



Virginia
Regulatory
Town Hall

townhall.state.va.us

Proposed Regulation Agency Background Document

Agency name	Board for Opticians
Virginia Administrative Code (VAC) citation	18 VAC 100 - 20 - 53
Regulation title	Board for Opticians Regulations
Action title	Promulgating
Document preparation date	April 8, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

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

The Board for Opticians proposes to promulgate Section 18 VAC 100-20-53 of the Board of Opticians Regulations in accordance with Chapter 740 of the 2002 Acts of the Assembly that mandated that the board promulgate regulations for an out-of-state practitioner to be registered to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute. In accordance with the enactment clause, the board adopted emergency regulations, and it is the board's intent to replace the emergency regulations with permanent regulations.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, 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 2 of Title 54.1 of the Code of Virginia. Section 54.1-201(5) provides the Board the authority to promulgate regulations to administer the regulatory system:

§ 54.1-201. Powers and duties of regulatory boards.

The powers and duties of regulatory boards shall be as follows:

5. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>

The specific legal mandate to promulgate the regulation for the provision of voluntary health care services by out-of-state practitioners in clinics in underserved areas sponsored by nonprofit organizations is found in Chapter 740 of the 2002 Acts of the Assembly.

<http://leg1.state.va.us/cgi-bin/legp504.exe?021+ful+CHAP0740>

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.

Chapter 740 of the 2002 Acts of the Assembly mandates that the board promulgate regulations for an out-of-state practitioner to be registered to volunteer his services to a non-profit organization that has no paid employees and offers health care to underprivileged populations throughout the world. Regulations set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute. The enactment clause required the board to adopt emergency regulations, and it is the board's intent to replace those regulations with permanent regulations.

This regulatory action's purpose is to protect the health, safety, and welfare of citizens by ensuring that an out-of-state practitioner who is registered to provide voluntary services to underserved areas has provided adequate information to their determine their eligibility and for the Board for Opticians to meet its responsibility to protect the health, safety, and welfare of citizens pertaining to individuals engaged in the practice of opticianry.

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.)

Chapter 740 of the 2002 Acts of the Assembly provides specific conditions under which a health care practitioner who is licensed in another state can provide free care in underserved areas of Virginia. Statutory requirements include: 1) that they do not regularly practice in Virginia; 2) that they hold a current valid license or certificate in another U. S. jurisdiction; 3) that they volunteer to provide free care to an underserved area of this Commonwealth under the auspices of a publicly supported all-volunteer, nonprofit organization with no paid employees that sponsors the provisions of health care to populations of underserved people throughout the world; 4) that they file copies of their licenses or certificates in advance with the Board; 5) that they notify the Board of the dates and location of services; and 6) that they acknowledge in writing that they will only provide services within the parameters stated in the application. The statute also provides specific requirements for the non-profit organization sponsoring provision of health care.

As provided in the law, the regulations will insert the following requirements:

A practitioner who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world shall:

1. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice;
2. Provide a complete list of professional licensure in each state in which he has held a license and a copy of any current license;
3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;
4. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of the applicable section of the Code of Virginia.

In order to protect the health, safety and welfare of the consuming public and to ensure that the care provided by out-of-state practitioners will be minimally competent, the Board will use the information garnered from the application and verification from other states to determine whether the practitioner meets the criteria set forth in the law.

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.

The primary advantages to the public and the Commonwealth of implementing the regulations are additional practitioners may be available to staff voluntary clinics, a requirement for licensure in another state to be verified will ensure that the practitioner holds a current, unrestricted license, and the requirement for a notarized statement from a representative of the nonprofit organization will ensure compliance with provisions of law for voluntary practice.

There are no disadvantages to the public or the Commonwealth.

There are no primary advantages or disadvantages to the agency.

