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Fast-Track Regulation
Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC85-130
Regulation title(s)	Regulations Governing the Practice of Licensed Midwives
Action title	Practical experience under supervision
Date this document prepared	10/26/2017

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.*

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed amendment will change the time from three years to ten years in which a person who is enrolled in a midwifery education program or completing his portfolio is allowed to perform tasks related to the practice of midwifery under direct and immediate supervision.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

CPM = certified professional midwife
NARM = North American Registry of Midwives

Statement of final agency action

Please 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 October 26, 2017, the Board of Medicine amended 18VAC85-130, Regulations Governing the Practice of Licensed Midwives.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person'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 legal basis for regulation of licensed midwives is found in:

§ 54.1-2957.7. Licensed midwife and practice of midwifery; definitions.
"Midwife" means any person who provides primary maternity care by affirmative act or conduct prior to, during, and subsequent to childbirth, and who is not licensed as a doctor of medicine or osteopathy or certified nurse midwife.
"Practicing midwifery" means providing primary maternity care that is consistent with a midwife's training, education, and experience to women and their newborns throughout the childbearing cycle, and identifying and referring women or their newborns who require medical care to an appropriate practitioner.

§ 54.1-2957.8. Licensure of midwives; requisite training and educational requirements; fees.

A. It shall be unlawful for any person to practice midwifery in the Commonwealth or use the title of licensed midwife unless he holds a license issued by the Board. The Board may license an applicant as a midwife after such applicant has submitted evidence satisfactory to the Board that he has obtained the Certified Professional Midwife (CPM) credential pursuant to regulations adopted by the Board and in accordance with the provisions of §§ 54.1-2915 and 54.1-2916.
B. Persons seeking licensure as a midwife shall submit such information as required in the form and manner determined by the Board.
C. Persons seeking licensure shall pay the required license fee as determined by the Board.

§ 54.1-2957.9. Regulation of the practice of midwifery.
The Board shall adopt regulations governing the practice of midwifery, upon consultation with the Advisory Board on Midwifery. The regulations shall (i) address the requirements for licensure to practice midwifery, including the establishment of standards of care, (ii) be consistent with the North American Registry of Midwives' current job description for the profession and the National Association of Certified Professional Midwives' standards of practice, except that prescriptive authority and the possession and administration of controlled substances shall be prohibited, (iii) ensure independent practice, (iv) require midwives to disclose to their patients, when appropriate, options for consultation and referral to a physician and evidence-based information on health risks associated with birth of a child outside of a hospital or birthing center, as defined in § 54.1-2957.03, including risks associated with vaginal births after a prior cesarean section, breech births, births by women experiencing high-risk pregnancies, and births involving multiple gestation, (v) provide for an appropriate license fee, and (vi) include requirements for licensure renewal and continuing education. Such regulations shall not (a) require any agreement, written or otherwise, with another health care professional or (b) require the assessment of a woman who is seeking midwifery services by another health care professional.
License renewal shall be contingent upon maintaining a Certified Professional Midwife certification.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the amended regulation is to provide a sufficient time frame for completion of a midwifery portfolio for evaluation by NARM to qualify a person to sit for the certification examination and thus qualify for licensure. Since persons engaged in gaining practical experience and directly and immediately supervised by a licensed physician or midwife, the public continues to be protected. The goal is to ensure that supervised practice continues for the time period that may be necessary for someone to complete a portfolio.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The amended regulation was requested by the Advisory Board on Midwifery and unanimously approved by the Board of Medicine. It is less burdensome and noncontroversial.

Substance

Please 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.

The proposed amendment will change the time from three years to ten years in which a person who is enrolled in a midwifery education program or completing his portfolio is allowed to perform tasks related to the practice of midwifery under direct and immediate supervision.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

1) The primary advantage to the public may be the ability for some persons to complete a NARM portfolio within a more reasonable time frame and thereby become licensed to provide midwifery services. There are no disadvantages to the public since such persons must provide services under direct and immediate supervision.
2) There are no advantages or disadvantages to the agency or the Commonwealth.
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*." Since this is a less restrictive amendment, there is no restraint on competition as a result of promulgating this regulation.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

There are no alternative regulatory methods, consistent with health, safety and welfare that accomplish the objectives.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including: **a) fund source / fund detail; and** **b) a delineation of one-time versus on-going expenditures**	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 for necessary functions of regulation. All notifications will be done electronically. There are no on-going expenditures.
Projected cost of the new regulations or changes to existing regulations on localities.	There are no costs to localities.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	The individuals affected will be person enrolled in a midwifery education program or working with a supervisor to gain clinical experiences necessary for completion of a NARM portfolio.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses	There is no estimate of the number who may be positively affected by the extension of the time

affected. Small 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.	frame. There are no educational programs in Virginia. There were 7 persons licensed as midwives in 2016-17; 7 in 2015-2016; and 4 in 2014-2015.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	There are no projected costs.
Beneficial impact the regulation is designed to produce.	The revised time frame will benefit persons working on completion of a NARM portfolio.

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 less intrusive or costly alternatives.

Public participation notice

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.

Family impact

Please assess the impact of this 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.

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

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
45	N/A	The current section is entitled, "Practice while enrolled in an accredited midwifery education program" and provides a student exemption from licensure for performance of tasks related to the practice of midwifery, while under direct and immediate supervision, for a period of three years. A person is allowed to request an extension beyond three years for one additional year for good cause shown.	The section is retitled to more accurately reflect its content and intent, "*Practical experience under supervision*." The provisions in the section cover practice while enrolled in an educational program but also while completing the experiences necessary for a NARM portfolio evaluation. The current time frame of three years is extended to 10 years, and the provision for a request for one additional year (4 years) is deleted. *It may take a person who is working with a midwife who has a solo practice a number of years to acquire all the varied midwifery experience necessary to complete a NARM portfolio. The three-year time frame is unrealistic for some of these situations. NARM will only accept clinical experiences within the immediate past 10 years, so that time frame has been adopted for this allowance from the requirements of a license.*