



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Medicine/Department of Health Professions
VAC Chapter Number:	18 VAC 85-101-10 et seq.
Regulation Title:	Regulations Governing the Licensure of Radiologic Technologist and Radiologic Technologist-Limited
Action Title:	Regulatory Review
Date:	6/28/02

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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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 proposed amendments address concerns about the adequacy of training for the limited licensees and provide greater clarity for the regulated entities. Amendments are recommended to require persons training as a radiologic technologist-limited to gain practical experience in the radiologic procedures for which they are seeking licensure, and provisions are established for a traineeship similar to that currently in effect for the radiologic technologists. In addition, the scope of practice for the limited licensee is further specified to exclude certain procedures for which they are not trained or tested. Regulations for endorsement are eliminated since the grandfathering provisions expired in 1999; persons licensed in other states who are seeking licensure in Virginia are licensed based on passage of the national examination. Finally, provisions for the implementation of continuing education requirements are added.

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 authority for the Board to license radiologic technologists-limited and to determine requisite education and training is found in Chapter 29 of Title 54.1 as follows:

§ 54.1-2900. Definitions (Exerpted).

As used in this chapter, unless the context requires a different meaning:

"Practice of radiologic technology" means the application of x-rays to human beings for diagnostic or therapeutic purposes.

"Radiologic technologist, limited" means an individual, other than a licensed radiologic technologist, dental hygienist or person who is otherwise authorized by the Board of Dentistry under Chapter 27 of this title and the regulations pursuant thereto, who performs diagnostic radiographic procedures employing equipment which emits ionizing radiation which is limited to specific areas of the human body.

§ 54.1-2956.8:1. Unlawful to practice radiologic technology without license; unlawful designation as a radiologic technologist or radiologic technologist, limited; Board to regulate radiologic technologists.

Except as set forth herein, it shall be unlawful for a person to practice or hold himself out as practicing as a radiologic technologist or radiologic technologist, limited, unless he holds a license as such issued by the Board.

In addition, it shall be unlawful for any person who is not licensed under this chapter whose licensure has been suspended or revoked, or whose licensure has lapsed and has not been renewed to use in conjunction with his name the words "licensed radiologic technologist" or "licensed radiologic technologist, limited" or to otherwise by letters, words, representations, or insignias assert or imply that he is licensed to practice radiologic technology.

The Board shall prescribe by regulation the qualifications governing the licensure of radiologic technologists and radiologic technologists, limited. The regulations may include requirements for approved education programs, experience, examinations, and periodic review for continued competency. The provisions of this section shall not apply to any employee of a hospital licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 acting within the scope of his employment or engagement as a radiologic technologist.

§ 54.1-2956.8:2. Requisite training and educational achievements of radiologic technologists and radiologic technologists, limited.

The Board shall establish a testing program to determine the training and educational achievements of radiologic technologists or radiologic technologists, limited, or the Board may accept other evidence such as successful completion of a national certification examination, experience, or completion of an approved training program in lieu of testing and shall establish this as a prerequisite for approval of the licensee's application.

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.

During the periodic review of regulations, the primary issue raised was the competency of persons with a limited rad tech license to perform radiographic procedures. In the past, the Advisory Committee has heard testimony and received letters from practitioners and educators expressing concern about the limited amount of training received by these licensees. When the ARRT examination was first required for licensure as a rad tech-limited, the cut score set by the Board was 75. Faced with a very poor passage rate, the Board looked into solutions to the problem. It was determined that the cut score was set above the national average and should be lowered to be consistent with the score recommended by the ARRT, which was 65. Along with a reduction in the passing score, the educational programs have become more proficient in teaching the material necessary to pass the national examination, and the passage rate has dramatically improved. Similar passage rates are evident on the anatomical exams of chest, extremities, skull, spine and podiatric.

Even with the improved passage on the exam, the actual experience of some practitioners with the skill level of limited licensees has led to a recommendation to require a certain number of procedures to be performed under direct supervision and observation before a license is granted. Consequently, the Board has proposed that training in the anatomical areas for which someone is seeking licensure include performance of at least 10 procedures under direct supervision and observation of a licensed rad tech or doctor. To accommodate the need for practice while in training, the Board has added provisions for a traineeship for the limited license similar to that already in effect for the full license. Finally, the Board determined that the public health and safety was not adequately protected and further specified certain procedures to be beyond the scope of practice for someone with a limited license. Rad tech-limited licensees do not have the training and are not tested on fluoroscopic procedures, computerized tomography, vascular-interventional procedures or mobile radiography.

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.

Amendments will provide for additional practical experience for those seeking licensure as a radiologic technologist-limited and will specify that certain radiographic procedures are outside their scope of practice. Amendments are adopted to provide a traineeship in which to gain practical experience under supervision and observation and to implement continuing education requirements as necessary for renewal of a license in 2005. Other amendments are clarifying to eliminate unnecessary or outdated rules or to provide adequate information for compliance with requirements of law and regulation.

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.

1) The primary advantages and disadvantages to the public.

