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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 76-40-10 et seq.
Regulation title	Regulations Governing Emergency Contact Information
Action title	Initial regulations
Document preparation date	7/15/03

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Preamble

The APA (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

House Bill 2182 of the 2003 General Assembly authorized the Department to “require certain licensed, certified or registered persons to report any email address, telephone number and facsimile number that may be used to contact such person in the event of a public health emergency.”

Further, the General Assembly included an enactment clause to authorize the promulgation of emergency regulations. The second enactment clause in Chapter 602 of the 2003 Acts of the Assembly requires, “That the Director of the Department of Health Professions, in consultation with the Department of Health and the Department of Emergency Management, shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.”

Chapter 602 requires the Director, in consultation with the Department of Health and the Department of Emergency Management, to adopt regulations that identify those licensed, certified or registered persons to which the requirement to report shall apply and the procedures for reporting. Emergency regulations list those categories of regulated entities that will be required to provide emergency contact information and limits that requirement to those persons or entities whose address of record is in Virginia, a contiguous state or the District of Columbia. The contact information required to be reported is set forth in regulation, along with the time frame within the regulant is expected to respond. Regulated entities are only required to provide fax numbers or email addresses if they have direct access to such, and all collected information may be only used for the purpose of disseminating notification of a public health emergency.

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 purpose of these regulations is to set out the listing of licensees, certificate holders, registrants and permitted facilities that will be required to provide contact numbers and email addresses which may be used in the event of a public health emergency to disseminate information to health care providers and to request mobilization of those providers needed to deliver services in an affected area of the state. Phone numbers, fax numbers and email addresses will be collected from those who list Virginia as their address of record, as well as those from contiguous states and DC. The Department of Health Professions will collect the data which will be maintained in a web-based system and available for use by the Department of Health in the event of a public health emergency. The regulated entities will be given a time frame of 30 to 90 days within which to respond to any request for information. After the initial data collection, the regulants will be asked to update their information on a renewal application and whenever there is a change in the contact information provided to the Department. Contact information may not be disclosed for any purpose other than to the Department of Health for utilization in a public health emergency.

Legal basis

- 1) Please confirm that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.
- 2) Please indicate that the regulation is not otherwise exempt under the provisions of subdivision A.4 of Section 2.2-4006 of the APA.

The legislative mandate for promulgation of 18 VAC 76-40-10 is found in Chapter 602 of the 2003 Acts of the Assembly:

CHAPTER 602

An Act to amend and reenact § 54.1-2506.1 of the Code of Virginia, relating to health practitioner contact information for a public health emergency; emergency.

[H 2182]

Approved March 18, 2003

Be it enacted by the General Assembly of Virginia:

1. That § [54.1-2506.1](#) of the Code of Virginia is amended and reenacted as follows:

§ [54.1-2506.1](#). Submission of required information.

A. The Department is authorized to require individuals applying for initial licensure and individuals who are licensed to practice medicine, osteopathic medicine, dentistry, or to practice as a physician assistant, nurse practitioner or dental hygienist, to provide information in addition to that which is required to determine the individual's qualifications to be licensed. Such additional information shall identify the individual's specialty and subspecialty; credentials and certifications issued by professional associations, institutions and boards; and locations of practice and number of hours spent practicing at each practice location. Such information shall be collected and maintained by the Department for manpower planning purposes in cooperation with agencies and institutions of the Commonwealth and shall be released by the Department only in the aggregate without reference to any licensee's name or other individual identifying particulars. Prior to collecting any information described in this section from individual licensees, the Department shall first attempt to obtain from other sources information sufficient for manpower planning purposes.

B. For the purpose of expediting the dissemination of information about a public health emergency, the Department is authorized to require certain licensed, certified or registered persons to report any email address, telephone number and facsimile number that may be used to contact such person in the event of a public health emergency. Such email addresses, telephone numbers and facsimile numbers shall not be published, released or made available for any other purpose. The Director, in consultation with the Department of Health and the Department of Emergency Management, shall adopt regulations that identify those licensed, certified or registered persons to which the requirement to report shall apply and the procedures for reporting.

