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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) Chapter citation(s)	18VAC105-20
VAC Chapter title(s)	Regulations of the Virginia Board of Optometry
Action title	Addition of NPDB report to licensure by endorsement process
Date this document prepared	August 28, 2024

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*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Board proposes to add the submission of a report from the National Practitioner Data Bank ("NPDB") to the licensure by endorsement process.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

NPDB = National Practitioner Data Bank

Mandate and Impetus

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, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The Board of Optometry proposes to add the requirement to include an NPDB report to licensure by endorsement provisions for protection of the public. The NPDB records all actions taken in other jurisdictions against a healthcare licensee and is a standard requirement on applications for licensure and licensure by endorsement for many other professions, including: Dentistry (18VAC60-21-90(A)(3); 18VAC60-25-130(A)(3)); Medicine (18VAC85-20-141(5) (physicians and podiatrists); Long-Term Care Administrators (18VAC95-20-230(B)(5) (nursing home administrators) and 18VAC95-30-130(B)(5) (assisted living facility administrators)); Physical Therapy (18VAC112-20-65(B)(3) (applies to physical therapists and physical therapist assistants)); Counseling (18VAC115-20-45(A)(6) (licensed professional counselors), 18VAC115-30-45(4) (certified substance abuse counselors and assistants), 18VAC115-40-25(5) (certified rehabilitation providers), 18VAC115-50-40(A)(6) (licensed marriage and family therapists), 18VAC115-60-50(7) (licensed substance abuse treatment providers), 18VAC115-70-40(A)(2) (registered peer recovery specialists), 18VAC115-80-40(A)(2) and 18VAC115-80-50(A)(2) (qualified mental health providers)); Psychology (18VAC125-20-42(5) (licensed clinical, school, and applied psychologists) and 18VAC125-30-30(A)(3)(c) (certified sex offender treatment providers)); and Social Work (18VAC140-20-40(2)(e) (licensed clinical social workers) and 18VAC140-20-51 (B)(2)(c) (licensed masters social workers and licensed bachelors social workers)).

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 and 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 Optometry 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.”

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of the action is to add a requirement to submit a current NPDB report with an application for licensure for endorsement. This is necessary for protection of the public because the NPDB, operated by the U.S. Department of Health and Human Services, is a clearinghouse for medical malpractice payment

and adverse action reports on healthcare professionals in all jurisdictions of the United States. It is an invaluable resource when determining whether an applicant is safe and competent to practice optometry in the Commonwealth.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Board will amend 18VAC105-20-10 to require that every applicant for licensure by endorsement submit a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank.

Alternatives to Regulation

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.

There are no alternatives to regulation. To require the submission of an additional report for application for licensure, the Board must amend the regulation.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board of Optometry is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Erin Barrett, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or erin.barrett@dhp.virginia.gov or by fax to (804) 915-0382. In

order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.