services, the supervising physician remains responsible for the care and treatment of patients. Provisions for a written protocol setting out the assistant's scope of practice and a process for evaluation will ensure that the physician is aware of his responsibility for the health and safety of the patient.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

There were no alternatives to adoption of an emergency regulation as it was mandated by Chapters 387 and 740 of the 2002 Acts of the Assembly.

Voluntary practice

The most burdensome aspect of the regulation on voluntary practice is specifically mandated by the Code, and that is that the group sponsoring the practice of the health care provider must be a "publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world."

Meeting such stringent criteria may be difficult for many nonprofits who would like to set up one-time or temporary clinics in underserved areas of Virginia and utilize the services of out-of-state practitioners who are willing to provide services at no charge. Since the qualifying language for the organization is taken from the provisions of law, the Board had no option about those criteria.

The law is also very specific in providing an exemption from the requirement for licensure in Virginia, so the regulations simply set forth the process for filing an application and submitting the documentation necessary to determine whether the applicant and the organization meet the statutory qualifications. The law provides that the applicant notify the Board at least 15 days before provision of services, but the Board will not be able to process an application until it is complete and the qualifications and licensure have been verified. There is also a provision in the legislation for a fee to be paid prior to providing services in Virginia, so the Board has adopted a very minimal fee of \$10 to cover some of the costs of processing the application.

Since there is already an exemption in § 54.1-2901 (16) for: "*Any practitioner of the healing arts licensed or certified and in good standing with the applicable regulatory agency in another state or Canada when that practitioner of the healing arts is in Virginia temporarily and such practitioner has been issued a temporary license or certification by the Board from practicing medicine or the duties of the profession for which he is licensed or certified (i) in a summer camp or in conjunction with patients who are participating in recreational activities, (ii) while participating in continuing educational programs prescribed by the Board, or (iii) by rendering at any site any health care services within the limits of his license, voluntarily and without compensation, to any patient of any clinic which is organized in whole or in part for the delivery of health care services without charge as provided in § 54.1-106.*" A temporary license for

limited practice in a free clinic is currently issued by the Board under the current exemption. Therefore, it was necessary for proposed regulations to stipulate that the requirements do not apply to a person applying under that provision in the Code.

Supervision of assistants

Since the change in § 54.1-2952 does not require the physical presence of the supervising physician at all times and in all settings in which the assistant is providing care and treatment, several rules in Chapter 50 had to be revised accordingly. Current definitions provide several levels of supervision with “general” requiring only the availability of the physician and an ability to be physically present within one hour. Since the law now allows PA’s to practice without the physician being physically present, general supervision was amended to provide for the physician to be easily available or accessible for consultation within one hour. In general supervision, his physical presence is not required. Depending on the level of acuity and practice setting, the written protocol between the assistant and physician may require personal or direct supervision for certain procedures or circumstances. Likewise, a rule for notifying the board if the assistant is going to perform duties away from the supervisor was unnecessary.

Current regulations require a review of the record of services rendered within 72 hours of care. Some physician assistants and supervising physicians have found that requirement to be burdensome and unworkable. The Board determined that the amended law requiring an evaluation process for the PA’s performance could replace the specific requirement for chart review within 72 hours. With amended regulations, the schedule for review would be determined in the written protocol, which must be on file with the board. The protocol must specify the appropriate time period for evaluation, based on the acuity of care and practice setting. Depending on the nature of the practice, it may be necessary for the supervising physician to review the care and treatment provided more frequently than 72 hours or it may be possible to evaluate performance on a less frequent basis.

With the passage of House Bill 1318 (Chapter 740 of the 2002 Acts) and House Bill 687 (Chapter 387 of the 2002 Acts), the Board is mandated to promulgate regulations implementing provisions of the law within 280 days. It has also adopted a Notice of Intended Regulatory Action to receive comment on its intent to replace the emergency regulations with permanent regulations.

Family Impact Statement

Please provide a preliminary analysis of the potential 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.

The proposed regulatory action would not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, strengthen or erode the marital commitment or increase or decrease disposable family income. The ability of out-of-state

practitioners to provide health care services at no charge to persons in underserved areas may benefit a small number of families who have limited access to such services.