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Periodic Review Report of Findings

Agency name	Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC76-10
Regulation title	Regulations Governing the Health Practitioners Monitoring Program
Date this document prepared	3/12/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

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

HPMP = Health Practitioners Monitoring Program

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Regulations Governing the Health Practitioners Monitoring Program are adopted by the Director of the Department of Health Professions and promulgated under the statutory mandate in;

§ 54.1-2516. Program established; practitioner participation; disciplinary action stayed under certain conditions.

A. *The Director of the Department of Health Professions shall maintain a health practitioners' monitoring program that provides an alternative to disciplinary action for impaired health practitioners. The Director shall promulgate such regulations as are necessary for the implementation of this program after consulting with the various health regulatory boards.*

As specified in the APA, regulations promulgated by the Director for HPMP are exempt from executive branch review:

§ 2.2-4002. Exemptions from chapter generally.

A. *Although required to comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.), the following agencies shall be exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 2.2-4024, 2.2-4030, and 2.2-4031:...*

18. *The regulations for the implementation of the Health Practitioners' Monitoring Program and the activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.*

Alternatives

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

There are no alternatives to the purpose of the regulation which is mandated by the Code of Virginia.

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. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

A Notice of Periodic Review was posted on Townhall and published in the Register of Regulations with comment requested from December 10, 2018 to January 9, 2019. There were no comments posted or received by the Department.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The Department has reviewed the current chapter, noted that it is mandated by the law and necessary for public health, welfare and safety. The regulation has been amended several times to update the requirements and to implement the recommendations of an independent audit of the Program in 2016. The Department has determined that it is effective and clearly understood by participants and health regulatory boards.

Decision

Please explain the basis for the rulemaking entity’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The Director of the HPMP, the Chief Deputy Director of the Department, and the Regulatory Coordinator for the Department have reviewed the regulation and recommended that a few clarifying amendments be promulgated.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include 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, discuss why the agency’s decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

- (1) The regulation is necessary for public protection since there is a statutory mandate for regulations in: *The Director of the Department of Health Professions shall maintain a health practitioners' monitoring program that provides an alternative to disciplinary action for impaired health practitioners. The Director shall promulgate such regulations as are necessary for the implementation of this program after consulting with the various health regulatory boards.*
- (2) There have been no complaints or comments on the content of the regulation.
- (3) The Program is overseen by the Health Practitioners' Monitoring Program Committee consisting of nine persons appointed by the Director to advise and assist in its operation. Eight of the members are licensed, certified, or registered practitioners and one is a citizen member. Of the members who are licensed, certified, or registered practitioners, at least one must be licensed to practice medicine or osteopathy in Virginia and engaged in active clinical practice, at least one must be a registered nurse engaged in active practice, and all must be knowledgeable about impairment and rehabilitation, particularly as related to the monitoring of health care practitioners. This Committee helps to inform the Director if there is a need for clarification or amendment to regulations governing the operation of the HPMP.
- (4) These regulations do not overlap, duplicate, or conflict with state or federal law.

(5) Amendments to this chapter have been promulgated four times since inception of the Program in keeping with changes in the law and practice relating to the scope and nature of the program. A periodic review of this chapter was conducted in 2012 with a recommendation to retain without changes.