



Final Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC85-20, 18VAC85-40, 18VAC85-50, 18VAC85-80, 18VAC85-101, 18VAC85-110
Regulation title	Regulations Governing the: Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic Practice of Respiratory Care Practitioners Practice of Physician Assistants Licensure of Occupational Therapists Licensure of Radiologic Technologists and Radiologic Technologists-Limited Licensed Acupuncturists
Action title	Restricted volunteer license
Document preparation date	10/18/07

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

Chapter 881 of the 2006 Acts of the Assembly authorized the Board of Medicine to adopt regulations establishing a *restricted volunteer license* and authorized the adoption of emergency regulations. Emergency regulations setting out the fee for a restricted volunteer license and the continuing education required to renew such a license after the first biennial renewal became effective on September 1, 2006 and must be replaced by February 28, 2008. This final action would replace the emergency regulations with the identical language.

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.

On October 18, 2007, the Board of Medicine adopted final amendments to

18VAC85-20, 18VAC85-40, 18VAC85-50, 18VAC85-80, 18VAC85-101, 18VAC85-110
Regulations Governing the: Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic Practice of Respiratory Care Practitioners Practice of Physician Assistants Licensure of Occupational Therapists Licensure of Radiologic Technologists and Radiologic Technologists-Limited Licensed Acupuncturists

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, 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 or licensure 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 or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license 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 (§ 9-6.14:1 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 Board was mandated to promulgate regulations for restricted volunteer licenses by Chapter 881 of the 2006 Acts of the Assembly:

§ 54.1-2928.1. *Restricted volunteer license.*

A. The Board may issue a restricted volunteer license to a practitioner of the healing arts who:

- 1. Held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive;*
- 2. Is practicing within the limits of his license in accordance with provisions of § [54.1-106](#); and*
- 3. Attests to knowledge of the laws and regulations governing his branch of the healing arts in Virginia.*

B. A person holding a restricted volunteer license under this section shall not be required to complete continuing education for the first renewal of such a license. Subsequent renewals will require continuing education as specified by Board regulation.

C. If a practitioner with a restricted volunteer license issued under this section has not held an active, unrestricted license and been engaged in active practice within the past four years, he shall only practice his profession if a doctor of medicine or osteopathic medicine with an active, unrestricted Virginia license reviews the quality of care rendered by the practitioner with the restricted volunteer license at least every 90 days.

D. Such license may be renewed every two years in accordance with regulations promulgated by the Board.

E. A practitioner holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter, the regulations promulgated under this chapter, and the disciplinary regulations which apply to all such practitioners in Virginia.

F. The application fee and the biennial renewal fee for restricted volunteer license under this section shall be no more than one-half the renewal fee for an inactive license in the same branch of the healing arts.

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 it 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.

The purpose of the action is compliance with a statutory mandate for the promulgation of regulations to establish a restricted volunteer license under the Board of Medicine for persons to

practice without compensation in free clinics. Regulations set out the requirements for applying for such a license, the fees for application and renewal and the hours of continuing education necessary for the second renewal. The goal of the regulation was to establish minimal fees and continuing education requirements to facilitate and encourage practitioners who are retired or taking a break from active practice to obtain such a license and volunteer their services in a free clinic. At the same time, there was concern that practitioners maintain current knowledge and technique as necessary to serve patients in free clinics with the same degree of professionalism and skill as could be expected in other health care settings.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Proposed regulations establish the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee. Regulations also establish the continuing education that would be required for the second renewal of a restricted volunteer license at one-half the number of hours that would be required for the renewal of an active license.

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.*

- 1) The primary advantage to the public is the creation of a license that a person who is retiring from active practice can obtain in order to practice in a free clinic without compensation. The free clinics requested support for legislation and regulation to authorize such a license, with the hope that a drastically reduced licensure fee and hours of continuing education, more practitioners would be willing to volunteer their services. In so doing, the clinics may have the advantage of skilled practitioners who do not want the pressures of a full-time practice but are still extremely competent and able to use their knowledge and professional abilities to deliver badly-needed health care services to an underserved population. There are no disadvantages to the public; the clinics would continue to be primarily staffed and supervised by fully licensed practitioners who would provide oversight for the volunteers.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) There are no other matters of interest.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

There were no changes to the text of the proposed regulation since its publication.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Proposed regulations were published on June 11, 2007 with a 60-day comment period that closed on August 10, 2007. A public hearing was conducted on June 21, 2007. There were no written or oral comments received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Chapter 20 – Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
22	n/a	Sets fees for applicants and licensees	Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee. <i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i>
n/a	226	n/a	Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 30 hours, at least 15 of which must be Type 1 activities or courses offered by an accredited organization and no more than 15 hours of Type 2 hours that may be selected by the licensee.

			<p><i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for full licensure was reasonable. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i></p>
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Chapter 40 – Regulations Governing the Practice of Respiratory Care Practitioners

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
35	n/a	Sets fees for applicants and licensees	<p>Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee.</p> <p><i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i></p>
n/a	67	n/a	<p>Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 10 hours of continuing education as approved and documented by a sponsor recognized by the American Association for Respiratory Care (AARC) or in courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 CME credit within the last biennium.</p> <p><i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for renewal of a full license was reasonable. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i></p>

Chapter 50 – Regulations Governing the Practice of Physician Assistants

Current section	Proposed new section	Current requirement	Proposed change and rationale
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number	number		
35	n/a	Sets fees for applicants and licensees	Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee. <i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i>
n/a	61	n/a	Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 50 hours of continuing education during the biennial renewal period with at least 25 hours in Type 1 and no more than 25 hours in Type 2 as acceptable to the National Commission on Certification of Physician Assistants (NCCPA). <i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for renewal of full licensure was reasonable. Renewal as a physician assistant requires evidence of current certification by the National Commission on Certification of Physician Assistants, which requires a total of 100 hours every two years. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i>

Chapter 80 – Regulations Governing the Practice of Occupational Therapists

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
26	n/a	Sets fees for applicants and licensees	Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee. <i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i>
n/a	73	n/a	Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the

		<p>Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 10 hours of continuing education during the biennial renewal period with at least five hours of Type 1 and no more than five hours of Type 2.</p> <p><i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for full licensure was reasonable. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i></p>
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Chapter 101 – Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
25	n/a	Sets fees for applicants and licensees	<p>Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee.</p> <p><i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i></p>
n/a	153	n/a	<p>Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 12 hours of Category A continuing education as acceptable to and documented by the ARRT within the last biennium for radiologic technologists. A radiologic technologist-limited must attest to having completed 6 hours of Category A continuing education within the last biennium that corresponds to the anatomical areas in which the limited licensee practices. Hours must be acceptable to and documented by the American Registry of Radiologic Technologists (ARRT) or by any other entity approved by the board for limited licensees whose scope of practice is podiatry or bone densitometry.</p> <p><i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required</i></p>

			<i>to specify the CE requirement for any subsequent renewal and determined that half the number of hours for full licensure was reasonable. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i>
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Chapter 110 – Regulations Governing the Practice of Licensed Acupuncturists

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
35	n/a	Sets fees for applicants and licensees	Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee. <i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i>
n/a	161	n/a	Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 20 hours of continuing education acceptable to the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), obtained within the last biennium. <i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for full licensure was reasonable. Renewal as a licensed acupuncturist requires evidence of current certification by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), which requires a total of 40 hours every two years. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i>

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact of the proposed regulatory action on the institution of the family and family stability.