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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC85-50-10 et seq.
Regulation title(s)	Regulations Governing the Practice of Physician Assistants
Action title	Changes to practice
Date this document prepared	8/22/16

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

In reviewing regulations to be amended pursuant to the Chapter 450 of the 2016 Acts of the Assembly, the Advisory Board on Physician Assistants identified amendments to sections 110 and 115 that they believed were within the spirit and intent of the legislation. However, they were not necessary to conform regulations to changes in the Code, so those changes could not be included in the exempt action.

Therefore, a Notice of Intended Regulatory Action identifies amendments that will eliminate requirements for submission to the Board of a physician's certification that his/her physician assistant (PA) is competent to perform specific invasive procedures and of the arrangements he/she has made for coverage by an alternative physician in his/her absence.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity 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, 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 specific Code sections relating to licensure and practice of physician assistants are:

§ 54.1-2952. Supervision of assistants by licensed physician, or podiatrist; services that may be performed by assistants; responsibility of licensee; employment of assistants.

A. A physician or a podiatrist licensed under this chapter may supervise physician assistants and delegate certain acts which constitute the practice of medicine to the extent and in the manner authorized by the Board. The physician shall provide continuous supervision as required by this section; however, the requirement for physician supervision of physician assistants shall not be construed as requiring the physical presence of the supervising physician during all times and places of service delivery by physician assistants. Each team of supervising physician and physician assistant shall identify the relevant physician assistant's scope of practice, including the delegation of medical tasks as appropriate to the physician assistant's level of competence, the physician assistant's relationship with and access to the supervising physician, and an evaluation process for the physician assistant's performance.

Physician assistants appointed as medical examiners pursuant to § 32.1-282 shall be under the continuous supervision of a licensed doctor of medicine or osteopathic medicine who has been appointed to serve as a medical examiner pursuant to § 32.1-282.

No licensee shall be allowed to supervise more than six physician assistants at any one time. Any professional corporation or partnership of any licensee, any hospital and any commercial enterprise having medical facilities for its employees which are supervised by one or more physicians or podiatrists may employ one or more physician assistants in accordance with the provisions of this section.

Activities shall be delegated in a manner consistent with sound medical practice and the protection of the health and safety of the patient. Such activities shall be set forth in a practice supervision agreement between the physician assistant and the supervising physician or podiatrist and may include health care services which are educational, diagnostic, therapeutic, preventive, or include treatment, but shall not include the establishment of a final diagnosis or

treatment plan for the patient unless set forth in the practice supervision agreement. Prescribing or dispensing of drugs may be permitted as provided in § [54.1-2952.1](#). In addition, a licensee is authorized to delegate and supervise initial and ongoing evaluation and treatment of any patient in a hospital, including its emergency department, when performed under the direction, supervision and control of the supervising licensee. When practicing in a hospital, the physician assistant shall report any acute or significant finding or change in a patient's clinical status to the supervising physician as soon as circumstances require and shall record such finding in appropriate institutional records. The physician assistant shall transfer to a supervising physician the direction of care of a patient in an emergency department who has a life-threatening injury or illness. Prior to the patient's discharge, the services rendered to each patient by a physician assistant in a hospital's emergency department shall be reviewed in accordance with the practice agreement and the policies and procedures of the health care institution. A physician assistant who is employed to practice in an emergency department shall be under the supervision of a physician present within the facility.

Further, unless otherwise prohibited by federal law or by hospital bylaws, rules, or policies, nothing in this section shall prohibit any physician assistant who is not employed by the emergency physician or his professional entity from practicing in a hospital emergency department, within the scope of his practice, while under continuous physician supervision as required by this section, whether or not the supervising physician is physically present in the facility. The supervising physician who authorizes such practice by his physician assistant shall (i) retain exclusive supervisory control of and responsibility for the physician assistant and (ii) be available at all times for consultation with both the physician assistant and the emergency department physician. Prior to the patient's discharge from the emergency department, the physician assistant shall communicate the proposed disposition plan for any patient under his care to both his supervising physician and the emergency department physician. No person shall have control of or supervisory responsibility for any physician assistant who is not employed by the person or the person's business entity.

B. No physician assistant shall perform any delegated acts except at the direction of the licensee and under his supervision and control. No physician assistant practicing in a hospital shall render care to a patient unless the physician responsible for that patient has signed the practice agreement, pursuant to regulations of the Board, to act as supervising physician for that physician assistant. Every licensee, professional corporation or partnership of licensees, hospital or commercial enterprise that employs a physician assistant shall be fully responsible for the acts of the physician assistant in the care and treatment of human beings.

