Virginia Regulatory Town Hall

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Proposed Regulation
Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC85-20-10 et seq.
Regulation title	Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic
Action title	Elimination of face-to-face continuing education
Document preparation date	6/23/06

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

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The Board proposes to eliminate the requirement that 15 of the 30 hours of Type 1 continuing education required for biennial renewal of a license in medicine, osteopathic medicine, podiatry or chiropractic must be acquired face-to-face or in interactive course work.

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 number(s), if applicable, and (2) promulgating entity, i.e., the 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:
…
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. …

In addition, the Medical Practice Act requires the Board to establish requirements to ensure continued practitioner competence:

§ 54.1-2912.1. Continued competency and office-based anesthesia requirements.
A. The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and/or any other requirement.

B. In promulgating such regulations, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

C. The Board may approve persons who provide or accredit such programs in order to accomplish the purposes of this section.

D. Pursuant to § 54.1-2400 and its authority to establish the qualifications for registration, certification or licensure that are necessary to ensure competence and integrity to engage in the regulated practice, the Board of Medicine shall promulgate regulations governing the practice of medicine related to the administration of anesthesia in physicians' offices.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the action is to amend section 235 to eliminate the requirement that 15 of the required 30 hours of Type 1 continuing competency activities or course be completed face-to-face or in interactive experiences. According to comments received from practitioners on the petition for rule-making, much of the electronically-offered CME is superior in quality and applicability to practice than the courses that can be accessed through conferences and meetings. In addition, internet CME can be obtained and digested during hours and in settings that do not remove the practitioner from practice and limit his availability to patients. For those reasons, the

Board believes the public health and safety benefits of amending the continuing competency requirements to eliminate face-to-face CE would outweigh any concerns about practitioner isolation.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The proposed regulatory action is to eliminate the requirement that 15 of the 30 hours of Type 1 continuing education must be acquired face-to-face or in interactive course work, so all 30 hours can be obtained in on-line or journal course or activities which are approved for Category 1 by an accrediting body such as the American Medical Association.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

1) There are no advantages or disadvantages to the public.
2) There are no advantages or disadvantages to the agency or the Commonwealth.
3) There are no other matters of interest.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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	a) 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 for necessary functions of regulation; b) The agency will incur some one-time costs (less than $1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Since most mailings to the PPG list are handled electronically, there is very little cost

	involved. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going cost related to this action.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	The entities that are likely to be affected by these regulations would be doctors of medicine, osteopathic medicine, podiatry and chiropractic with an active license.
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.	There are 27,191 doctors of medicine, 1,145 doctors of osteopathic medicine, 1409 doctors of chiropractic, and 417 doctors of podiatric medicine with active licenses. The vast majority would be engaged in a small business, but the affect of the regulation would be economically positive rather than negative.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	There could be a cost-saving associated with this amendment since all continuing education hours could be acquired through on-line or journal courses or activities that can be completed during hours in which the practitioner would not be seeing patients. Attendance at a course or conference would not be required.

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.

The proposed action is in response to a petition for rule-making submitted on October 12, 2005 by Dr. David Ellington on behalf of the Medical Society of Virginia. In its petition, MSV noted that technology offers a variety of methods for obtaining continuing medical education, including internet courses that many specialty boards now accept to fulfill criteria for re-certification. With the range of approved continuing education available, the Board may also consider reducing the hours of Type 2 (non-approved, non-verifiable) continuing education and increasing the ratio of Type 1 (approved, verifiable) hours. The goal of the regulation is to provide some assurance that practitioners have remained current in their knowledge and skills. While that may be accomplished without requiring face-to-face coursework, the Board may need to increase the percentage of hours that are offered by an approved provider in continuing medical education.

When the Board of Medicine adopted regulations in 1999 requiring evidence of continued competency, it followed the recommendation of an Ad Hoc Committee that included active practitioners, educators and board members. The evidence in research on continuing education indicates that competency is enhanced when a practitioner examines his practice, determines possible gaps in knowledge or skill, and sets goals for learning. To that end, the Board

developed the Continued Competency Assessment Form that licensees are required to complete to not only record their hours but also to assess their practice and the potential effect of CE on that practice. It was acknowledged that effective learning often occurs in non-traditional continuing education experiences – such as grand rounds or serving on the ethics committee in a hospital – so the Committee recommended that the Board allow a portion of the required hours to be Type 2 hours that the practitioner would record but would not be verifiable by an approved sponsor.

At the time regulations were initially adopted, members voiced concerns about practitioners seen in disciplinary cases, who had become isolated in their practices, had not remained current in medical knowledge and skills, and had failed to consult with colleagues when indicated. To address those concerns, the Board determined that half of the Type 1 hours should be acquired in live or interactive courses that would force the doctor to interact with peers.

In response to a request for comment on the petition from the Medical Society, 26 persons wrote in support. Some of those persons noted that the intent of face-to-face hours was understandable but was not accomplished by the current regulation. While the intent was to encourage interaction on a professional level, many of the Type 1 hours are obtained in a classroom/lecture setting and that "seat time" did not necessarily equate to learning or negate the isolation of the practitioner. Others argued that face-to-face does offer an important educational quality but the cost has become financially excessive and burdensome in terms of lost time from practice. Three of the comments did not support elimination of face-to-face hours, noting the 15 hours over a two-year period does not seem excessive and should only be eliminated or reduced on an individual basis for hardship cases. In their view, attending face-to-face CME allows physicians to witness and interact with peers and superiors, learning attitudes and traits that carry over into practice in a way that goes beyond assimilating information.

All of the commenters agreed that continuing education was essential for a doctor to remain competent in practice, and some wrote in favor of increasing the overall number of hours or requiring all of the hours to be Type 1 or Category 1 CME. The Board considered three options: 1) take no action to amend regulations; 2) eliminate the face-to-face requirement; or 3) eliminate the face-to-face requirement but increase the number of Type 1 hours, so the ratio of Type 1 and Type 2 would be 40/20 rather than 30/30. By motion of the Board on June 22, 2006, the second option was adopted, but the Board may consider a change in Type 1 and Type 2 hours in the future.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

The Notice of Intended Regulatory Action was published in the Register on April 3, 2006 and sent to the Public Participation Guidelines list with comment requested until May 3, 2006. The following comments are summarized:

The Chairman and Vice-Chairman of the Intrastate Continuing Medical Education Accreditation Committee of the Medical Society of Virginia commented that the committee had determined that it is not in the best interest of improving medical practice and patient care to eliminate the requirement for face-to-face continuing medical education and recommended that the current requirement be maintained.

Two doctors with "Virtual Radiologic" in Minnesota wrote to support elimination of the face-to-face requirement.

Board's response: The Board determined that eliminating face-to-face CME would be more cost-effective for physicians as there are increasingly more opportunities to obtain CME on-line.

Family impact

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

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

Detail of changes

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number	Proposed change and rationale
235	n/a	The requirement for 15 of the Type 1 hours of continuing education to be earned in face-to-face group activities or other interactive courses is eliminated. *There are now a wide range of Category 1 accredited hours offered in the various professions, and some argue that on-line courses are a more effective learning tool for their practice. Therefore, the Board determined that the benefit of acquiring face-to-face continuing education did not outweigh the costs and time away from patient care.*