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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC85-130
VAC Chapter title(s)	Regulations Governing the Practice of Licensed Midwives
Date this document prepared	October 6, 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

N/A

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Regulations of the Board of Medicine are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be "[t]o promulgate regulations in accordance with the

Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system.”

Virginia Code § 54.1-2957.9 requires the Board to regulate and license professional midwives in the Commonwealth.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The Board is directed by the General Assembly to license and regulate health professions. There are no alternatives to regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
The Board received 179 comments via Town Hall, all stating the same point.	All 179 public comments to the periodic review requested that midwives be permitted to carry and administer medications. Many of the comments incorrectly stated that the scope of practice for professional midwives is determined by Board regulations.	Virginia Code § 54.1-2957.9 specifically prohibits licensed professional midwives from having prescriptive authority and prohibits them from possessing or administered controlled substances, which in Virginia includes Schedule VI medications. The Board has no jurisdiction to change the Code. Because statutory changes are made by the General Assembly, these public comments cannot be addressed in the periodic review of the regulations governing professional midwives.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This chapter of the regulations of the Board of Medicine is necessary for the protection of public health, safety and welfare because it sets for the requirements for licensure and standards of practice for professional midwives. These regulations are necessary to continue to renew licenses for professional midwives and to issue new licenses for professional midwives, which the General Assembly determined is a necessary component of the provision of healthcare in the Commonwealth. These regulations are additionally necessary to protect public health, safety, and welfare by providing a basis for disciplinary

actions against practitioners. The Board of Medicine has reviewed this chapter and determined that it is clearly written and understandable.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The Board decided to retain and amend Chapter 130.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The regulations are needed for the reasons stated above. The General Assembly requires these professions to be licensed and regulated by the Board. The Board cannot do that without regulations. The Board has received no complaints or comments regarding Chapter 80. The chapter is not unnecessarily complex, as explained above. The regulations do duplicate some state law; those provisions will be eliminated in the subsequent action. This chapter has been revised four times since the last periodic review in 2018. Any changes in technology, economic conditions, or other factors have changed would have been considered with each of the four revisions. The regulations affect practitioners, not businesses, so there is no impact on small businesses.
