



**Virginia
Regulatory
Town Hall**

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Board of Medicine, Department of Health Professions
VAC Chapter Number:	18 VAC 85-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic
Action Title:	Physician profile
Date:	4/24/02

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The Board of Medicine intends to amend its regulations to comply with a statutory mandate found in § 54.1-2910.1 as amended by Chapter 38 of the 2002 Session of the General Assembly. The statute requires certain changes to the practitioner profile system for doctors of medicine, osteopathy and podiatry to include the addition of telephone numbers, email and fax for dissemination of emergency information and information on felony convictions. The amended regulations would replace emergency regulations required by the second enactment clause of the bill.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

18 VAC 85-20-10 et seq. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic were promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility 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:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 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 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
- 9. To take appropriate disciplinary action for violations of applicable law and regulations.*
- 10. To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii)*

place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.

- 11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
- 12. To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

The specific statutory mandate for the Board to implement the physician profile is found in:

§ [54.1-2910.1](#). *Certain data required.*

A. The Board of Medicine shall require all doctors of medicine, osteopathy and podiatry to report and shall make available the following information:

- 1. The names of the schools of medicine, osteopathy, or podiatry and the years of graduation;*
- 2. Any graduate medical, osteopathic, or podiatric education at any institution approved by the Accreditation Council for Graduation Medical Education, the American Osteopathic Association or the Council on Podiatric Medical Education;*
- 3. Any specialty board certification as approved by the American Board of Medical Specialties, the Bureau of Osteopathic Specialists of the American Osteopathic Association, or the Council on Podiatric Medical Education of the American Podiatric Medical Association;*
- 4. The number of years in active, clinical practice as specified by regulations of the Board;*
- 5. Any hospital affiliations;*
- 6. Any appointments, within the most recent ten-year period, of the doctor to the faculty of a school of medicine, osteopathy or podiatry and any publications in peer-reviewed literature within the most recent five-year period and as specified by regulations of the Board;*
- 7. The location and telephone number of any primary and secondary practice settings and the approximate percentage of the doctor's time spent practicing in each setting. For the sole purpose of expedited dissemination of information about a public health emergency, the doctor shall also provide to the Board any e-mail address or facsimile number; however, such e-mail address or facsimile number*

shall not be published on the profile database and shall not be released or made available for any other purpose;

8. The access to any translating service provided to the primary and secondary practice-setting settings of the doctor;

9. The status of the doctor's participation in the Virginia Medicaid Program;

10. Any final disciplinary or other action required to be reported to the Board by health care institutions, other practitioners, insurance companies, health maintenance organizations, and professional organizations pursuant to §§ [54.1-2906](#), [54.1-2908](#), and [54.1-2909](#) that results in a suspension or revocation of privileges or the termination of employment or a final order of the Board relating to disciplinary action;

11. Conviction of any felony; and

12. Other information related to the competency of doctors of medicine, osteopathy, and podiatry, as specified in the regulations of the Board.

B. In addition, the Board shall provide for voluntary reporting of insurance plans accepted and managed care plans in which the doctor participates.

C. The Board shall promulgate regulations to implement the provisions of this section, including, but not limited to, the release, upon request from a consumer, of such information relating to a specific doctor. The Board's regulations shall provide for reports to include all paid claims in categories indicating the level of significance of each award or settlement; however, the specific numeric values of reported paid claims shall not be released in any individually identifiable manner under any circumstances.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

Chapter 38 of the 2002 Acts of the Assembly resolves several problems with the existing law on physician profiling in § 54.1-2910.1 as approved in the 2001 Special Session. The Department identified several ways in which the physician profile system could be more efficient and effective and worked with the patron and other interested parties in amending provisions of the law that were problematic and offered no real benefit to the consumers of health care services by doctors. Required elements of the profile are intended to provide information sufficient for the public to locate doctors in their area who practice in a particular specialty and to further assure the public health, safety and welfare in their informed selection of doctors in the Commonwealth.

As provided in the law, the emergency regulations will amend the following sections:

18 VAC 85-20-280. Required information.

Subsection A

- ?? This section has a technical amendment to incorporate language currently in subsection C requiring submission of information within 30 days of a change in what is on the profile.
- ?? An amendment specifies the reporting the telephone numbers for primary and secondary practice settings in addition to addresses.
- ?? An amendment eliminates the requirement for reporting of all insurance plans accepted or managed care plans in which the doctor participates. That information is now optional, as provided in a new section (285) on voluntary information.
- ?? An amendment adds the requirement of reporting translating services at secondary practice settings as well as primary practice settings.
- ?? Complying with #11 in the listing of information the law requires on the profile, the regulations are amended to specify that a doctor must report any felony conviction, including the date of the conviction, the nature of the conviction, the jurisdiction in which the conviction occurred and the sentence that was imposed.
- ?? The law requires the Board to specify in regulation other information related to the competency of doctors. In accordance, an amendment is adopted to require information on final disciplinary orders from a regulatory board of another jurisdiction or a disciplinary action taken by a federal health institution or agency.