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		FY 2003	FY 2004	FY2005	FY2006
	Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
	Program / Subprogram	560 44	560 44	560 44	560 44
	Impact of Regulatory Changes:				
	One-Time Costs	0	0	0	0
	Ongoing Costs	0	0	0	0
	Total Fiscal Impact	0	0	0	0
	FTE	0.00	0.00	0.00	0.00
	One-time:	There are no one-time costs associated with the proposed regulations.			
	On-going:	There are no on-going costs associated with the proposed regulations.			
Projected cost of the regulation on localities	None anticipated.				
Description of the individuals, businesses or other entities likely to be affected by the regulation	Individuals engaged in the practice of opticianry.				
Agency's best estimate of the number of such entities that will be affected	The Department currently regulates approximately 1,800 opticians.				

<p>Projected cost of the regulation for affected individuals, businesses, or other entities</p>	<p>The current cost to a regulated optician is approximately \$55 -\$60 per biennium. These proposed regulations will increase that cost to \$100 per biennium.</p>
--	---

Opticians

Economic Impact of Proposed Regulation

Summary:

The proposed regulation provides registration for voluntary practice by out-of-state licensees who do not hold a license in Virginia.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

**Financial Status and Projections
Opticians**

Number of Regulants **1,800**

Current Regulations

	<u>2000-2002</u>	<u>2002-2004</u>	<u>2004-2006</u>	<u>2006-2008</u>
Beginning Cash Balance	63,704	51,997	-4,905	-70,580
Revenue	<u>127,303</u>	<u>128,497</u>	<u>131,215</u>	<u>133,839</u>
Expenditures:				
Board Expenditures	26,562	39,134	41,560	46,214
Board Administration	23,317	28,540	30,309	33,703
Examinations	32,457	35,889	38,113	42,382
Enforcement	238	246	261	291
Legal Services	2,503	4,125	4,381	4,871
Information Systems	18,941	29,932	31,787	35,347
Facilities/ Support Services	16,655	19,398	20,600	22,907
Agency Administration	17,862	21,207	22,521	25,044
Transfers/Other	475	6,928	7,357	8,181
Total Expenditures	<u>139,010</u>	<u>185,399</u>	<u>196,890</u>	<u>218,941</u>
Cash Balance	<u>51,997</u>	<u>-4,905</u>	<u>-70,580</u>	<u>-155,682</u>
Callahan Percentage	<u>37.4%</u>	<u>-2.6%</u>	<u>-35.8%</u>	<u>-71.1%</u>

Notes:

These regulations will have no material impact on the board's financial position.

Fee increases have been proposed and are in the process for this board.

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.

There were no alternatives to adoption of a regulation in that the Board is mandated to promulgate regulations implementing provisions of the law, Chapter 740 of the 2002 Acts of the Assembly.

The most burdensome aspect of the regulation is specifically mandated by the Code of Virginia in that the group sponsoring the practice of the health care provider must be a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world. Since the language is taken from the statute, the Board did not have alternatives to consider.

Public comment

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

There was no public comment received during the public comment period following the publication of the NOIRA.

Commenter	Comment	Agency response

Family impact

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

This proposed regulatory action is not anticipated to have any significant impact on Virginia's families.

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.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
NA	53	NA	The proposed change permits individuals who do not hold a license in Virginia to register to provide volunteer services for a nonprofit organization that has not paid employees and offers health care to underprivileged populations throughout the world. Registrants are required to apply 15 days prior to engaging in practice and to provide a list of professional licensure in other states, the name of the nonprofit organization, the dates and location for the voluntary services and a notarized statement attesting to compliance with the statute.

The proposed regulation is intended to replace an emergency regulation.

(1) The change between the pre-emergency regulation and the proposed regulation is the addition of § 18 VAC 100-20-53.

(2) The change made since the publication of the emergency regulation:

18 VAC 100-20-53. Registration for voluntary practice by out-of-state licensees.

4. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with the provisions of § 54.1-1701(5) of the Code of Virginia and 18 VAC 100-20-53.