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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Boards of Nursing and Medicine, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation(s)</b>	18VAC90-30-10 et seq.
<b>Regulation title(s)</b>	Regulations Governing the Licensure of Nurse Practitioners
<b>Action title</b>	Addition of AACN as certifying body for licensure
<b>Date this document prepared</b>	11/19/14

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

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In response to a petition for rule-making, the Boards of Nursing and Medicine propose an amendment to section 215 to add the American Association of Critical-Care Nurses Certification Corporation to the list of bodies offering professional certification acceptable for licensure as a nurse practitioner.

## 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.*

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AACN = American Association of Critical-Care Nurses

**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 October 16, 2014, the Board of Medicine adopted a fast-track action, and on November 18, 2014, the Board of Nursing adopted a fast-track action for 18VAC90-30-10 et seq., Regulations Governing the Licensure of Nurse Practitioners.

**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, which provides the Boards of Nursing and 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 mandate to promulgate regulations for the practice of nurse practitioners is found in § 54.1-2957 of the Code of Virginia:

**§ 54.1-2957. Licensure and practice of nurse practitioners; practice agreements.**

*A. 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 the Commonwealth unless he holds such a joint license.*

*B. A nurse practitioner shall only practice as part of a patient care team. Each member of a patient care team shall have specific responsibilities related to the care of the patient or patients and shall provide health care services within the scope of his usual professional activities. Nurse practitioners practicing as part of a patient care team shall maintain appropriate collaboration*

*and consultation, as evidenced in a written or electronic practice agreement, with at least one patient care team physician. Nurse practitioners who are certified registered nurse anesthetists shall practice under the supervision of a licensed doctor of medicine, osteopathy, podiatry, or dentistry. Collaboration and consultation among nurse practitioners and patient care team physicians may be provided through telemedicine as described in § 38.2-3418.16. Practice of patient care teams in all settings shall include the periodic review of patient charts or electronic health records and may include visits to the site where health care is delivered in the manner and at the frequency determined by the patient care team.*

*Physicians on patient care teams may require that a nurse practitioner be covered by a professional liability insurance policy with limits equal to the current limitation on damages set forth in § 8.01-581.15.*

*Service on a patient care team by a patient care team member shall not, by the existence of such service alone, establish or create liability for the actions or inactions of other team members.*

*C. The Board of Medicine and the Board of Nursing shall jointly promulgate regulations specifying collaboration and consultation among physicians and nurse practitioners working as part of patient care teams that shall include the development of, and periodic review and revision of, a written or electronic practice agreement; guidelines for availability and ongoing communications that define consultation among the collaborating parties and the patient; and periodic joint evaluation of the services delivered. Practice agreements shall include a provision for appropriate physician input in complex clinical cases and patient emergencies and for referrals. Evidence of a practice agreement shall be maintained by a nurse practitioner and provided to the Boards upon request. For nurse practitioners providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the nurse practitioner's clinical privileges or the electronic or written delineation of duties and responsibilities in collaboration and consultation with a patient care team physician.*

*D. 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 the Commonwealth.*

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

*F. As used in this section:*

*"Collaboration" means the communication and decision-making process among members of a patient care team related to the treatment and care of a patient and includes (i) communication of data and information about the treatment and care of a patient, including exchange of clinical observations and assessments; and (ii) development of an appropriate plan of care, including decisions regarding the health care provided, accessing and assessment of appropriate additional resources or expertise, and arrangement of appropriate referrals, testing, or studies.*

*"Consultation" means the communicating of data and information, exchanging of clinical observations and assessments, accessing and assessing of additional resources and expertise, problem-solving, and arranging for referrals, testing, or studies.*

### 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.*

The listing of AACN in section 90 is justified because AACN is recognized as a national certifying body which offers professional certification by examination. Its certification is already acceptable to the boards in assuring the minimal competency of a nurse practitioner applicant; and therefore, the amendment is consistent with the boards' mission of protecting the health and safety of patients in the Commonwealth.

### 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 action is appropriate because the boards have already accepted AACN as a professional certifying body under subsection B of section 90, which authorizes the boards to accept professional certification from other national certifying bodies that meet certain criteria. The amendment to regulation is a formality to have AACN specifically included in the listing in subsection A.

### 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 boards have amended Section 215 to include the American Association of Critical-Care Nurses Certification Corporation among the bodies that offer professional certification by examination as a qualification for licensure as a nurse practitioner.

### 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) There are no specific advantages to the public. While AACN certification is already acceptable for licensure, the amendment will be clarifying to potential applicants who may look at the listing in regulation for information about approved certifying bodies. There are no disadvantages.
- 2) The only advantage to the agency is clarity for those seeking information about acceptable certifying bodies. There are no disadvantages.
- 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

*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.*

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The agency is responding to a petition for rule-making from AACN. The regulatory action is advantageous to that body and has no negative effect on any other entity.

### 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:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p>	<p>There are no costs for implementation. Posting of the amendment and requests for comment are handled electronically. There are no on-going expenditures.</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>The AACN may be positively affected by its listing among the certifying organizations acceptable for licensure as a nurse practitioner in Virginia.</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:  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.</p>	<p>Only the AACN and any potential applicants could possibly be affected.</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 including:</b>  <b>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</b>  <b>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.</b></p>	<p>There are no costs.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>Clarity about the professional certifying organizations acceptable to the boards.</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.*

The only alternative is maintenance of the status quo, which is acceptance of AACN by policy rather than by regulation. That alternative is more burdensome to applicants and to the Board of Nursing, which has to answer inquiries about AACN.

**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. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the pre-emergency regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
90	n/a	Subsection A lists bodies that offer professional certification acceptable for licensure as a nurse practitioner.	The proposed change is the addition of the American Association of Critical-Care Nurses Certification Corporation. <i>The proposed amendment is the result of a petition for rule-making to have AACN listed among the professional certifying bodies in subsection A. It may have a positive impact on AACN and on nurses who seek certification through AACN for licensure as nurse practitioners.</i>