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Regulatory
Town Hall

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Fast Track Proposed Regulation Agency Background Document

Agency name	Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC76-40
Regulation title	Regulations Governing Emergency Contact Information
Action title	Other professions to be notified in emergency
Document preparation date	7/15/13

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The proposed amendment to the existing regulation is to add dental hygienists, assisted living facility administrators and nursing home administrators to the listing of health care practitioners from whom emergency contact information would be requested for the purpose of disseminating information in case of a public health emergency.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

ECI = Emergency contact information

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 July 15, 2013, the Director of the Department of Health Professions determined to amend 18VAC76-40-10 et seq., Regulations Governing Emergency Contact Information through a fast-track action in response to a periodic review of regulations.

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.

The statutory authority for promulgation of 18VAC76-40-10 by the Director of the Department is found in § [54.1-2506.1](#):

§ [54.1-2506.1](#). Submission of required information.

...B. For the purpose of expediting the dissemination of public health information, including notice about a public health emergency, the Department is authorized to require certain licensed, certified or registered persons to report any email address, telephone number and facsimile number that may be used to contact such person in the event of a public health emergency or to provide information related to serving during a public health emergency. In the event of an animal health emergency, the Department shall provide to the State Veterinarian the email addresses, telephone numbers and facsimile numbers that may be used to contact licensed veterinarians.

Such email addresses, telephone numbers and facsimile numbers shall not be published, released or made available for any other purpose by the Department, the Department of Health, or the State Veterinarian.

The Director, in consultation with the Department of Health and the Department of Emergency Management, shall adopt regulations that identify those licensed, certified or registered persons to which the requirement to report shall apply and the procedures for reporting.

The authority for the initial promulgation of regulation was mandatory; the authority for amending the regulation to add another profession is discretionary.

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.

As the emergency contact information is being increasingly used by the Department of Health to disseminate public health information as well as to issue notices of a public health emergency, it is important to reach those health care professionals who have responsibility for the health and safety of a vulnerable population in assisted living facilities and nursing homes. Having those practitioners in the ECI system will help ensure that information is reaching the administrators of those facilities. Dental hygienists are often the practitioners who have primary responsibility for the maintenance of dental health; having them appropriately informed about public health information or a public health emergency will benefit the health and safety of the general public.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-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 objection 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.

This regulatory action is taken at the request of the one of regulated professions who will be affected by it. In addition, the need to implement the emergency contact system to inform health care professionals about a public health emergency could definitely affect the populations at assisted living facilities or nursing homes, so those administrators will benefit from a notification from the Department of Health as soon as possible. Therefore, the Director believes the action should have no objection.

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.)

The change is the addition of dental hygienists, assisted living facility administrators and nursing home administrators in section 10 to the listing of professions who are required to report emergency contact information.

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.
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- 1) The primary advantage to the public would be that there would be additional groups of health care professionals available for contact and assistance in case of a public health emergency or disaster. There are no disadvantages.
- 2) The Department of Health and the Department of Emergency Management would have access to additional health care workers in case of a public health emergency and would have a direct link to assisted living facilities and nursing home to disseminate information about an outbreak of a communicable disease. There are no disadvantages.
- 3) There is no other pertinent matter of interest.

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 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.

There are no localities particularly affected.

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.

There are no alternative regulatory methods that will accomplish the objectives of applicable law which specifically requires the promulgation of regulations that identify the professions that are included in the requirement for emergency contact information.

Economic impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

<p>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>The entities affected would be licensed dental hygienists, assisted living facility administrators and nursing home administrators who live in Virginia or in a contiguous state or the District of Columbia.</p>
<p>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</p>	<p>The following licensees have a Virginia address or live in a contiguous state or DC:</p> <p>592 assisted living facility administrators 4879 dental hygienists 737 nursing home administrators</p> <p>The agency has no estimate of the number of small businesses affected. Some assisted living facilities and nursing homes are small business; others are part of a national chain with hundreds of employees. None of the dental hygienists would be a small business because all are employees of dental practices.</p>
<p>Benefits expected as a result of this regulatory proposal.</p>	<p>Greater efficiency and effectiveness in the dissemination of information about a public health emergency</p>
<p>Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.</p>	<p>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 or entities for necessary functions of regulation. There would be a one-time expense for revising the data system to include three additional professions. Data has estimated approximately \$800 in staff time for setup in License 2000 and companion module MyLicense for the ECI online forms. Entry of paper ECI information that will need to be keyed by the Call Center staff would cost less than \$400. There would be no on-going expenditures, as emergency contact information is updated in conjunction with renewal of licensure.</p>

