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Periodic Review Report of Findings

Agency name	Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC75-20
Regulation title	Regulations Governing Practitioner Self-Referral
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.

18VAC75-20-10 et seq. Regulations Governing Practitioner Self-Referral 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 practitioner self-referral is found in Chapter 24.1 of Title 54.1. Specifically, the Board is mandated to promulgate regulations and administer the Act in:

§ 54.1-2412. Board to administer; powers and duties of Board; penalties for violation.

A. In addition to its other powers and duties, the Board of Health Professions shall administer the provisions of this chapter.

B. The Board shall promulgate, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), regulations to:

- 1. Establish standards, procedures, and criteria which are reasonable and necessary for the effective administration of this chapter;*
- 2. Establish standards, procedures, and criteria for determining compliance with, exceptions to, and violations of the provisions of § 54.1-2411;*
- 3. Establish standards, procedures, and criteria for advising practitioners and entities of the applicability of this chapter to activities and investments;*
- 4. Levy and collect fees for processing requests for exceptions from the prohibitions set forth in this chapter and for authorization to make referrals pursuant to subsection B of § 54.1-2411;*
- 5. Establish standards, procedures, and criteria for review and referral to the appropriate health regulatory board of all reports of investigations of alleged violations of this chapter by practitioners and for investigations and determinations of violations of this chapter by entities;*
- 6. Establish standards, procedures, and criteria for granting exceptions from the prohibitions set forth in this chapter; and*
- 7. Establish such other regulations as may reasonably be needed to administer this chapter.*

C. Upon a determination of a violation by the Board, pursuant to the Administrative Process Act, any entity, other than a practitioner, that presents or causes to be presented a bill or claim for services that the entity knows or has reason to know is prohibited by § 54.1-2411 shall be subject to a monetary penalty of no more than \$20,000 per referral, bill, or claim. The monetary penalty may be sued for and recovered in the name of the Commonwealth. All such monetary penalties shall be deposited in the Literary Fund.

D. Any violation of this chapter by a practitioner shall constitute grounds for disciplinary action as unprofessional conduct by the appropriate health regulatory board within the Department of Health Professions. Sanctions for violation of this chapter may include, but are not limited to, the monetary penalty authorized in § 54.1-2401.

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 entities that seek advisory opinions from the Board.

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 rules are consistent and clear, 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
- (2) There have been no complaints or comments on the content of the regulation.
- (3) The regulation sets out criteria and a process for seeking advisory opinions or exceptions. Since 1996, the Board has issued 15 advisory opinions, all of which available for review on the Board's website. No applications have been received requesting an exception to the Act.
- (4) These regulations do not overlap, duplicate, or conflict with state or federal law.
- (5) In 2007, Part IV was added to regulations governing practitioner self-referral in order to set out criteria for delegation of an informal conference to an agency subordinate. The criteria for delegation would be those applications for an advisory opinion or an exception to the Practitioner Self-Referral Act that are deemed by the executive director and the chairman of the Board to be appropriate for a conference with a subordinate who is qualified by his training and experience in the organizational structure of the entity providing the health care service. The Board would delegate the choice of the subordinate to the executive director. Sections 60 and 70 were also amended to accurately reflect the process currently followed by a committee of the board that hears an application for an advisory opinion or an exception. The committee does not issue the opinion or grant the exception until its recommendation is presented to the board for ratification. This chapter was reviewed in 2011 and recommended in 2012 to be retained without amendments.