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## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Nursing; Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC90-25-10 et seq. 18VAC90-26-10 et seq. (new chapter)
<b>Regulation title</b>	Regulations Governing Certified Nurse Aides Regulations for Nurse Aide Education Programs
<b>Action title</b>	Regulatory reform
<b>Date this document prepared</b>	5/21/13

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

Regulations are amended to clarify the regulations, facilitate electronic submission of documents and forms, accept a certificate of naturalization as evidence of a name change, and allow completion of one clinical nursing course within the past 12 months to qualify an applicant for registration.

This action will also repeal sections 20 through 60 to move the requirements for nurse aide education programs into a separate chapter, promulgated as Chapter 26. In the re-promulgation regulation, the administrative processes for initial board approval, continued approval, and denial of approval are revised for consistency with current delegation of authority to professional staff for nursing education programs and the Administrative Process Act. Requirements for curriculum, instructors, course hours, and other essential elements of an approved program are identical to those currently in Chapter 25.

### 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.*

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The Board of Nursing adopted the amendments to 18VAC90-25-10 et seq., Regulations Governing the Practice of Nursing and the promulgation of 18VAC90-26-10 et seq., Regulations for Certified Nurse Aide Programs on May 21, 2013.

### 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.*

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**Chapter 24 of Title 54.1** establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations.

*§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:*

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...

In addition, Chapter 30 of Title 54.1 specifies the authority of the Board of Nursing in:

**§ 54.1-3005. Specific powers and duties of Board.**

*In addition to the general powers and duties conferred in this title, the Board shall have the following specific powers and duties:*

- 1. To prescribe minimum standards and approve curricula for educational programs preparing persons for licensure or certification under this chapter;*
- 2. To approve programs that meet the requirements of this chapter and of the Board;*
- 3. To provide consultation service for educational programs as requested;*
- 4. To provide for periodic surveys of educational programs;*
- 5. To deny or withdraw approval from educational programs for failure to meet prescribed standards;*

6. *To provide consultation regarding nursing practice for institutions and agencies as requested and investigate illegal nursing practices;*

7. *To keep a record of all its proceedings;*

8. *To certify and maintain a registry of all certified nurse aides and to promulgate regulations consistent with federal law and regulation. The Board shall require all schools to demonstrate their compliance with § 54.1-3006.2 upon application for approval or reapproval, during an on-site visit, or in response to a complaint or a report of noncompliance. The Board may impose a fee pursuant to § 54.1-2401 for any violation thereof. Such regulations may include standards for the authority of licensed practical nurses to teach nurse aides;*

9. *To approve programs that entitle professional nurses to be registered as clinical nurse specialists and to prescribe minimum standards for such programs;*

10. *To maintain a registry of clinical nurse specialists and to promulgate regulations governing clinical nurse specialists;*

11. *To certify and maintain a registry of all certified massage therapists and to promulgate regulations governing the criteria for certification as a massage therapist and the standards of professional conduct for certified massage therapists;*

12. *To promulgate regulations for the delegation of certain nursing tasks and procedures not involving assessment, evaluation or nursing judgment to an appropriately trained unlicensed person by and under the supervision of a registered nurse, who retains responsibility and accountability for such delegation;*

13. *To develop and revise as may be necessary, in coordination with the Boards of Medicine and Education, guidelines for the training of employees of a school board in the administration of insulin and glucagon for the purpose of assisting with routine insulin injections and providing emergency treatment for life-threatening hypoglycemia. The first set of such guidelines shall be finalized by September 1, 1999, and shall be made available to local school boards for a fee not to exceed the costs of publication;*

14. *To enter into the Nurse Licensure Compact as set forth in this chapter and to promulgate regulations for its implementation;*

15. *To collect, store and make available nursing workforce information regarding the various categories of nurses certified, licensed or registered pursuant to § 54.1-3012.1;*

16. *To expedite application processing, to the extent possible, for an applicant for licensure or certification by the Board upon submission of evidence that the applicant, who is licensed or certified in another state, is relocating to the Commonwealth pursuant to a spouse's official military orders;*

