



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Fast Track Proposed Regulation Agency Background Document

Agency name	Virginia Department of Health
Virginia Administrative Code (VAC) citation	12VAC5-31
Regulation title	Virginia Emergency Medical Services Regulations
Action title	Amend 12VAC5-31-910 to add the term "affiliation" to the criteria for the general or presumptive denial for individuals applying for affiliation with an EMS agency or certification as an EMS provider.
Date this document prepared	July 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This revision adds criteria that limit an individual's ability to become affiliated with an EMS agency if they have a prior history of committing certain crimes to an existing exclusion that prevents these individual's from becoming certified as a Virginia EMS provider. This language was in the 2003 version of the Virginia EMS Regulations but was inadvertently deleted when the current regulations were adopted in 2012. These amendments constitute a technical revision. In addition, minor revisions to the definition of "EMS Personnel" are necessary to correct grammar, without affecting the content of the definition.

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.

The State Board of Health approved the fast track amendments to the Virginia Emergency Medical Services Regulations, 12VAC5-31-10 and 12VAC5-31-910, on September 18, 2014.

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.

§ 32.1-111.4. Regulations; emergency medical services personnel and vehicles; response times; enforcement provisions; civil penalties.

A. The State Board of Health shall prescribe by regulation:

1. Requirements for record keeping, supplies, operating procedures and other agency operations;
2. Requirements for the sanitation and maintenance of emergency medical services vehicles and their medical supplies and equipment;
3. Procedures, including the requirements for forms, to authorize qualified emergency medical services personnel to follow Do Not Resuscitate Orders pursuant to § 54.1-2987.1;
4. Requirements for the composition, administration, duties and responsibilities of the State Emergency Medical Services Advisory Board;
5. Requirements, developed in consultation with the Emergency Medical Services Advisory Board, governing the training, certification, and recertification of emergency medical services personnel;
6. Requirements for written notification to the State Emergency Medical Services Advisory Board, the State Office of Emergency Medical Services, and the Financial Assistance and Review Committee of the Board's action, and the reasons therefore, on requests and recommendations of the Advisory Board, the State Office of Emergency Medical Services or the Committee, no later than five workdays after reaching its decision, specifying whether the Board has approved, denied, or not acted on such requests and recommendations;
7. Authorization procedures, developed in consultation with the Emergency Medical Services Advisory Board, which allow the possession and administration of epinephrine or a medically accepted equivalent for emergency cases of anaphylactic shock by certain levels of certified emergency medical services personnel as authorized by § 54.1-3408 and authorization procedures that allow the possession and administration of oxygen with the authority of the local medical director and a licensed emergency medical services agency;
8. A uniform definition of "response time" and requirements, developed in consultation with the Emergency Medical Services Advisory Board, for each agency to measure response times starting from the time a call for emergency medical care is received until (i) the time an appropriate emergency medical response unit is responding and (ii) the appropriate emergency medical response unit arrives on the scene, and requirements for agencies to collect and report such data to the Director of the Office of Emergency Medical Services who shall compile such information and make it available to the public, upon request; and

9. Enforcement provisions, including, but not limited to, civil penalties that the Commissioner may assess against any agency or other entity found to be in violation of any of the provisions of this article or any regulation promulgated under this article. All amounts paid as civil penalties for violations of this article or regulations promulgated pursuant thereto shall be paid into the state treasury and shall be deposited in the emergency medical services special fund established pursuant to § 46.2-694, to be used only for emergency medical services purposes.

B. The Board shall classify agencies and emergency medical services vehicles by type of service rendered and shall specify the medical equipment, the supplies, the vehicle specifications and the personnel required for each classification.

C. In formulating its regulations, the Board shall consider the current Minimal Equipment List for Ambulances adopted by the Committee on Trauma of the American College of Surgeons.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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.

This is a technical change to amend the current EMS Regulations to prohibit individuals with an adverse criminal history from affiliating with an EMS agency licensed by the Virginia Department of Health’s Office of Emergency Medical Services, as was the case in the previous version of the regulations. Individuals who provide care to patients in their time of need must meet high moral, ethical and legal standards in order to maintain the trust and confidence of the communities they serve. Being able to restrict EMS agency affiliation and certification to those who have not committed heinous crimes adds a layer of protection to the health, safety and welfare of the citizens and visitors of the Commonwealth.

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?

Please note: 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 (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Changes to the regulations are not expected to be controversial. Key stakeholders groups and the general EMS community requested this technical change to reflect language that was previously in the 2003 version of the EMS Regulations but did not convey to the current version of the regulations.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.) Please be sure to define any acronyms.

12VAC5-31-910 prohibits the certification of individuals who have been found guilty of certain crimes. The proposed technical changes add the term “affiliation” to this section in order to reflect the previous

version of the EMS Regulations. This change is designed to prohibit an individual who has committed crimes of a certain nature from affiliating with an EMS agency in addition to restricting their ability to apply for certification as an EMS provider. In addition, there are certain crimes, after a defined waiting period, which do not affect an individual’s ability to apply to become affiliated or certified as an EMS provider in Virginia.