C. Notwithstanding the provisions of § [54.1-2956.8:1](#), a licensed physician assistant who (i) is working under the supervision of a licensed doctor of medicine or osteopathy specializing in the field of radiology, (ii) has been trained in the proper use of equipment for the purpose of performing radiologic technology procedures consistent with Board regulations, and (iii) has successfully completed the exam administered by the American Registry of Radiologic Technologists for physician assistants for the purpose of performing radiologic technology procedures may use fluoroscopy for guidance of diagnostic and therapeutic procedures.

§ 54.1-2952.1. Prescription of certain controlled substances and devices by licensed physician assistant.

A. In accordance with the provisions of this section and pursuant to the requirements of Chapter 33 (§ [54.1-3300](#) et seq.), a licensed physician assistant shall have the authority to prescribe

controlled substances and devices as set forth in Chapter 34 (§ [54.1-3400](#) et seq.), provided that the physician assistant has entered into and is, at the time of writing a prescription, a party to a practice agreement with a licensed physician or podiatrist that provides for the direction and supervision by such licensee of the prescriptive practices of the physician assistant. Such practice agreements shall include the controlled substances the physician assistant is or is not authorized to prescribe and may restrict such prescriptive authority as deemed appropriate by the physician or podiatrist providing direction and supervision.

B. It shall be unlawful for the physician assistant to prescribe controlled substances or devices pursuant to this section unless such prescription is authorized by the practice agreement between the licensee and the assistant.

C. The Board of Medicine, in consultation with the Board of Pharmacy, shall promulgate such regulations governing the prescriptive authority of physician assistants as are deemed reasonable and necessary to ensure an appropriate standard of care for patients.

The regulations promulgated pursuant to this section shall include, at a minimum, (i) such requirements as may be necessary to ensure continued physician assistant competency that may include continuing education, testing, and/or any other requirement, and shall address the need to promote ethical practice, an appropriate standard of care, patient safety, the use of new pharmaceuticals, and appropriate communication with patients; and (ii) a requirement that the physician assistant disclose to his patients the name, address, and telephone number of the supervising licensee and that he is a physician assistant. A separate office for the physician assistant shall not be established.

D. This section shall not prohibit a licensed physician assistant from administering controlled substances in compliance with the definition of "administer" in § [54.1-3401](#) or from receiving and dispensing manufacturers' professional samples of controlled substances in compliance with the provisions of this section.

§ 54.1-2952.2. When physician assistant signature accepted.

Whenever any law or regulation requires a signature, certification, stamp, verification, affidavit, or endorsement by a physician, it shall be deemed to include a signature, certification, stamp, verification, affidavit, or endorsement by a physician assistant.

§ 54.1-2953. Renewal, revocation, suspension and refusal.

The Board may revoke, suspend, or refuse to renew an approval for any of the following:

- 1. Any reason stated in this chapter for revocation or suspension of the license of a practitioner;*
- 2. Failure of the supervising licensee to supervise the physician assistant or failure of the employer to provide a licensee to supervise the physician assistant;*
- 3. The physician assistant's engaging in acts beyond the scope of authority as approved by the Board;*
- 4. Negligence or incompetence on the part of the physician assistant or the supervising licensee in his use of the physician assistant;*
- 5. Violating or cooperating with others in violating any provision of this chapter or the regulations of the Board; or*
- 6. A change in the Board's requirements for approval with which the physician assistant or the licensee does not comply.*

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

Chapter 450 of the 2016 Acts of the Assembly amended the Code to delete the requirement for physician assistants and their supervising doctors to submit a practice agreement for Board approval and the requirement for the practice agreement to include periodic site visits for physician assistants who provide services at a location other than where the physician regularly practices. Given that the practice agreement will no longer be submitted and approved by the Board, it is reasonable to delete or modify requirements for submission of other documents relating to the oversight of PAs by physicians. Elimination of documents relating to invasive procedures and alternative physician coverage will make the supervision and practice of PAs somewhat less burdensome. Maintenance of a requirement for a physician to certify the competency of a PA to perform specific invasive procedures will continue to protect the public health and safety.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Section 110 may be amended to eliminate the requirement that physicians provide certification for Board approval for the PA to perform certain invasive procedures. Physicians would still be required to directly supervise the performance of a specific procedure at least three times and then complete the certification form attesting that the PA is competent to do the procedure under general supervision, but that certification would become part of the PA’s practice agreement and would not need to be accepted and approved by the Board.

Section 115 may be amended to eliminate the requirement for the supervising physician to report to the Board arrangements for coverage of the PA supervision by an alternative physician in case of his or her absence from the practice.

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.

There are no viable alternatives to the selection of the least burdensome and intrusive regulation.

Public participation

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website , www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Richmond, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

The Advisory Board on Physician Assistants, consisting of three licensed PAs, a physician who supervises a PA, and one citizen member, will serve as the Regulatory Advisory Panel to develop proposed regulations resulting from the NOIRA and any comment on the NOIRA.