2. That the Director of the Department of Health Professions, in consultation with the Department of Health and the Department of Emergency Management, shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

3. That an emergency exists and this act is in force from its passage.

The Office of the Attorney General has certified that the "emergency situation" which exists is specified in § 2.2-4011 of the Code of Virginia as one in which the agency is required by statutory law to have a regulation in effect within 280 days from the enactment of the law. The regulation is not otherwise exempt under the provisions of subdivision A.4 of Section 2.2-4006 of the Administrative Process Act.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

Section number	Requirement (all sections are new regulations)	Rationale
10	<p>Listing of the persons and entities regulated by a health regulatory board that will be required to provide emergency contact information. Only those regulants whose address of record is in Virginia, a contiguous state or the District of Columbia are required to report.</p>	<p>The listing was compiled in consultation with the Departments of Health and Emergency Management and includes those persons or entities that might be essential in case of a public health emergency. The listing is in alphabetical order, rather than priority order. Contact information is currently collected and available on doctors of medicine, osteopathy and podiatry, so they are not included. For the purpose of disseminating emergency information and mobilizing a response, it was not necessary to obtain contact numbers and addresses on regulants whose residency is in states beyond the borders of Virginia.</p>
20	<p>Information that must be reported for contact in the event of a public health emergency includes:</p> <ul style="list-style-type: none"> A telephone number at which he may be contacted during weekday business hours (8:00 am – 5:00 pm); A telephone number at which he may be contacted during non-business hours (5:00 pm – 8:00 am weekdays and on weekends or holidays); A fax number at which he may be sent information concerning the emergency; and An email address at which he may be sent information concerning the emergency. <p>A person or entity is only required to report those fax numbers or email addresses to which he has direct access; and information collected for the purpose of disseminating notification of a public health emergency cannot be published or made available for any other purpose.</p>	<p>With guidance from the Health and Emergency Management, a list of the required contact numbers and addresses is established. Regulations also specify that the regulated entities are only required to provide a fax number or email if they have direct access to such, and that any information provided as required in this section cannot be released for any purpose other than dissemination of information about a public health emergency.</p>
30	<p>A licensee, certificate or permit holder or registrant must provide the required emergency contact information within a time</p>	<p>A time limit is established by which a regulant listed in section 10 is required to report the information set forth in section 20.</p>

	<p>period specified by the Director to be no less than 30 days or greater than 90 days from receipt of the request or notification from the Department. Whenever there is a change in the information that has been provided, the licensee, certificate or permit holder or registrant must provide revised information to the Department within 30 days.</p>	<p>Notification or a request to report from the Director will specify a time frame between 30 and 90 days for reporting. The initial request for information may give the regulant 30 to 60 days to report. Thereafter a renewal notice, typically sent 45 to 60 days in advance of the expiration date may give the regulant 60 to 90 days to update the contact information during the course of renewing a license. Anytime there has been a change in the information provided, the regulant is supposed to notify the Department with an update within 30 days.</p>
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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.

There are no alternatives to the promulgation of regulations, which is specifically mandated by Chapter 602 of the 2003 Acts of the Assembly. The regulations provide the basic framework for the data collection, namely the listing of regulated entities from which information is to be collected, the specific numbers and addresses that will be requested, and a time frame for compilation.

Implementation of the DHP-VDH online system for collecting health care practitioner emergency contact information has been set out in a Memorandum of Understanding (MOU) between the Department of Health and the Department of Health Professions. It calls for certain classifications of health care practitioners to provide emergency contact information on a voluntary basis. Though practitioners will be given a specific time frame within which to respond, there will be no disciplinary action taken and no one will be denied licensure renewal for failure to comply. Emergency contact data will be combined with licensure information already maintained in a data system within DHP, so VDH will have access to the practitioner’s full name, occupation, licensing board, licensure status, license number, and zip code in addition to phone numbers, fax numbers and email addresses. The practitioner will also be asked whether he would be willing to volunteer for medical response during a bioterrorism event or any other public health emergency and may be asked to voluntarily provide a digital pager number. Data collection will initially be conducted on-line with opportunity given after the first 30 days for practitioners to respond to a paper survey.

Persons involved in emergency preparedness at VDH and the Department of Emergency Management have been provided the categories of regulants from which information is needed. Also, a decision has been made to prioritize that listing to ensure that health care practitioners who are considered more critical to care for the public in an emergency are solicited for information first. Since doctors of medicine, osteopathy and podiatry have already provided such information in a data base through a previous legislative mandate, the next group would

include nurses (RN and LPN), physician assistants, certain licensed mental health professionals, veterinarians, pharmacists, pharmacies and so forth.

During the implementation phase lasting approximately six months, DHP will assume the costs associated with maintenance and administration of the system. Thereafter, VDH and DHP will determine whether and how to allocate ongoing costs between the two agencies. According to the MOU, the expected initial cost will total approximately \$28,000. It is expected that data will be requested from approximately 150,000 persons and entities regulated by the Department.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

The Board has determined that there is no impact on the family or family stability as a result of these regulations. In the event a public health emergency, it would be expected that the ready availability of contact numbers to disseminate information and mobilize a response by health care workers and entities could have a positive effect of the stability and viability of many families in the Commonwealth.