<p>Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.</p>	<p>There are no costs to localities.</p>
<p>All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.</p>	<p>There would be no cost to licensees who would be able to provide information on the web or by calling toll-free to the DHP call center.</p>

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.

In order to ensure that the three additional professions are contacted in a public health emergency, either to disseminate information or to solicit them for volunteer practice, it is necessary to include them in the listing. When the original listing was compiled in 2004 with the adoption of emergency regulations, the intent was the creation of a database to disseminate information to practitioners who could serve in a public health emergency. With amendments to the Code section in 2009, the purpose was expanded to expedite the dissemination of public health information, including notice about a public health emergency.

Therefore, it is appropriate for dental hygienists, assisted living facility administrators and nursing home administrators to be included among other professions who need to receive important information about a public health emergency. If there is information about a public health emergency involving an influenza epidemic or other communicable disease, those responsible for the vulnerable populations in assisted living and nursing home facilities should be directly and urgently informed.

The Code of Virginia requires that: *The Director, in consultation with the Department of Health and the Department of Emergency Management, shall adopt regulations that identify those licensed, certified or registered persons to which the requirement to report shall apply and the procedures for reporting.* Accordingly, the Director sent the draft proposed regulation to the Commissioner of the Department of Health and the Director of the Department of Emergency Management in February 2013. There has been no objection from either agency to the proposed change.

Periodic review and small business impact review report of findings

If this fast-track regulation is not the result of a periodic review and/or small business impact review report of the regulation, please delete this entire section.

If this fast-track regulation is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

If this fast-track regulation is also a small business impact review report of the regulation, pursuant to § 2.2-4007.1 E and F, 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 the 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 is required.

The amended regulation is the result of a periodic review noticed in the Register of Regulations and posted on Townhall. Comment was requested from 11/5/12 to 12/5/12. There was no comment received.

The amendment to add dental hygienist is also in response to a request to the Director from the Virginia Dental Hygienists' Association initially received in October of 2012 and then added to the periodic review process.

The Director has reviewed the regulation and determined that it meets the criteria set out in Executive Order 14 (2010), as necessary for the protection of public health, safety, and welfare. It is clearly written and easily understandable with only three sections in the Chapter.

Pursuant to § 2.2-4007.1 E and F, the agency considered:

(1) the continued need for the regulation;

Section 54.1-2506.1 requires the Director to promulgate regulations for reporting of emergency contact information for the purpose of disseminating information about a public health emergency. Since there is a statutory mandate for regulation, there is a continued need.

(2) the nature of complaints or comments received concerning the regulation from the public;
There have been no complaints or comments concerning this regulation from the public.

(3) the complexity of the regulation;

The regulation is straightforward - section 10 sets out the persons or entities required to report; section 20 sets out the information to be reported (telephone numbers, email or fax numbers); section 30 sets out the time limit for reporting the information.

(4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and

There is no federal or state law or regulation that overlaps, duplicates or conflicts with the regulation.

(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 is required.

The initial regulation became effective in 2004 following passage of legislation in the 2003 General Assembly. The regulation was amended in 2005 and in 2009. The current electronic system at the Department allows practitioners subject to the ECI requirement to provide information on-line at the time they renew their licenses or to make changes to such information between renewal cycles.

Family impact

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

There would be no impact of the proposed regulatory action 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, if applicable	Current requirement	Proposed change and rationale
10	n/a	Lists in alphabetical order 19 types of health professions required to report emergency contact information for use in a public health emergency	Would add licensed assisted living facility administrators, dental hygienists, and nursing home administrators to the list of professions required to report.