



Virginia
Regulatory
Town Hall

Proposed Regulation 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, Chiropractic and Podiatry
Action Title:	Changes in physician profile
Date:	10/10/02

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Board of Medicine proposes 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, which are in effect from June 19, 2002 to June 18, 2003.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 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.

The Office of the Attorney General has certified by letter that the Board has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

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.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Requirements for the physician profile have been amended in conformity to changes in § 54.1-2910.1. Certain information is now required - such as telephone numbers of practice locations, availability of translating services at secondary practice settings, and reports of any felony convictions. In addition, contact information, such as an email address, which are necessary for communicating with practitioners in times of emergency situations is required to be reported, but not available on the profile viewed by the public. Information on insurance plans accepted is voluntary, and the amended regulations specify that notices and orders will be posted by the Board after the notice has been adjudicated. The statistical methodology for calculating the rating of malpractice claims has been modified to more accurately reflect the relative nature of the claim. Where there have been fewer than 10 claims in a specialty, no rating is applied. Other technical changes are proposed to make the regulation clearer and more enforceable.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

There are several advantages to the public of the amended regulation:

- Current law requires the licensees to report any "insurance plans accepted" - a requirement with which it is nearly impossible to comply since the list can be well over 1,000 and licensees sometimes don't even know when they have been added or deleted from a panel. By making that field in the profile optional, the practitioner can choose several options: 1) he can report no insurance plans; 2) he can list the 10 or more that are most frequently used in his office; 3) he can state that most major plans are accepted with instruction for the patient to call the office; or 4) he can respond in some other fashion. If he chooses to report insurance plans, he is responsible for keeping it accurate. The amended law and regulation make the reporting of this information optional and less confusing to the consumer.

- Under current regulations, primary and secondary practice addresses are required but telephone numbers are not. Including telephone numbers will be a convenience for patients.
- Current regulation requires the reporting of translating services only at the primary practice setting. Including secondary practice settings would better serve consumers.
- The amended regulation requires a practitioner to report a felony conviction, which is information that consumers may need to make an informed choice about a doctor.

There are no disadvantages to the public as all amendments are intended to provide better access to useful information on doctors of medicine, osteopathy and podiatry.

There are no advantages or disadvantages to the agency; the amended regulations clarify several aspects of the profile and address some issues that had been difficult to resolve. The provision of email addresses and facsimile numbers will provide a valuable resource and an immediate contact for the Board or the Department of Health in cases of emergency.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

(i) Fund source: As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$2,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be licensed doctors of medicine, osteopathy, and podiatry.

Estimate of number of entities to be affected:

Doctors of medicine and surgery	28,174
Doctors of osteopathy and surgery	893
Doctors of podiatry	487

Projected costs to the affected entities:

There are no additional costs to affected entities. The physician profile is currently operational, and all affected entities have been required to report the information in the statute. Some practitioners will have to modify their profile to provide information not previously captured, but that process will be carried out at no additional cost to licensees.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

As provided in the law, the proposed 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 the specific 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 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 NOIRA for this action.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

An announcement of the board's intent to amend its regulations was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the board. Public comment was received from July 15, 2002 until August 14, 2002. During the 30-day comment period, there were no comments received from members of the public. Prior to introduction of SB 59, the Department worked with representatives of the Medical Society of Virginia to resolve several issues with the profile. The amended law and regulation reflect the consensus that was reached.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

An informal workgroup consisting of the Board president and staff that are responsible for implementation of SB 59 met to determine the changes required by the law. Its recommendations were reviewed by the Legislative Committee, which reported to the full Board. The proposed regulations are identical to the emergency regulations, for which there has been no comment. The Assistant Attorney General who provides counsel to the Board and the Agency Regulatory Coordinator have been involved during the adoption of proposed regulations to ensure clarity and compliance with law and regulation. The draft regulations have been available at public meetings, and the public has been invited to offer suggested changes.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Public participation guidelines require the Board to review regulations each biennium or as required by Executive Order. Regulations will be reviewed again during the 2005-06 fiscal year.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability or on disposable family income.