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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)	18VAC85-101-10 et seq.
Regulation title(s)	Regulations Governing the Practice of Radiologic Technology
Action title	Clarification of licensure requirement and practice according to certification
Date this document prepared	3/4/16

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The amended regulation in Section 40 will clarify that the Board determines qualification for licensure of radiologic technologists based on certification by the ARRT or the NMTCB; such certification is evidence of passage of an examination and meets the statutory requirement for a testing program.

The amended regulation in Section 110 will clarify that a radiologic technologist is responsible for administering and documenting procedures consistent with his education and certifying examination.

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.

ARRT = American Registry of Radiologic Technologists

NMTCB = Nuclear Medicine Technology Certification Board

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 February 18, 2016, the Board of Medicine adopted amendments to 18VACC85-101-10 et seq., Regulations Governing the Practice of Radiologic Technology.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person'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 (6), 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. ...

The specific authority for the Board to regulate this profession is found in:

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

Except as set forth herein, it shall be unlawful for a person to practice or hold himself out as practicing as a radiologist assistant, 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 radiologist assistant," "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 radiologist assistants, 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 radiologist assistants, radiologic technologists, and radiologic technologists, limited.

The Board shall establish a testing program to determine the training and educational achievements of radiologist assistants, radiologic technologists, or radiologic technologists, limited. 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 Board shall consider and may accept relevant practical experience and didactic and clinical components of education and training completed by an applicant for licensure as a radiologist assistant, radiologic technologist, or radiologic technologist, limited, during his service as a member of any branch of the armed forces of the United States as evidence of the satisfaction of the educational requirements for licensure.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Currently, the regulation requires submission of evidence that an applicant has passage an examination with a minimum score acceptable to the Board. Such a requirement may be confusing to applicants and the public because the ARRT or the NMTCB examines the applicant, determines the passing score and grants certification on that basis. The amendment is necessary because the Board does not determine the minimum passing score and does not received a score from ARRT or NMTCB. The credentialing bodies provide documentation that the applicant has been certifying with the appropriate credential as evidence that the certifying examination has been passed.

Since the certifying examination and resulting credential qualifies a person in an area of radiography – radiologic technology, nuclear medicine, sonography, etc., the regulation is amended to clarify that the radiologic technologist must practice consistent with his education and certifying examination. There is no statutory authority to grant specialty licenses in radiography, so the public is protected by specifying that the licensee is responsible for practicing within his area of education and expertise.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

There is no controversy in the adoption of these amendments; they are explanatory of current practice and clarifying for the licensee and the public.

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.

The amended regulation in Section 40 will clarify that the Board determines qualification for licensure of radiologic technologists based on certification by the ARRT or the NMTCB; such certification is evidence of passage of an examination and meets the statutory requirement for a testing program.

The amended regulation in Section 110 will clarify that a radiologic technologist is responsible for administering and documenting procedures consistent with his education and certifying examination.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

- 1) The primary advantage to the public is assurance that a rad tech is practicing consistent with the credential for which he is qualified. There are no disadvantages.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) There are no other pertinent matters of interest to the regulated community, government officials, and the public.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

There are no alternative regulatory methods that will accomplish the objective.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>There is no cost for implementation or enforcement. The amendments are clarifying and consistent with current interpretation and practice.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs to localities.</p>
<p>Description of the individuals, businesses, or</p>	<p>The individuals affected will be licensed radiologic</p>

other entities likely to be affected by the new regulations or changes to existing regulations.	technologists.
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: 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.	There are 3893 persons who hold a current Virginia license as a radiologic technologist. There is no estimate of the number of small businesses because radiologic technologists typically work in many types of practices and employment settings.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	There are no costs; the proposed amendments are consistent with current law and regulation.
Beneficial impact the regulation is designed to produce.	Greater efficiency and understanding of current regulation.

Alternatives

Please describe any viable 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. 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 regulation.

The Advisory Board of Radiologic Technology has discussed the appropriate use of titles and initials to indicate the credentials held by a licensee. There was interest in defining nuclear medicine and radiation therapy as specific radiologic specialties to be included in a revision of 18VAC85-101-110, but the members were advised that creating new definitions of specific radiologic specialties would require amending the Code of Virginia and then the regulations. Therefore, the only viable alternative was the amendment to section 110 as proposed, which clarifies that the licensee is responsible for practicing consistent with this education and certification.

Public participation notice

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.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent 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.

There is no impact on the family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
40	Sets out the licensure requirements for a radiologic technologist	<p>In subsection A 3, the amendment will delete “certification examination with a minimum passing score acceptable to the board” and insert “an examination resulting in certification by” the ARRT or NMTCB.</p> <p><i>Currently, the Board does not determine a passing score on the certifying examinations nor does it receive a score from the certifying bodies. Licensure is based on certification by the ARRT or the NMTCB, and such certification is based on passage of an examination. The revision will make the regulation more understandable and less confusing.</i></p>
110	Sets out the individual responsibilities to patients and to licensed doctors	<p>Currently, subsection A requires a radiologic technologist to administer and document procedures within the limit of his professional knowledge, judgment, and skills. The amendment adds: “consistent with his education and certifying examination” to clarify that a radiologic technologist certifying in nuclear medicine (for example) should practice in that field.</p> <p><i>There is concern that the field of radiologic technology is becoming more specialized but the Board does not have authority to recognize and license accordingly. Therefore, the regulation needs</i></p>

		<i>to clarify that procedures should be administered consistent with one's expertise.</i>
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