17. *To register medication aides and promulgate regulations governing the criteria for such registration and standards of conduct for medication aides;*
18. *To approve training programs for medication aides to include requirements for instructional personnel, curriculum, continuing education, and a competency evaluation;*
19. *To set guidelines for the collection of data by all approved nursing education programs and to compile this data in an annual report. The data shall include but not be limited to enrollment, graduation rate, attrition rate, and number of qualified applicants who are denied admission;*
20. *To develop, in consultation with the Board of Pharmacy, guidelines for the training of employees of child day programs as defined in § 63.2-100 and regulated by the State Board of Social Services in the administration of prescription drugs as defined in the Drug Control Act (§ 54.1-3400 et seq.). Such training programs shall be taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist;*
21. *In order to protect the privacy and security of health professionals licensed, registered or certified under this chapter, to promulgate regulations permitting use on identification badges of first name and first letter only of last name and appropriate title when practicing in hospital emergency departments, in psychiatric and mental health units and programs, or in health care facility units offering treatment for patients in custody of state or local law-enforcement agencies;*
22. *To revise, as may be necessary, guidelines for seizure management, in coordination with the Board of Medicine, including the list of rescue medications for students with epilepsy and other seizure disorders in the public schools. The revised guidelines shall be finalized and made available to the Board of Education by August 1, 2010. The guidelines shall then be posted on the Department of Education's website; and*
23. *To promulgate, together with the Board of Medicine, regulations governing the licensure of nurse practitioners pursuant to § 54.1-2957.*

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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.*

The purpose of the amendments is to update language and simplify the process of applying for registration as a CNA. Elimination of unnecessary or outdated provisions and inclusion of language consistent with current practices will facilitate submission of documentation. The goal is to enable qualified applicants to obtain which provides the public with some assurance of competency and accountability in the delivery of nurse aide services. The changes to the process of initial approval, continued approval and conditional approval will result in a more efficient system to avoid unnecessary delay in the provision of educational programs for training new

nurse aides. Requirements for education, practical training and evaluation of persons seeking certification are not being changed and will continue to ensure minimal competency to serve patients with safety and skill.

### 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?*

*Please note: 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 (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

The amendments are less restrictive and not controversial. They are consistent with the intent and purpose of regulatory reform.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.) Please be sure to define any acronyms.*

Regulations are amended to clarify the regulations, facilitate electronic submission of documents and forms, accept a certificate of naturalization as evidence of a name change, and allow completion of one clinical nursing course within the past 12 months to qualify an applicant for registration.

This action will also repeal sections 20 through 60 to move the requirements for nurse aide education programs into a separate chapter, promulgated as Chapter 26. In the re-promulgation regulation, the administrative processes for initial board approval, continued approval, and denial of approval are revised for consistency with current delegation of authority to professional staff for nursing education programs and the Administrative Process Act. Requirements for curriculum, instructors, course hours, and other essential elements of an approved program are identical to those currently in Chapter 25.

### 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.*

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- 1) The primary advantage to the public is facilitation of applications and elimination of outdated language. The Board will be able to approve nurse aide education programs in a timelier manner, thus making qualified programs available to persons interested in becoming CNA's. There are no disadvantages.
- 2) The advantage to the Commonwealth is clarity in the regulations which reduces queries to board staff.
- 3) There are no other pertinent matters.

### 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.*

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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.*

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There are no localities particularly affected.

### Regulatory flexibility analysis

*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.*

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There are no alternative regulatory methods. Elimination or reduction in the regulatory burden requires promulgation of amendments to regulations.

**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><b>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</b></p>	<p>a) 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; b) The agency will not incur additional costs for email notification to persons on the Public Participation Guidelines mailing lists. There will be no on-going expenditures related to this action.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>There are no costs to localities.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>Affected individuals may be certified nurse aides and persons applying for registration. Nurse aide education programs may be affected by new promulgation of Chapter 26.</p>
<p><b>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.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are currently: 53,877 registered CNA’s The number of persons who may be affected by less restrictive application requirements is unknown. It is unlikely that any of the affected entities would constitute a small business.  There are 230 nurse aide education programs approved by the Board.</p>
<p><b>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. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. 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.</b></p>	<p>There would be no costs associated with this action.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>Greater efficiency and less burdensome documentation required in applying for registration and renewal</p>

**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.*

There are no alternatives that will accomplish the purpose of eliminating outdated language and reducing the regulatory burden.

**Family impact**

*Please assess the impact of the proposed 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 institution of the family and family stability.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. 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.*

**Changes to Chapter 25**

<b>Current section number</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
10	Sets out definitions of words and terms used in regulation	Words and terms pertaining to nurse aide education programs are deleted in Chapter 25 because those sections in which they are used are deleted and re-promulgated in Chapter 26.
15	Sets out requirements for maintaining accurate records with the board	An amendment to subsection B will allow a licensee to provide a certificate of naturalization as proof of a name change in addition to current evidence of a marriage certificate or court order. The additional option will enable a nurse to officially change the name on her license without the trouble and expense of seeking a court order. An amendment to subsection C will allow a licensee to submit an address change <i>electronically</i> rather than requiring the information to be sent in writing.
20 through 60	Establishes requirements for approval of a nurse aide education program	Sections 20 through 60 are being repealed and re-promulgated as a separate chapter. These sections pertain to requirements for nurse aide education programs. Promulgation of a separate chapter for the education programs will facilitate compliance and use of the regulations – Chapter 25 for the CNA’s and Chapter 26 for the education



