



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Boards of Nursing and Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 90-30
Regulation title	Regulations Governing the Licensure of Nurse Practitioner
Action title	Requirement for consistency in educational program and professional certification
Document preparation date	

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

In recent months, questions have been raised about the qualifications of several applicants for licensure as nurse practitioners. The Boards have identified three issues related to licensure which need to be addressed by amending the regulations. First, regulations governing the licensure of nurse practitioners do not clearly state that an applicant for initial licensure in a specialty area of practice must have a degree from an advanced practice educational program and certification by national examination that are both consistent with that area of practice. Regulations do specify that a nurse practitioner is only authorized to practice in the specialty of her education and certification, but do not specifically require that the education and certification be congruent. Therefore, the intent is to specify a long-standing policy of the Board in regulation.

Second, the definition of an “approved program” specifies that the program must be “offered by a school of nursing or jointly offered by a school of medicine and a school of nursing which grant a master’s degree in nursing.” Therefore, in the opinion of the Boards, a graduate of an

approved program should have a master's or doctoral degree, but the regulations stating the qualifications for licensure do not specify that a graduate degree is required. The Boards intend to amend section 80 to clearly state that qualification.

Third, the Boards intend to address the need to write regulations for licensure by endorsement. Currently, all applicants must meet the qualifications for initial licensure. If regulations specify that a graduate degree is required for licensure in Virginia, it could disqualify persons seeking to endorse from other states who graduated in previous years from bachelor-level programs. Regulations should provide for some equivalency of qualifications at the time of initial licensure rather than expecting persons who have practiced for some time in another state to meet current requirements of education and certification.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board 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 legal mandate to promulgate the regulation for the licensure of nurse practitioners is found in § 54.1-2957.

§ 54.1-2957. Licensure of nurse practitioners.

The Board of Medicine and the Board of Nursing shall jointly prescribe the regulations governing the licensure of nurse practitioners. It shall be unlawful for a person to practice as a nurse practitioner in this Commonwealth unless he holds such a joint license.

The Boards may issue a license by endorsement to an applicant to practice as a nurse practitioner if the applicant has been licensed as a nurse practitioner under the laws of another state and, in the opinion of the Boards, the applicant meets the qualifications for licensure required of nurse practitioners in this Commonwealth.

Pending the outcome of the next National Specialty Examination, the Boards may jointly grant temporary licensure to nurse practitioners.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the regulation is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

At its August, 2003 meeting, the Committee of the Joint Boards reiterated that the policy of the Board should be to license individuals whose advanced practice educational program and area of certification are congruent. Likewise, the National Council of State Boards of Nursing published a position paper in 2002 recommending regulations to that effect. Currently, 18 VAC 90-30-80 states that the qualifications for initial licensure as a nurse practitioner include evidence of completion of an approved educational program designed to prepare nurse practitioners and submission of evidence of professional certification by an agency accepted by the boards. The regulation needs to be amended to specify that both the qualifying education program and the professional certification must relate to one of the 16 categories of nurse practitioner practice, as designated in section 70 of the regulations, for which the applicant is seeking licensure. Therefore, if a nurse has been educated as a family nurse practitioner, but certified as an adult nurse practitioner, he could not be licensed as a family nurse practitioner because the certifying examination did not test for minimal competency in family practice, including services to children. To protect the health and safety of the public, the boards must ensure that licensees have demonstrated competency through their educational program as well as the certifying examination to treat the population of patients for which they are being licensed.

Additionally, questions have arisen about the degree requirement for an applicant as a nurse practitioner. The definition of an approved program indicated that an applicant must be a graduate of such a program, resulting in a master's degree, but regulations do not specifically state that a master's or doctoral degree is required. If such a requirement is added for initial licensure, the Boards must provide for applicants from other states where a bachelor-level program was acceptable. To address that issue, the Boards intend to develop regulations for licensure by endorsement to specify minimal qualifications equivalent to those required in Virginia at the time of initial licensure.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

In section 120 of the regulations, the Boards have provided that “the practice of licensed nurse practitioners shall be based on specialty education preparation as a nurse practitioner and in

accordance with standards of the applicable certifying organization and written protocols.” Therefore, in the opinion of Board counsel, regulations already stipulate that a licensee can only practice in accordance with his specialty education and the corresponding specialty certification. However, to ensure that the regulations on specialty education and certification are clearly stated, an amendment is the only viable alternative.

The Committee of the Joint Board discussed the possibility of adopting a guidance document stating the position of the boards on this issue. Such a document would not have the force of law or regulation and could be used in making a case decision on denial of licensure. Decisions of the boards on licensure of nurse practitioners have always been based on the boards’ interpretation of the regulation and have not previously been challenged.

Until recently, certifying agencies have generally accepted candidates for examination whose educational program was consistent with the specialty area for which certification was being sought. The agencies have begun to accept a few candidates with different educational backgrounds – such as a person seeking certification as a psychiatric nurse practitioner whose training was as a clinical nurse specialist not a nurse practitioner. Consequently, the boards have received several applications from persons without consistent educational and examination credentials, and they must now address this issue through a regulatory action to avoid confusion and be sure that the rule is clearly stated for applicants.

In examining the issue of congruency of education and certification, it became apparent that there was a disparity between the expectations of the Boards for a graduate degree in nursing and the actual wording of the regulation. In addressing that problem, the Boards must also address the lack of provision for licensure by endorsement, so applicants from other states who met acceptable qualifications for licensure at an earlier time will not be held to the current requirements of the Boards.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

There is no potential impact of the proposed regulatory action on the institution of the family or on family stability.