Virginia Regulatory Town Hall

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Notice of Intended Regulatory Action (NOIRA)
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	Amendments to continuing competency requirements
Document preparation date	12/27/05

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.*

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the proposed regulatory action is to examine the continuing competency requirements for doctors of medicine, osteopathic medicine, podiatry and chiropractic to consider: 1) elimination of the requirement that 15 of the 30 hours of Type 1 continuing education must be acquired face-to-face or in interactive course work, and 2) a change in the 50/50 ratio of Type 1 and Type 2 hours. 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.

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., 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.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The proposed change would 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. The Board will also consider changing the 50/50 ratio of Type 1 and Type 2 hours, since there has been a significant increase in the availability of Type 1 hours in internet or electronic courses that could be fully credited towards meeting the hourly requirement for renewal.

According to comments received from practitioners, 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.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

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 will consider the ratio and source of the hours required for renewal of a license to achieve a balance for busy doctors who want and need to refresh their medical education and acquire new knowledge and skills necessary to provide the best care for patients.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

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