		programs.
71	Establishes certification by examination	Currently, one option to qualify an applicant to be placed on the registry and certified by examination is to be <u>currently</u> enrolled in a nursing education program and satisfactory completion of a clinical nursing course with at least 40 hours of clinical experience involving direct client care. <i>The amendment will eliminate the requirement for current enrollment and allow an applicant who has completed such a course within the past 12 months to qualify for certification as a nurse aide.</i>
72	Establishes certification by endorsement	An amendment allows for electronic verification of registration, certification, or licensure by another state for applicants seeking certification by endorsement.
90	Sets out “requirements for certified nurse aides”	Section 90 is repealed because the requirements are redundant of those in section 15 and are, therefore, unnecessary.
120	Establishes requirements for advanced certified nurse aides	Subsection B is amended to correct the renewal cycle for CNA’s – it was changed from biennial to annual in 2011, but this section was not amended at that time.

**Promulgation of Chapter 26**

<b>Current section number</b>	<b>Proposed section number</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
10	10	Sets out definitions of words and terms used in regulation	Words and terms pertaining to nurse aide education programs are deleted from Chapter 25 and incorporated into Chapter 26. There are no new words or terms and no changes to definitions.
20	20	Sets out requirements for establishing a nurse aide education program	<p>The process for obtaining approval in subsection A is modified to allow a more timely approval process. The requirements for submission on an application in ##1 and 2 are identical. However, in the current regulation, the “committee” (which is the Education Special Conference Committee) receives and reviews the application and makes a recommendation to the Board. If the recommendation is to deny approval, the program must request a hearing before the full Board or a panel thereof.</p> <p>In the re-promulgated Chapter 26, initial approval may be given once it is determined “by the board” that requirements for establishing a program have been met. The Board will delegate that determination to professional staff, so there would be no need to convene the committee and no delay in approval. If the program is denied approval following the staff review, then the program may request an informal conference with the committee. Finally, ##5 and 6 set out the current administrative process for requesting a formal hearing and for an appeal to a circuit court.</p> <p>Subsection B, which sets out all the general</p>

			requirements for an approved nurse aide education program is <u>identical</u> to subsection B of section 20 in the current regulation, Chapter 25.
30	30	Sets out requirements for instructional personnel	The requirements in section 30 in newly promulgated Chapter 26 are <u>identical</u> to current requirements in section 30 in Chapter 25.
40	40	Sets out requirements for the curriculum	The requirements in section 40 in newly promulgated Chapter 26 are <u>identical</u> to current requirements in section 40 in Chapter 25.
50	50	Sets out other program requirements, such as records, length of program, and classroom facilities	The requirements in section 50 in newly promulgated Chapter 26 are <u>identical</u> to current requirements in section 50 in Chapter 25.
60	60	Sets out requirements for continued approval	<p>The requirements in subsection A in newly promulgated Chapter 26 are <u>identical</u> to current requirements in subsection A of section 60 in Chapter 25. By federal mandate, the Board is required to conduct a site visit every other year and to receive a written program evaluation in the off-year.</p> <p>In subsection B, the process for maintaining approval is modified to allow a more timely approval process. In the current regulation, the “committee” (which is the Education Special Conference Committee) receives and reviews the report of the site visit or program evaluation report and makes a recommendation to the Board to grant continued approval, place a program on conditional approval or deny continued approval. In the re-promulgated Chapter 26, the “board” receives the report and may determine whether requirements for maintaining a program have been met. The Board will delegate that determination to professional staff, so there would be no need to convene the committee and no delay in continued approval. The criteria for granting continued approval or placing a program on conditional approval (subdivisions a and b under #1) are identical to the current regulation.</p> <p>If the decision is to place the program on conditional approval, the program provider is given a reasonable period of time to correct the deficiencies. The program may request an informal conference with the committee.</p> <p>Board staff will receive and review progress reports and will be authorized to grant continued approval at the end of the specified period of time. If the program fails to correct the deficiencies, the committee may recommend withdrawal of approval. If the Board accepts the recommendation of the committee, no further action is required unless the program requests a</p>

			<p>formal hearing.                  If the decision of professional staff is to deny continued approval (rather than placing the program on conditional approval), the committee will be convened and may recommend withdrawal of approval. If the Board accepts the recommendation of the committee, no further action is required unless the program requests a formal hearing. The right to appeal to a circuit court is set out in regulation.</p>
70	70	Sets out requirements for interruption or closing of a program	<p>Requirements for section 70 are identical to those in subsections C and D of Section 60 in current regulation with the exception of the time frame for a program that does not hold classes. Currently, the regulation says “for a period not to exceed one year.” The re-promulgated regulation says “for a period of one year” which is intended to be less confusing.</p>