



townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Optometry, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC105-20
VAC Chapter title(s)	Regulations Governing the Practice of Optometry
Action title	Regulations for optometrist profiles and reporting
Date this document prepared	August 26, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

These amendments to an existing chapter require optometrists to annually register with the Board and report certain information pursuant to enactment clause 3 of [Ch. 16](#) and [Ch. 17](#) of the 2022 Acts of Assembly. That enactment clause required the Board to promulgate regulations to establish required reporting of certain data.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

N/A

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 the ORM procedures, “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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The mandate for this action comes from enactment clause 3 of [Ch. 16](#) and [Ch. 17](#) of the 2022 Acts of Assembly, which required the Board to promulgate regulations regarding annual reporting by optometrists to the Board of certain, specified information.

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 of the Board of Optometry are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be “[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system.”

Enactment clause 3 of [Ch. 16](#) and [Ch. 17](#) of the 2022 Acts of Assembly requires the Board to promulgate regulations related to annual reporting by optometrists to the Board of certain, specified information.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The agency was required by legislation to promulgate regulations. Enactment clause 3 stated that the Board “shall” promulgate reporting requirement regulations, which must include

reporting for: (i) any disciplinary action taken against a person licensed by the Board in another state or in a federal health institution or voluntary surrender of a license in another state while under investigation; (ii) any malpractice judgment against a person licensed by the Board; (iii) any settlement of a malpractice claim against a person licensed by the Board; and (iv) any evidence that indicates a reasonable belief that a person licensed by the Board is or may be professionally incompetent, has or may have engaged in intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, has or may have

engaged in unprofessional conduct, or may be mentally or physically unable to engage safely in the practice of his profession.

See [Ch. 16](#) and [Ch. 17](#) of the 2022 Acts of Assembly, enactment clause 3.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The changes being considered include establishment of a reporting system on the Board's website to include the information required by the enacting legislation. Such reporting requirements will include:

- any disciplinary action taken against a person licensed by the Board in another state or in a federal health institution or voluntary surrender of a license in another state while under investigation;
- any malpractice judgment against a person licensed by the Board;
- any settlement of a malpractice claim against a person licensed by the Board; and
- any evidence that indicates a reasonable belief that a person licensed by the Board is or may be professionally incompetent, has or may have engaged in intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, has or may have engaged in unprofessional conduct, or may be mentally or physically unable to engage safely in the practice of his profession.

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 to regulation. Regulation is required by the enacting legislation and the Board must enact regulations for reporting the topics specified in the enacting legislation.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board of Optometry is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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 Erin Barrett, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or erin.barrett@dhp.virginia.gov or by fax to (804) 915-0382. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.