Virginia Regulatory Town Hall

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Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	Board of Optometry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC105-20-10 et seq.
Regulation title	Regulations Governing the Practice of Optometry
Action title	Continuing education requirements
Document preparation date	3/15/07

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.*

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

In its proposed regulatory action, the Board intends to clarify and amend certain provisions of section 70, the continuing education requirements as stated in Chapter 20. A Notice of Intended Regulatory Action was published on July 24, 2006. During the comment period on the NOIRA and at subsequent meetings, the Board became aware of other issues relating to continuing education that were not included. Therefore, the 2006 NOIRA is being withdrawn, and the amendments identified in that document incorporated into another Notice.

The Board intends to address issues relating to the validity and value of continuing education for the practitioner. To do so, it will consider requiring that some of the hours be obtained in face-to-face courses, that half of the hours be offered by sponsors approved by two educational accrediting bodies, that additional documentation and verification be provided and maintained and that the hours relating to therapeutic pharmaceutical agents be increased for optometrists.

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 number(s), 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.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Optometry the authority to promulgate regulations to administer the regulatory system:

§ 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. …

There is a statutory mandate for the Board of Optometry to require continuing education for renewal of licensure provided in:

§ 54.1-3219. Continuing education.

As a prerequisite to renewal of a license or reinstatement of a license, each optometrist shall be required to take annual courses relating to optometry as approved by the Board. The courses may include, but need not be limited to, the utilization and application of new techniques, scientific and clinical advances and new achievements of research. The Board shall prescribe criteria for approval of courses of study and credit hour requirements. However, the required number of credit hours shall not exceed sixteen in any one calendar year. The Board may approve alternative courses upon timely application of any licensee. Fulfillment of education requirements shall be certified to the Board upon a form provided by the Board and shall be submitted by each licensed optometrist at the time he applies to the Board for the renewal of his license. The Board may waive individual requirements in cases of certified illness or undue hardship.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

In section 70 of 18VAC105-20-10 et seq., the following changes were identified in the NOIRA document that was published with a comment period from July 24, 2006 to August 23, 2006:

1. The Board believes it is important to affirmatively state in regulation that falsifying the attestation or failure to comply with CE requirements may subject a licensee to disciplinary action by the Board, consistent with § 54.1-3215 of the Code of Virginia.

2. Currently, the regulation provides that courses that are "solely" designed to promote the sale of specific instruments or products and courses offering instruction on augmenting income are excluded. The problem is that "solely" is too subjective and allows for acceptance of a course that is 99% a sales pitch and 1% relating to patient care. The Board intends to amend that provision to make it clearer that the principal purpose of an acceptable course cannot be to sell goods or augment income.

3. Subsection B needs to be amended to specifically state that any request for an extension or a waiver of CE requirements must be made prior to date the renewal form is due, which is December 31st .

4. Subsection G needs to be amended to distinguish between those entities that are providers or sponsors of continuing education and those that offer approval for courses (Council on Optometric Practitioner Education (COPE) and the Accreditation Council for Continuing Medical Education of the American Medical Association).

5. The current regulation, as stated in subsection G, allows an approved course or program to be offered by correspondence, electronically or in person. In amending this section, the Board will consider some requirement on the number of hours that must be obtained from courses that are face-to-face – possibly 4 hours of the required 16 hours. Such a limitation is typical of CE requirements in other states. Face-to-face courses or interactive programs have the benefit of an exchange of ideas and experiences with other practitioners that reading a journal article does not offer. Since many optometrists practice in solo or small practices, the Board believes there may be a benefit to interaction at professional meetings and a positive impact on health and safety of patient in their care.

The following issues were identified in meetings of the Regulatory Committee since the publication of the original NOIRA and will be considered by the Board in the development and promulgation of amendments to CE regulations:

1. While all providers of continuing education currently approved by the Board would continue to be acceptable, the Board may limit the number of hours that may be obtained by providers that are not approved by the two accrediting bodies – the Council on Optometric Practitioner Education (COPE) and the Accreditation Council for Continuing Medical Education of the American Medical Association. Those entities provide an assurance of quality for the content offerings and maintain records of attendance for verification in an audit. The Board will consider specifying that half of the 16 hours must be either COPE or AMA approved.

2. By observation and experience with audits of continuing education, the Board is concerned that some sponsors do not provide a certificate of completion that gives sufficient information about the course nor do they provide verification of attendance. In amended regulations, the Board will consider specifying that an approved CE sponsor must provide a certificate of attendance that shows the date, location, lecturer, and content hours of the course; contact information of the provider/sponsor. The certificate of attendance must be based on verification by the sponsor of the attendee's presence throughout the course – either provided by a post-test

or by an independent monitor. If a licensee obtains CE from an electronic or self-study course, a post-test would be required as verification of completion.

3. In conducting an audit of a licensee continuing education, it is often necessary to contact a sponsor or provider to request additional information about a course or about the licensee's attendance. Therefore, the Board will consider an additional requirement for an approved CE provider/sponsor to maintain documentation about the course and attendance for at least three years following its completion.
4. The Board is concerned that private sponsors/providers of continuing education occasionally provide a benefit based on membership or referrals to a practice or business. The Board will consider language that requires approved continuing education to be generally available to all licensed optometrists.

5. Given the expansion of therapeutic pharmaceutical agents in the practice of optometry, the Board will also consider increasing the required hours from 2 to 4 hours in the treatment of the human eye and its adnexa with pharmaceutical agents; those hours would continue to be included in the required16 hours of continuing education.

6. Since the AMA can provide verification of clinical supervision hours, approved for AMA Type II CME, the Board will consider inclusion of those hours as acceptable CE for optometrists.

7. The Board will also consider the acceptance of or a requirement for third-party verification of continuing education courses and hours.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The review of continuing education requirements in section 70 of the regulations was initiated to consider utilization of OE Tracker, a system recently established the Association of Regulatory Boards of Optometry (ARBO) for the purpose of tracking and maintaining information about CE compliance with requirements for state licensure. The tracking system posts hours of approved CE and allows optometrists to view the status of their continuing education. A committee of the Board was appointed to consider OE Tracker and other issues relating to continuing education.

The Committee reviewing the continuing education regulations did not recommend an amendment to require all licensees to participate. As the market evolves for OETracker's service, it may become possible to use OETracker, as optometrists have voluntarily agreed to record their continuing education credits through the system. Currently, many national continuing education vendors already require a tracker number to record participation, so a large portion of optometric continuing education is already being recorded by OETracker. Five states have mandated their licensees to participate. For them, ARBO provides tailored reports to the board office on all licensees or only those that do not have sufficient hours.

In addition to philosophical objections over the state compelling licensees to participate in OETracker, the Committee has concerns over its funding. Historically, ARBO has funded its activities through member board fees, national examination fees, and fees to vendors for reviewing continuing education for approval through its Council on Professional Education (COPE) service. However, OETracker has also been funded "sponsorships" by two commercial companies, Essilor and Alcon. This funding relationship has not been publicized heretofore and may represent some conflict for the regulatory use of OETracker. More information will have to be gathered, and the Virginia Board will need to explore conflict of interest concerns before there is further consideration of the ARBO OETRacker system.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact of the proposed regulatory action on the institution of the family and family stability.