Subsection B

- ?? The current subsection B has been moved to a new section (285) on voluntary information.
- ?? The new subsection B requires the posting of adjudicated orders and notices or decision documents that are subject to public disclosure in § 54.1-2400.2 D of the Code. In addition, the profile is required to reflect that unadjudicated notices and orders that are subject to be vacated are available to the public upon request.

Subsection C

- ?? Language in the current subsection C has been incorporated into subsection A of this section.
- ?? An amendment will require doctors to provide email addresses or facsimile numbers for the sole purpose of expediting the dissemination of information about a public health emergency. Such information is not published on the profile or released to the public.

18 VAC 85-20-285. Voluntary information.

This section is added to distinguish from required information that information which the doctor may voluntarily provide on the profile to include names of insurance plans accepted or managed care plans in which he participates or any other information that suggests additional competency or recognition.

18 VAC 85-20-290. Reporting of malpractice paid claims.

Current language in section 290 was deleted and replaced with requirements for reporting that are more useful in presenting information on malpractice to the public. For example, current regulations require the physician to report the specialty in which he practices; amended regulations require the physician to report the specialty in which he was practicing at the time the

claim was paid. Calculation of the level of significance for each paid claim is based in part on the number of doctors in that specialty who have had paid claims, so the amended requirement is more pertinent. In addition, the Board found the standard deviation methodology set forth in current regulations produced skewed results, so a different statistical method has been used to rate the paid claims. If there have been fewer than 10 paid claims in any specialty, no rating system is applied. For all other paid claims, the top 16% of claims are displayed as above average; the next 68% are displayed as average; and the bottom 16% of claims are displayed as below average.

18 VAC 85-20-300. Non-compliance or falsification of profile.

Technical changes are made in this section to ensure consistency in the application of requirements and disciplinary action for non-compliance.

There are no potential issues to be addressed in the development of regulations to replace the emergency provisions adopted by the Board. Issues related to the posting of disciplinary information were worked out with representatives of the Medical Society of Virginia prior to the introduction of SB 59. Several of the suggested statutory and regulatory changes resulted from an internal assessment of the profiling system as well as meetings with MSV and other external groups such as the Virginia Association of Health Plans, Trigon, the Bureau of Insurance and the Virginia Hospital and Healthcare Association.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

There were no alternatives to adoption of a regulation as it was mandated by Chapter 38 of the 2002 Acts of the Assembly.

There are several advantages of the amended regulation:

?? Current law requires the licensees to report any “insurance plans accepted.” This requirement is all-inclusive. It encompasses all plans that a licensee participates in (a higher rate of coverage for the patient) as well as any he accepts (higher out of pocket expense to the patient). The Board conducted an informal survey of insurance plans accepted by several local licensees in June 2000; one local group had over 1,155 insurance plans it accepted. It is not reasonable to expect licensees to keep this information accurate and up-to-date. Often, licensees have been added or dropped from a panel and are not aware of it until a patient presents or a billing issue occurs. In addition, just naming the major insurance plan is misleading as there can be thousands of product lines associated with a plan. Just because a licensee accepts one, does not mean he accepts all. This could cause confusion for patients. The amended law and regulation make the reporting of this information optional and therefore put the onus on the licensee – if he chooses to report it, he is responsible for keeping it accurate.

- ?? Current regulations require the Board to make available on the profile “information regarding disciplinary notices and orders”. The amended regulations specify that only adjudicated notices and final orders and decision documents are to be available on the profile. Unadjudicated notices are also available by request from the Board but are not displayed on the profile.
- ?? Under current regulations, primary and secondary practice addresses are required but telephone numbers are not. Including telephone numbers would be a convenience for patients.
- ?? In addition, email addresses and facsimile numbers will be collected to provide an immediate contact for the Board or the Department of Health in cases of emergency; that information is required on the profile but not displayed or available to the public.
- ?? Current regulation requires the reporting of translating services only at the primary practice setting. Including secondary practice settings would better serve consumers.

Pursuant to Chapter 199 of the 2001 Acts of the Assembly, a requirement for reporting of felony convictions was added to the profiling system. On April 8, 2002, the Board published a Notice of Intended Regulatory Action to add that information to the profile. With the passage of Senate Bill 59 (Chapter 38 of the 2002 Acts), the Board was mandated to promulgate regulations implementing provisions of the law within 280 days. Therefore, the reporting of information related to a felony conviction was included in the emergency action and also in the Notice of Intended Regulatory Action.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The Board has determined that there is no potential impact on the family or on family stability as a result of this regulation. There is also no anticipated increase or decrease in disposable family income.