



Periodic Review / Retain Regulation Agency Background Document

Agency name	Board of Health Professions, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC75-40
Regulation title	Regulations Governing Certification of Dialysis Technicians
Document preparation date	2/22/12

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

The legal basis for establishing certification for dialysis care technicians is found in Chapter 27.01 of Title 54.1 of the Code of Virginia:

§ 54.1-2729.1. Scope of chapter.

This chapter shall not preclude or affect the ability of unregulated persons to perform services relating to the technical elements of dialysis, such as equipment maintenance and preparation of dialyzers for reuse by the same patient.

§ 54.1-2729.2. Dialysis patient care technician; definition.

"Dialysis patient care technician" or "dialysis care technician" means a person who has obtained certification from an organization approved by the Board of Health Professions to provide, under the supervision of a licensed practitioner of medicine or a registered nurse, direct care to patients undergoing renal dialysis treatments in a Medicare-certified renal dialysis facility. Such direct care may include, but need not be limited to, the administration of heparin, topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers in accordance with the order of a licensed physician, nurse practitioner or physician assistant. However, a person who has completed a training program in dialysis patient care may

engage in provisional practice to obtain practical experience in providing direct patient care under direct and immediate supervision in accordance with § 54.1-3408, until he has taken and received the results of any examination required by a certifying organization approved by the Board or for 24 months from the date of initial practice, whichever occurs sooner.

§ 54.1-2729.3. Prohibition on use of title without holding certification; continuing competency requirements; fees; penalty.

A. No person shall hold himself out to be or advertise or permit to be advertised that he is a dialysis patient care technician or dialysis care technician as defined in this chapter unless such person has obtained certification from an organization approved by the Board of Health Professions as examining candidates for appropriate competency or technical proficiency to perform as dialysis patient care technicians or dialysis care technicians.

B. The title restrictions provided by this section shall apply to the use of the terms "dialysis patient care technician" and "dialysis care technician" or any other term or combination of terms used alone or in combination with the terms "licensed," "certified," or "registered," as such terms also imply a minimum level of education, training, and competence. A person who is authorized for provisional practice to provide direct patient care while obtaining practical experience shall be identified as a "trainee" while working in a renal dialysis facility.

C. The Board of Health Professions may require such continuing competency training as it may deem necessary for dialysis patient care technicians or dialysis care technicians.

D. Any person who willfully violates the provisions of this chapter shall be guilty of a Class 3 misdemeanor.

Regulations are further specified in the Drug Control Act by subsection S of § 54.1-3408 which provides:

S. Nothing in this title shall prevent or interfere with dialysis care technicians or dialysis patient care technicians who are certified by an organization approved by the Board of Health Professions or persons authorized for provisional practice pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) of this title, in the ordinary course of their duties in a Medicare-certified renal dialysis facility, from administering heparin, topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers, for the purpose of facilitating renal dialysis treatment, when such administration of medications occurs under the orders of a licensed physician, nurse practitioner or physician assistant and under the immediate and direct supervision of a licensed registered nurse. Nothing in this chapter shall be construed to prohibit a patient care dialysis technician trainee from performing dialysis care as part of and within the scope of the clinical skills instruction segment of a supervised dialysis technician training program, provided such trainee is identified as a "trainee" while working in a renal dialysis facility.

The dialysis care technician or dialysis patient care technician administering the medications shall have demonstrated competency as evidenced by holding current valid certification from an organization approved by the Board of Health Professions pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) of this title.

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 the authority to promulgate regulations:

§ 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. ...

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

While Chapter 27.01 provides for title protection for persons who practice as dialysis care technicians or dialysis patient care technicians, the Drug Control Act (§ 54.1-3408) provides that only those persons who are dialysis care technicians or dialysis patient care technicians “**certified by an organization approved by the Board of Health Professions,**” in the ordinary course of their duties in a Medicare-certified renal dialysis facility, can administer medications. Therefore, there are no alternatives to establishment of certifying organizations in regulation in order for persons to be legally qualified to care for patients as dialysis care technicians.

In its 2012 review, staff of the Board of Health Professions reported that no additional organizations or credentials have been identified since the 2005 effective date of regulations. The regulation currently adopted is the least restrictive and most inclusive of qualifications to use the title of and practice as a dialysis care technician.

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. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

The Notice of Periodic Review of the current regulation was published on November 21, 2011 with comment requested until January 20, 2012. There was no comment received.

Effectiveness

Please 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.

The regulations have been in effect since 2005; they are inclusive of every credential available to dialysis care technicians that qualify them to administer drugs in a dialysis unit or facility. There have been no issues identified with the regulations and no requests for amendment. In order to continue the use of dialysis care technicians for administration of medications to patients in renal dialysis facilities, the continuation of 18VAC75-40 is essential for patient health and safety.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

The Board of Health Professions is recommending that 18VAC75-40-10 et seq., Regulations Governing Certification of Dialysis Technicians, remain in effect without change.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, 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 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, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

Since certification is a requirement of law in order for dialysis care technicians to practice and since the regulation is inclusive of all credentialing organizations available for certification, there is no impact on small businesses. Renal dialysis facilities would not be able to function without dialysis technicians, and technicians are not able to practice unless they are certified in accordance with Board regulations.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

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