



townhall.virginia.gov

Periodic Review Report of Findings

Agency name	Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC75-40
Regulation title	Regulations Governing Certification of Dialysis Technicians
Date this document prepared	3/11/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

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

N/A

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must 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 or promulgating entity's overall regulatory authority.

18VAC75-40-10 et seq. Regulations Governing Certification of Dialysis Technicians 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 with 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 (§ 2.2-4000 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 statutory mandate for regulations governing certification of dialysis technicians is found in Chapter 27.01 of Title 54.1:

§ 54.1-2729.2. Dialysis patient care technician; definition.

"Dialysis patient care technician" or "dialysis care technician" means a person who has obtained certification from an organization approved by the Board of Health Professions to provide, under the supervision of a licensed practitioner of medicine or a registered nurse, direct care to patients undergoing renal dialysis treatments in a Medicare-certified renal dialysis facility. Such direct care may include, but need not be limited to, the administration of heparin, topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers in accordance with the order of a licensed physician, nurse practitioner or physician assistant. However, a person who has completed a training program in dialysis patient care may engage in provisional practice to obtain practical experience in providing direct patient care under direct and immediate supervision in accordance with § 54.1-3408, until he has taken and received the results of any examination required by a certifying organization approved by the Board or for 24 months from the date of initial practice, whichever occurs sooner.

§ 54.1-2729.3. Prohibition on use of title without holding certification; continuing competency requirements; fees; penalty.

A. No person shall hold himself out to be or advertise or permit to be advertised that he is a dialysis patient care technician or dialysis care technician as defined in this chapter unless such person has obtained certification from an organization approved by the Board of Health Professions as examining candidates for appropriate competency or technical proficiency to perform as dialysis patient care technicians or dialysis care technicians.

B. The title restrictions provided by this section shall apply to the use of the terms "dialysis patient care technician" and "dialysis care technician" or any other term or combination of terms used alone or in combination with the terms "licensed," "certified," or "registered," as such terms also imply a minimum level of education, training, and competence. A person who is authorized for provisional practice to provide direct patient care while obtaining practical experience shall be identified as a "trainee" while working in a renal dialysis facility.

C. The Board of Health Professions may require such continuing competency training as it may deem necessary for dialysis patient care technicians or dialysis care technicians.

D. Any person who willfully violates the provisions of this chapter shall be guilty of a Class 3 misdemeanor.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no alternatives to the purpose of the regulation which is mandated by the Code of Virginia.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

A Notice of Periodic Review was posted on Townhall and published in the Register of Regulations with comment requested from December 10, 2018 to January 9, 2019. There were no comments posted or received by the Department.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The Department has reviewed the current chapter, noted that it is mandated by the law and necessary for public health, welfare and safety. The Department has determined that it is effective and clearly understood by technicians and the dialysis facilities in which they provide services.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The Executive Director of the Board reviewed the regulation, confirmed that the certifications delineated are current, and recommended that it be retained without amendments.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic

conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

- (1) The regulation is necessary for public protection since there is a statutory mandate for board-approved certifications in order for a dialysis technician to provide services in a Medicare-certification facility: *"Dialysis patient care technician" or "dialysis care technician" means a person who has obtained certification from an organization approved by the Board of Health Professions to provide, under the supervision of a licensed practitioner of medicine or a registered nurse, direct care to patients undergoing renal dialysis treatments in a Medicare-certified renal dialysis facility.,*
- (2) There have been no complaints or comments on the content of the regulation.
- (3) The regulation is very straight-forward in identifying the certifications that are approved by the Board. There is no registration, certification, or licensure of dialysis technicians.
- (4) These regulations do not overlap, duplicate, or conflict with state or federal law.
- (5) This chapter was reviewed in 2011 and recommended in 2012 to be retained without amendments.