EMS – Emergency Medical Services

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.*

There are no disadvantages anticipated to the citizens, or businesses by amending these provisions. It will add an additional layer of scrutiny for those desiring to become affiliated with an EMS agency. For the Commonwealth, these recommended changes will work to assure a level of credibility for those seeking affiliation with or certification with an EMS agency providing service to the Commonwealth. There are no anticipated issues with this technical change. It restores the criteria as previously accepted by EMS system stakeholders in order to maintain the high standards the community expects for those providing emergency medical services in the Commonwealth.

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 requirements that exceed 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.

This proposed amendment affects all localities and EMS agencies in the Commonwealth of Virginia.

Regulatory flexibility analysis

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.

This recommended change re-establishes previously identified screening criteria for applicants who wish to be certified or affiliated with an EMS agency in Virginia. There are no viable alternative regulatory methods that will accomplish the statutory objectives contained in the Code of Virginia.

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	No anticipated additional costs.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	No anticipated additional costs.
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	This change aligns with national criteria for certification and re-establishes the two main criteria for screening an applicant for affiliation or certification in Virginia.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	This affects the licensed EMS agencies in Virginia, 681 as of March 4, 2014.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. 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.	No anticipated additional costs.
Beneficial impact the regulation is designed to produce.	Provides additional screening criteria for individuals seeking to become affiliated with an EMS agency or certified as a provider.

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 viable alternatives identified that would be less intrusive or least burdensome.

Family impact

Please assess the impact of the proposed 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 or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. 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 list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10		“Emergency medical services personnel” or “EMS personnel” means a person, affiliated with an EMS agency, responsible for the provision of emergency medical services including any or all persons who could be described as an attendant,	“Emergency medical services personnel” or “EMS personnel” means a person, <u>who is</u> affiliated with an EMS agency, <u>or is</u> responsible for the provision of emergency medical services including any or all persons who could be described as an attendant, attendant-in-charge, operator or operational medical director.

<p>910</p>		<p>attendant-in-charge, operator or operational medical director.</p> <p>A. General denial. Application for or certification of individuals convicted of certain crimes present an unreasonable risk to public health and safety. Thus, applications for certification by individuals convicted of the following crimes will be denied in all cases:</p> <p>B. Presumptive denial. Application for or current certification by individuals in the following categories will be denied except in extraordinary circumstances, and then will be granted only if the applicant or provider establishes by clear and convincing evidence that certification will not jeopardize public health and safety.</p> <ol style="list-style-type: none"> 1. Application for certification by individuals who have been convicted of any crime and who are currently incarcerated, on work release, on probation, or on parole. 2. Application for or certification by individuals convicted of crimes in the following categories unless at least five years have passed since the conviction or five years have passed since release from custodial confinement whichever occurs later: <ol style="list-style-type: none"> a. Crimes involving controlled substances or synthetics, including unlawful possession or distribution or intent to distribute unlawfully Schedule I through V drugs as defined by the Virginia Drug Control Act (§ 54.1-3400 seq. of the Code of Virginia). b. Serious crimes against 	<p>Rationale: provides clarification of who is affiliated with or provides services on behalf of an EMS agency.</p> <p>A. General denial. Application for <u>affiliation</u> or certification of individuals convicted of certain crimes present an unreasonable risk to public health and safety. Thus, applications for <u>affiliation or certification</u> by individuals convicted of the following crimes will be denied in all cases:</p> <p>B. Presumptive denial. Application for <u>affiliation</u> or current certification by individuals in the following categories will be denied except in extraordinary circumstances, and then will be granted only if the applicant or provider establishes by clear and convincing evidence that affiliation or certification will not jeopardize public health and safety.</p> <ol style="list-style-type: none"> 1. Application for <u>affiliation or certification</u> by individuals who have been convicted of any crime and who are currently incarcerated, on work release, on probation, or on parole. 2. Application for <u>affiliation or certification</u> by individuals convicted of crimes in the following categories unless at least five years have passed since the conviction or five years have passed since release from custodial confinement whichever occurs later: 3. Is currently under any disciplinary or enforcement action from another state EMS office or other recognized state or national healthcare provider licensing or certifying body. Personnel subject to these disciplinary or enforcement actions may be eligible for <u>affiliation or certification</u> provided there have been no further disciplinary or enforcement actions for five years prior to application for certification in Virginia. <p>Rationale: Amends the regulation to clarify the exclusionary criteria for not only EMS certification, but also those who desire to become affiliated with an EMS agency.</p>
------------	--	---	--

		<p>property, such as grand larceny, burglary, embezzlement, or insurance fraud.</p> <p>c. Any other crime involving sexual misconduct.</p> <p>3. Is currently under any disciplinary or enforcement action from another state EMS office or other recognized state or national healthcare provider licensing or certifying body. Personnel subject to these disciplinary or enforcement actions may be eligible for certification provided there have been no further disciplinary or enforcement actions for five years prior to application for certification in Virginia.</p>	
--	--	--	--