



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC85-40-10 et seq.
Regulation title	Regulations Governing the Practice of Respiratory Care
Action title	Acceptance of AMA category 1 continuing education
Document preparation date	7-2-04

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The Board of Medicine is responding to a petition for rule-making from a respiratory care practitioner requesting regulations be amended to accept Category 1 CME approved by the American Medical Association to meet the required hours for renewal of licensure as a respiratory care practitioner. The goal is to expand the approved CE courses available for this profession to include those directed to the practice of respiratory care and offered by another recognized provider.

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

**18 VAC 85-40-10 et seq. Regulations Governing the Practice of Respiratory Care Practitioners** was promulgated by the Board of Medicine under the general authority of Title 54.1 of the Code of Virginia.

**Chapter 24** establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and issue an inactive license.

*§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:*

1. *To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
2. *To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
3. *To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
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 and Chapter 25 of this title...*

The Board of Medicine has a specific statutory mandate to promulgate regulations to ensure practitioner competence with requirements such as continuing education.

**§ 54.1-2912.1. Continued competency requirements.**

- A. *The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and/or any other requirement.*
- B. *In promulgating such regulations, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.*
- C. *The Board may approve persons who provide or accredit such programs in order to accomplish the purposes of this section.*

In addition, the Board is also authorized by § 54.1-103 to specify additional training for licensees seeking renewal of licenses.

**§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.**

A. *The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.*

### Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.*

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The proposed action would amend 18VAC85-40-66, Continuing education requirements, to accept courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 CME credit to meet the 20-hour per biennium CE requirement for renewal of a license as a respiratory care practitioner.

As the scope of practice for respiratory care practitioners expands beyond its traditional therapies, it is logical to expand the subject matter and availability of courses in continuing education to prepare licensees to assume increasing responsibilities for patient care. Respiratory care practitioners are seeking legislative authority to expand their authority to administer all schedules of medication by any route. In addition, hospital-based respiratory care already involves practice well beyond the traditional inhalation therapy. Respiratory care practitioners may be better prepared to practice in a manner that protects the health and safety of patients if they can use courses offered for continuing medical education for CE credit.

### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

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The Board is responding to a petition for rule-making from a respiratory care practitioner; the petition was supported by letters from 24 other practitioners who want to be able to avail themselves of CE offerings that have Category 1 CME credits. The petitioner provided public comment to the Advisory Board on Respiratory Care at its meeting on May 19, 2004 to explain the need for amending the regulations.

At the Advisory Board meeting, there was concern expressed about the validity and relevance of courses approved by the American Medical Association. Under current regulations, the only body that can approve continuing education for respiratory care is the American Association for Respiratory Care (AARC). Since CE is a new requirement for respiratory care practitioners, there was some sentiment for maintaining a sole approval source to ensure that courses would have an acceptable level of quality and applicability to the practice.

It was discussed with the advisory board that other professions, such as dentistry, nursing and pharmacy, accept category 1 CME credits from the AMA, so there is precedence for such

recognition. In addition, regulations can specify that the CME courses must be directly related to the practice of respiratory care. With that specificity, the Advisory Board and the Legislative Committee recommended approval of a Notice of Intended Regulatory Action, which was adopted by the full Board of Medicine at its meeting on June 24, 2004.

### **Family impact**

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.*

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There is no impact on the institution of the family and family stability.