



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Long-Term Care Administrators, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC95-20-10 et seq. 18VAC95-30-10 et seq.
Regulation title	Regulations Governing the Practice of Nursing Home Administrators Regulations Governing the Practice of Assisted Living Facility Administrators
Action title	Information from Data Bank for licensure
Date this document prepared	6/26/14

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The amendments are proposed to require applicants for licensure to provide a current report from the U. S. Department of Health and Human Services Data Bank.

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.

None

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 June 24, 2014, the Board of Long-Term Care Administrators amended 18VAC95-20-10 et seq., Regulations Governing the Practice of Nursing Home Administrators and 18VAC95-30-10 et seq., Regulations Governing the Practice of Assisted Living Facility Administrators.

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.

18VAC95-20-10 et seq. and 18VAC95-30-10 et seq. are promulgated by the Board of Long-Term Care Administrators under the general authority of Title 54.1, Chapter 24 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary for the administration of a regulatory program.

§ 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. ...*

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 amended regulation is protection of the elderly and often vulnerable population of residents and patients in assisted living facilities and nursing homes. Applicants are usually honest in their responses to questions about the status of licensure in other states and malpractice history, but a report from the Data Bank is the only means of ensuring that Virginia

does not license a person who has had disciplinary action based on unprofessional conduct or a criminal conviction that would provide grounds for denial of licensure. By doing so, the Board could potentially expose Virginians to practice by a person who could present some risk to the health and safety of our citizens.

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?

The fast track process is being used because the amendment is essential for public protection and therefore, will not be controversial.

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.

The amendments are proposed to require applicants for licensure to provide a current report from the U. S. Department of Health and Human Services Data Bank.

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 advantage to the public is greater assurance that persons licensed as assisted living administrators and nursing home administrators have no history of convictions of unprofessional conduct that could present a risk of harm. There are no disadvantages to the public.
- 2) The advantage to the Board is the availability of a third party confirmation of the possible disciplinary history of applicants. There are no disadvantages to the Commonwealth.
- 3) There are no other pertinent matters of interest.

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 requirements more restrictive than 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

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 accomplish the purpose of these 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>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>The entities affected by the amendments will be applicants for licensure as assisted living facility administrators or nursing home administrators.</p>
<p>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</p>	<p>From 7/1/13 to 6/30/14, there were 430 applications for licensure submitted to the Board.</p>
<p>Benefits expected as a result of this regulatory proposal.</p>	<p>Greater assurance that the Board has a complete history of an applicant for licensure who may have</p>

	been licensed in another jurisdiction.
Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.	There are no costs to implement and enforce.
Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.	There are no costs to localities.
All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	Applicant will have to pay the costs for a report which is currently \$8 but which will be reduced on October 1, 2014 to \$5.

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 viable alternatives to the proposed changes that meet the essential purpose, since requirements for licensure are set in current regulations.

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 family.

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.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
Chapter 20 Section 230 Chapter 30 Section 130	Sets out requirements for an application package	Addition of a requirement that the application package include a current report from the U. S. Department of Health and Human Services Data Bank.

		<p><i>If applicants identify other states in which they hold or have held licensure, the Board requires verification of the status of that license and information on any disciplinary action from that jurisdiction. However, if an applicant does not disclose his licensure in another state, the Board would have no information about possible unprofessional conduct or criminal convictions. Since all state health regulatory boards are required to report to NPDB, a current report would provide the Board with any such information. Likewise, NPDB collects data about malpractice awards on health care practitioners, so a report would also provide that information. With assurance that all pertinent facts about an applicant's history have been made available, the Board can make a more informed decision on licensure.</i></p>
--	--	--