The primary advantages to the public include the additional assurance that persons with a limited license to perform radiographic procedures in certain anatomical areas have had practical experience in those procedures under the direction and observation of a supervising rad tech or physician. Experience in specific anatomical procedures under the direct supervision and observation of a licensed person will ensure that persons with a limited license have not only the education necessary to pass an examination but also the practical ability to safely perform radiography. Also, specific limitations on the scope of practice for someone with a limited

license will ensure that procedures are not being performed by someone who has not been appropriately trained or tested. There are no disadvantages to the public.

2) The primary advantages and disadvantages to the Commonwealth.

There are no advantages or disadvantages to the Commonwealth; there will be no additional cost for licensing or enforcement of standards for radiologic technologists-limited.

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 persons interested in becoming licensed as radiologic technologists or radiologic technologists-limited or licensees seeking to comply with requirements for continuing education.

Estimate of number of entities to be affected:

There are currently 918 persons licensed as radiologic technologists-limited and 2309 persons licensed as radiologic technologists.

Projected costs to the affected entities:

There should be no cost for compliance for applicants or current licensees. Persons who are receiving training in anatomical areas for a limited license will gain that experience as a trainee in the practice setting under the licensed doctor or rad tech.

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.

18 VAC 85-101-10. Definitions.

The Board proposes an amendment to the definition of "Traineeship" to clarify that a trainees is an applicant for licensure as either a radiologic technologist or a radiologic technologist-limited to allow that person to obtain practical experience under direct supervision and observation.

18 VAC 85-101-25. Fees.

The Board recommends moving the existing section on fees to Part I, General Provisions for consistency with other professions under the Board of Medicine.

18 VAC 85-110-30. Educational requirements for radiologic technologists.

The requirement for an applicant to submit proof of graduation from an educational program recognized by the American Registry of Radiologic Technology (ARRT) along with his application and fee is unnecessary. AART requires the submission of transcripts documenting graduation as a prerequisite for sitting for the ARRT examination, which is recognized by the Board for licensure. Additional submission of educational documents to the Board is duplicative and unnecessarily burdensome for the applicant.

18 VAC 85-101-40. ~~Examination~~ Licensure requirements.

The Board recommends eliminating distinction between licensure by examination and by endorsement since the requirements are identical. In order to verify that an applicant who has been licensed or certified in another jurisdiction does not have disciplinary action pending, he is required to provide information on the status of any license or certification held in another jurisdiction.

18 VAC 85-101-50. Traineeship for unlicensed graduate.

An amendment is adopted to replace the term "approved program" with "acceptable program" since the ARRT does not "approve" programs but maintains a list of those it finds

acceptable as preparation to sit for the examination and to change the name of the advisory group to the Advisory Board on Radiological Technology since that is the name now used in statute.

18 VAC 85-101-60. Examination requirements.

The Board has proposed the addition of a practice component for a limited license in the anatomical areas of chest, spine, skull and extremities, similar to what is required for a limited license to take xrays of the abdomen and pelvis. The proposal is to require at least ten radiologic examinations for each of the anatomical area in which the applicant is seeking a limited license. The examinations would be performed in a traineeship under the direct supervision and oversight of the supervisor who would attest to the applicant's competency in that areas or areas.

For a limited license obtained by passage of an examination by the American Chiropractic Registry of Radiologic Technology and practice solely under the direction of a doctor of chiropractic, the Board has inserted the phrase "in the anatomical area of the spine or extremities or in bone densitometry" to specify the scope of the limited license within the scope of practice of a chiropractor. Similarly, a limited license to practice under the direction of a doctor of podiatry specifies "in the anatomical area of the foot and ankle."

18 VAC 85-101-61. Traineeship for an applicant for licensure as a radiologic technologists-limited.

Practical training required for the limited licensure should be performed in a supervised traineeship similarly to the process for gaining experience necessary for full licensure. Therefore, a new section is added to specify the requirements for a traineeship for limited licensure to include direct supervision by a radiologic technologist or a doctor. Traineeships must be reviewed and approved by the Chairman of the Advisory Board. The traineeship terminates 14 days after receipt of the examination results or completion of the required number of procedures, but the applicant may apply for continuation of a traineeship.

18 VAC 85-101-80. Endorsement requirements for radiologic technologist.

Requirements for endorsement are deleted as unnecessary; amendments to section 40 permit licensure of persons from other jurisdictions. Subsection B provides requirements for "grandfathering" for the rad tech that expired on January 1, 1999 and are eliminated to avoid confusion to the public and the applicant.

18 VAC 85-101-90. Endorsement of previous practice for radiologic technologists-limited.

Section 90 provides requirements for "grandfathering" for the limited license that expired on January 1, 1999 and are eliminated to avoid confusion to the public and the applicant.

18 VAC 85-101-100. General Requirements.

The Board has added a provision to make clear that these regulations do not apply to persons employed by a licensed hospital; that exemption is stated in the law but has not been clearly understood by the rad techs, their employers, or the hospitals.

18 VAC 85-101-130. General Requirements.

To address an issue of scope of practice that has been raised, the Board has added a provision prohibiting performance of fluoroscopic procedures, computerized tomography, and vascular-interventional procedures by radiologic technologist-limited since those procedures are not covered on limited exam and are considered to be outside the scope of practice for a person with a limited license.

