



## Final Regulation Agency Background Document

|  |  |
|--|--|
| <b>Agency name</b>                                 | Board of Health Professions; Department of Health Professions            |
| <b>Virginia Administrative Code (VAC) citation</b> | 18 VAC 75-40   |
| <b>Regulation title</b>                            | Regulations Governing Criteria for Certification of Dialysis Technicians |
| <b>Action title</b>                                | Initial regulations  |
| <b>Document preparation date</b>                   | 10/21/04   |

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.*

Chapter 995 of the 2003 Acts of the Assembly amended the Code of Virginia to establish a definition and title protection for “dialysis care technicians” or “dialysis patient care technicians.” Legislation further requires the Board of Health Professions to approve in regulation organizations by which a person could be certified in order to use one of the restricted titles. Only those who hold one of those titles are authorized in the Drug Control Act to possess and administer drugs used in dialysis treatments.

### 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 October 21, 2004, the Board of Health Professions adopted final regulations for 18 VAC 75-40-10 et seq., Regulations Governing Criteria for Certification of Dialysis Technicians

## 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 numbers, 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.*

**18 VAC 75-40-10 et seq. Regulations Governing Criteria for Certification of Dialysis Technicians** is being promulgated under the legal authority of § 54.1-2400, stating the powers and duties of health regulatory boards and Chapter 27.01 of Title 54.1 of the Code of Virginia, which requires the Board to promulgate regulations establishing criteria for practice as a dialysis care technician.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary.

*§ 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.*

Chapter 27.01 was created by action of the 2003 General Assembly, effective July 1, 2003. The legislation may be accessed at: <http://leg1.state.va.us/cgi-bin/legp504.exe?031+ful+CHAP0995>.

## 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 it 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.*

The purpose of the new regulation is to approve the organization or organizations that can certify candidates with the appropriate competency and technical proficiency to perform as dialysis technicians. The intent of the legislation and the regulation that implements mandated certification was to protect persons who are receiving hemodialysis. If the technician providing patient care is not adequately prepared and trained, as verified by nationally-recognized certification, the patient may be at considerable risk for infection or improper treatment. The credentials set out in this regulation would establish a level of minimal competency as evidenced by a qualifying examination and certification. To the extent rules implementing certification

criteria for dialysis care technicians will improve the qualifications and abilities of persons who provide dialysis services to a population of persons whose health is fragile or compromised, the regulations are necessary for the protection of the health and safety of the public.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

The regulatory action is intended to implement certain provisions of Chapter 995 of the 2003 Acts of the Assembly, which requires the Board to approve a certifying body for dialysis care technicians. While Chapter 27.01 provides only title protection, rather than licensure, certification or registration by a health regulatory board, the Drug Control Act (Chapter 34 of Title 54.1) limits the administration of drugs used in dialysis treatment to those persons who hold the protected titles. Therefore, practically speaking, it will be necessary for any individual, who is not a licensed health care professional, who seeks employment in a dialysis care facility to hold the certification specified in regulations adopted by the Board of Health Professions.

### 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.*

- 1) The primary advantage to the public is the assurance that dialysis technicians have minimal education and training as evidenced by national certification. Therefore, patients who enter a hemodialysis center will not have to wonder whether the technician has been adequately prepared to provide care. The only disadvantage to the public is that persons who have been employed as dialysis technicians prior to the effective date of the regulation will be deemed "certified", but that is a provision of the legislation and cannot be altered by regulation.
- 2) There are no advantages or disadvantages to the Commonwealth. Since this regulatory scheme offers only title-protection, there will be no ongoing regulatory or disciplinary costs.
- 3) There is no other pertinent information regarding this regulatory action.

### Changes made since the proposed stage

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.*

There were no changes made to the text of the proposed regulation since publication of the proposed stage.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

Proposed regulations were published in the Virginia Register of Regulations on June 14, 2004. Public comment was requested for a 60-day period ending August 13, 2004; no written or electronic comment was received. A Public Hearing before the Board of Health Professions was held on July 15, 2004 at which no comment was received.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale  |
|------------------------|--|---------------------|--|
| n/a                    | 10   | n/a                 | Section 10 sets out the definitions for terms used in these regulations, including the protected titles of “dialysis patient care technician” and “dialysis care technician.” The definitions are identical to those found in § 54.1-2729.2.   |
| n/a                    | 20   | n/a                 | Section 20 delineates the scope of practice for dialysis care technicians including requirements for certification of any technician who provides direct patient care in a Medicare-certified renal dialysis facility and who administers certain medications necessary for dialysis treatment. Practice of dialysis care technicians must only occur under the direction of a licensed practitioner of medicine or a registered nurse and administration of medications can only occur under the direct and immediate supervision of a registered nurse. This section also sets out those duties that may be performed by a person who does not hold certification to include activities relating to the technical elements of dialysis, such as equipment maintenance.<br><br>The scope and limitations on practice, including the specific requirements for supervision are set forth in §§ 54.1-2729.1, 54.1-2729.2 and 54.1-3408 (O). |
| n/a                    | 30   | n/a                 | Section 30 establishes the criteria for use of the protected titles. The Board has approved certification from three organizations   |

|  |  |  |   |
|--|--|--|---|
|  |  |  | <p>that examine candidates for appropriate competency and technical proficiency. The three credentials that are approved are:</p> <ol style="list-style-type: none"> <li>1. Certified Clinical Hemodialysis Technician (CCHT) by the Nephrology Nursing Certification Commission (NNCC);</li> <li>2. Certified Hemodialysis Technician (CHT) by the Board of Nephrology Examiners Nursing and Technology (BONENT); and</li> <li>3. Certified in Clinical Nephrology Technology (CCNT) by the National Nephrology Certification Organization (NNCO).</li> </ol> <p>In addition, the Board will recognize certification or licensure as a dialysis technician or similar title by another jurisdiction in the United States provided the standards for certification or licensure or substantially equivalent to those in Virginia.</p> <p>The credentialing bodies recognized by the Board are all national in scope, require education and practical experience in dialysis care, offer a psychometrically tested examination, and test for competency and technical proficiency in providing patient care functions in a renal dialysis facility. The Board also chose to recognize certification or licensure from another state provided it is based on substantially equivalent criteria, such as education and training and passage of an examination.</p> |
|--|--|--|---|

**Family impact**

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

---

In its analysis of the final regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability.