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Fast-Track Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC85-20 18VAC85-50 18VAC85-101
VAC Chapter title(s)	Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry & Chiropractic Regulations Governing the Practice of Physician Assistants Regulations Governing the Licensure of Radiologic Technology
Action title	Requirements for licensure by endorsement
Date this document prepared	12/3/21

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Board has amended its regulations to facilitate licensure by only requiring verification of the most recent license status in another U.S. jurisdiction for applicants for licensure by endorsement in medicine, osteopathic medicine, podiatry. It has also amended licensure regulations for physician assistants and radiologist assistants to require only verification of one jurisdiction, which is consistent with current language for all other allied professions licensure under the Board.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

N/A

Statement of Final Agency Action

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 December 3, 2021, the Board of Medicine amended:
18VAC85-20: Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry & Chiropractic
18VAC85-50: Regulations Governing the Practice of Physician Assistants
18VAC85-101: Regulations Governing the Licensure of Radiologic Technology

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The impetus for this action came from recommendations of the Credentials Committee in consultation with all of the advisory boards to find ways of streamlining the licensing process for professions it regulates. This action is appropriate for the fast-track process because the amendments will make licensing more efficient, enabling applicants to obtain licensure and begin practice more expeditiously. Public protection and minimal competency are not being compromised, so there should be no objection to these changes.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency 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 (6), 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: ...

- 1. To establish the qualifications for registration, certification, licensure, permit, or the issuance of a multistate licensure privilege 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, licensure, or registration. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify, license, or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board....*
- 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. ...*

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

Amendments will make licensing more efficient, enabling applicants to obtain licensure and begin practice more expeditiously. Public health and safety are still protected, as verification is still required showing that no disciplinary action has been taken or is pending in another jurisdiction.

Substance

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.

Requirements for licensure in Chapters 20, 50, and 101 are amended for applicants in medicine, osteopathic medicine, podiatry, or as a physician assistant or radiologist assistant. The revised regulation will require verification that the most recent license held in another jurisdiction or Canada is in good standing or that there has been no disciplinary action taken or pending.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

- 1) The primary advantage to the public is expedited licensure for medical professionals to increase access to vital services. There are no disadvantages; public protection is maintained through a state verification and a report from the NPDB.
- 2) There are no advantages or disadvantages to the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the regulation 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.*” Any restraint on competition that results from this regulation is in accord with the General Assembly’s policy as articulated in § 54.1-100.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected - none

Localities Particularly Affected - none

Other Entities Particularly Affected - none

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	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 or entities for necessary functions of regulation. All notifications will be done electronically. There are no on-going expenditures.
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	None
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	None

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Applicants for licensure by endorsement in medicine, osteopathic medicine, or podiatry. Applicants for licensure as a physician assistant or a radiologist assistant.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses 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.	In 2020, there were 596 MD and DO licenses issued by endorsement (none for podiatrist). There are no statistics about how many of those held licenses in multiple jurisdictions, but the licensing specialists say the vast majority did. Licensure of physician assistants is not divided by licensure by exam or by endorsement, so there is no information on how many applicants were previously licensed in multiple jurisdictions. There were 150 PA licenses issued in the 4 th quarter of 2021.

	There were no licenses for radiologist assistants issued in the 4 th quarter; only one such license has been issued in the past year.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	The would be a cost-savings to applicants who would no longer have to provide verification of licensure status for <u>every</u> U.S. jurisdiction in which they are or ever have been licensed. Costs for verification of licensure vary from jurisdiction to jurisdiction.
Benefits the regulatory change is designed to produce.	The benefit is more efficient and expedited licensure.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no alternatives considered; in order to fully implement the recommendations of the Credentials Committee and the Advisory Boards for a streamlined licensure process, certain provisions of regulation had to be amended.

Regulatory Flexibility Analysis

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

The Board has now adopted a streamlined process for licensure by eliminating certain forms and allowing electronic submission (digital copies) of some information. To fully implement the methods recommended, amendments are required in three chapters.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, 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.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board of Medicine is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Elaine Yeatts, 9960 Mayland Drive, Henrico, VA 23233, Phone (804) 367-4688; Fax (804) 527-4434; elaine.yeatts@dhp.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
85-20-141	Licensure by endorsement. Requires verification that <u>all</u> licenses held in the U.S. and Canada are in good standing.	<p>Will require verification that the most recent license held in another jurisdiction or Canada is in good standing.</p> <p><i>Many applicants for licensure by endorsement in medicine, osteopathic medicine, and podiatry are licensed in multiple jurisdictions, so verification of every license can significantly delay the licensing process. Licensure by endorsement is supposed to be an expedited process, but it is often not the case as the Virginia Board waits for information from other states.</i></p>

		<i>Verification from the most recent state of licensure status, coupled with a report from the National Practitioner Data Bank, provides sufficient evidence that there are no grounds on which to deny licensure in Virginia.</i>
85-50-50	Licensure requirements for a physician assistants. Requires documentation that a license has not been suspended or revoked or is not the subject of a disciplinary in any other jurisdiction	<p>Consistent with the recommendation for licensure by endorsement in Chapter 20, the amendment will specify that, if licensed or certified in another jurisdiction, an applicant must provide verification that no disciplinary action has been taken or is pending in that jurisdiction.</p> <p><i>The amendment will make the application requirement for verification consistent with regulations for other allied professions under the Board of Medicine.</i></p>
85-101-28	Licensure requirements for a radiologist assistant. Requires documentation on the status of each license or certificate held	<p>Consistent with the recommendation for licensure by endorsement in Chapter 20, the amendment will specify that, if licensed or certified in another jurisdiction, an applicant must provide verification that no disciplinary action has been taken or is pending in that jurisdiction.</p> <p><i>The amendment will make the application requirement for verification consistent with regulations for radiologic technologists (also licensed under Chapter 101) and all other allied professions under the Board of Medicine.</i></p>