18 VAC 85-101-140. Individual responsibilities to patients and licensed radiologic technologist, doctor of medicine, osteopathy, chiropractic, or podiatry.

The Board has eliminated the provision requiring the “initial” patient visit to be made by a licensed radiologic technologist, doctor of medicine, osteopathy, chiropractic, or podiatry. That provision, which is standard language for other professions such as physical therapy or occupational therapy, is not applicable to radiologic technology. All “visits” or procedures by a limited licensee are performed after communication with a licensed rad tech or doctor. Therefore, the Board has also deleted the word “first” prior to “procedure” in subsection B.

18 VAC 85-101-150. Biennial renewal of license.

To specify and clarify when it is necessary to meet continuing competency requirements for renewal, the Board intends to add the phrase “On and after January 1, 2005” in subsections D and E. Other provisions that are necessary for continuing education verification and enforcement are added in subsection F. Those provisions include: an exemption for the first renewal after licensure; a requirement to maintain documentation of hours for four years following renewal and to provide such documentation to the board within 30 of an audit request; a statement that failure to comply may subject the licensee to disciplinary action; and authority for the board to grant an exemption or extension of time for good cause shown.

18 VAC 85-101-160. Fees.

This section is deleted and provisions moved to a new section under Part I.

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.

Alternatives were considered for the following issues:

Qualifications and practice by radiologic technologists-limited

From discussions with practitioners and educators, the Board has become aware that there is some concern about the qualifications of persons seeking limited licensee. While passage of the ARRT examination for Limited Scope of Practice in Radiography is now required, there continues to be a question about the clinical component of their training. For radiographic procedures on the abdomen and pelvis, an applicant must have completed 25 radiologic examinations under the direct supervision and observation of a licensed rad tech or doctor of medicine or osteopathy, who must sign a notarized statement as to the applicant's competency in the areas of radiation safety, positioning, patient instruction, anatomy, pathology and technical factors. To address the concerns about quality of instruction and abilities of limited licensees, the Board has added a clinical component for licensure in the other anatomical areas of chest, skull/sinuses, extremities, and spine. Since there is a section on the ARRT examination on those specific radiographic procedures, the Board adopted a lesser requirement of 10 procedures which must be supervised, observed and attested by a doctor or a licensed rad tech.

A person may also qualify for licensure as a radiologic technologist-limited by passage of the examination offered in chiropractic or podiatry. The Board recommends clarifying that limited licensure in those fields is restricted to the anatomical areas of the spine, extremities or bone densitometry or the foot and ankle respectively.

To address an issue of scope of practice by the radiologic technologists-limited, the Board has added provisions prohibiting performance of fluoroscopic procedures, computerized tomography (CT), and vascular-interventional procedures by radiologic technologist-limited since those procedures are not covered on limited exam and trainees do not receive specific instruction in the specialized equipment needed to perform those procedures. Fluoroscopy, which uses different equipment and a steady beam of x-ray involves the greatest amount of exposure to the patient and the technician. It is considered to be an advanced procedure and well beyond the scope of knowledge and training that a limited licensee would have received. Likewise, CT and vascular-interventional procedures utilize different equipment and are considered to be an advanced level of practice even for a registered radiologic technologist who holds a full license from the Board. To be qualified by ARRT to do CT, an advanced level examination is required with certification as a RRT as a prerequisite.

With these practice requirements and limitations, the Board believes the safety of the public is protected by licensing radiologic technologists-limited, but it will continue to monitor the passage rate on the examination to determine if additional hours of training are necessary.

Traineeship

In the definition of a "traineeship," the terminology needs to be changed to more accurately reflect current practice. The trainee is not an "unlicensed radiologic technologist" but should be an "applicant for licensure as a radiologic technologist." Since the Board has added practice requirements in the anatomical areas for which the limited rad tech is seeking licensure, it has also added provisions a traineeship for radiologic technologists-limited. Under a traineeship, the unlicensed person seeking practical experience will be authorized to perform radiologic procedures, provided it is under the direct supervision and observation of a qualified licensee.

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 April 8, 2002 until May 8, 2002. During the 30-day comment period, there was one comment received on the Regulatory Townhall.

The commenter suggested that supervision of a trainee could be performed in a hospital where there is an exemption from licensure. The Advisory Board did not recommend amending the regulation based on the suggestion.

The commenter questioned whether there should be specific regulations about health screenings that use radiologic procedures being performed without referral from a doctor. Current regulations would appear to address the issue of referral.

The commenter also offered support for prohibiting persons with limited licenses from performing fluoroscopic procedures.

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.

The Advisory Committee on Radiologic Technology, comprised of licensed radiologic technologists, physicians and members of the Board conducted the periodic review and recommended amendments for clarification and greater patient safety. The Assistant Attorney General who provides counsel to the Board has been involved during the adoption of proposed regulations to ensure clarity and compliance with law and regulation.

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 2004-05 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.

The proposed regulatory action would not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, strengthen or erode the marital commitment or increase or decrease disposable family income.