Form: TH-04
August 2018

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Fast-Track Regulation
Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18 VAC 85-20 Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry Chiropractic 18 VAC 85-40 Regulations Governing the Practice of Respiratory Therapists 18 VAC 85-50 Regulations Governing the Practice of Physician Assistants 18 VAC 85-80 Regulations for Licensure of Occupational Therapists 18 VAC 85-101 Regulations Governing the Licensure of Radiologic Technology 18 VAC 85-110 Regulations Governing the Practice of Licensed Acupuncturists 18 VAC 85-120 Regulations Governing the Licensure of Athletic Trainers 18 VAC 85-130 Regulations Governing the Practice of Licensed Midwives 18 VAC 85-140 Regulations Governing the Practice of Polysomnographic Technologists 18 VAC 85-150 Regulations Governing the Practice of Behavior Analysis 18 VAC 85-160 Regulations Governing the Registration of Surgical Assistants and Surgical Tec 18 VAC 85-170 Regulations Governing the Practice of Genetic Counselors
Action title	Electronic notifications
Date this document prepared	10/24/18

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for

Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations.*

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

During the 2018 General Assembly, legislation was passed authorizing the Board of Medicine to send notices electronically. Consequently, all chapters under the Board are amended to delete the word "mailed" (which is interpreted to mean by postal service) and to insert the word "sent."

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

N/A

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 18, 2018, to comply with the Board's new statutory authority in §54.1-2904 through Chapter 101 of the 2018 Acts of Assembly, the board amended the regulations of all professions to say "sent" instead of "mailed."

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

As required by Executive Order 14 (2018), the Board of Medicine conducted a periodic review of this chapter. The amendments are clarifying or intended for consistency with current practice. There are no substantive changes, so the amendments are not expected to be controversial.

Legal Basis

Please identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

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 Medicine 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. ...*

Chapter 101 of the 2018 Acts of the Assembly amended the Code as follows:

§ 54.1-2904. Biennial renewal of licenses; copies; fee; lapsed licenses; reinstatement; penalties.

A. Every license granted under the provisions of this chapter shall be renewed biennially as prescribed by the Board. The Board shall send by mail or electronically notice for renewal of a license to every licensee. Failure to receive such notice shall not excuse any licensee from the requirements of renewal. The person receiving such notice shall furnish the information requested and submit the prescribed renewal fee to the Board. Copies of licenses may be obtained as provided in the Board's regulations.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The change in these sections is intended for consistency with the amended Code and efficiency in the operation of the Board. The regulatory change will allow the Board to send renewal notices electronically and for licensees to renew more efficiently to protect the health and safety of patients they serve.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

During the 2018 General Assembly, legislation was passed authorizing the Board of Medicine to send notices electronically. Consequently, all chapters under the Board are amended to delete the word "mailed" (which is interpreted to mean by postal service) and to insert the word "sent."

Issues

Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

1) There are no substantive changes to the regulation so there are no real advantages or disadvantages to the public. The amendments are consistent with changes in the Code.
2) There are no disadvantages to the agency or the Commonwealth. The advantage is more efficiency and a more cost-effective method for sending renewal notices.
3) There are no other pertinent matters of interest. The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to "*promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to administer effectively the regulatory system.*"
   The proposed amendments are a foreseeable result of the statute requiring the Board to protect the health and safety of citizens of the Commonwealth.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There is no applicable federal requirement.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	There are no projected costs or savings resulting from the change. 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; The agency will incur no additional costs for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	None
For all agencies: Benefits the regulatory change is designed to produce.	None

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	No costs
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	All licensees of the Board of Medicine
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:	The Board has approximately 70,000 licensees. There is no estimate of the number of small businesses, but the proposed changes would not affect any such business. Licensees currently

a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	renew electronically, so the change in the method of notification does not affect the method of payment and renewal.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	None
Benefits the regulatory change is designed to produce.	Regulations are that consistent and updated with the Code.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The amendments do not change the substance of the chapter; there are no alternatives that meet the essential purpose of sending renewal notices electronically as authorized by statute.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There are no alternative regulatory methods for clarifying or updating the language of a regulation other than promulgating a regulatory action.

Public Participation

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the

General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Detail of Changes

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
Chapter 20; section 21 Chapter 40; section 25 Chapter 50; section 21 Chapter 80; section 25 Chapter 101; section 26 Chapter 110; section 36 Chapter 120; section 30 Chapter 130; section 31 Chapter 140; section 30 Chapter 150; section 30 Chapter 160; section 30 Chapter 170; section 30	Sets out requirements for providing the board with current name and address	All sections are amended to consistently specify that all notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when "sent" to the latest address of record provided or served to the licensee. The word "mailed" is deleted and replaced with the word "sent." *When they renew, licensees are currently providing an email address for the purpose of receiving notices and communications from the Board. With other boards, renewal notices are currently being sent to the email address on record. If a licensee fails to renew before the renewal deadline, a paper renewal notice is also sent as a courtesy to the licensee. Failure to receive a notice does not relieve a licensee from the renewal requirement (see 54.1-2904).*