



## Notice of Intended Regulatory Action (NOIRA) 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.
<b>Regulation title</b>	Regulations Governing Certified Nurse Aides
<b>Action title</b>	Periodic review
<b>Document preparation date</b>	6/30/05

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### 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 response to a periodic review of regulations, the Board recommends publication of a Notice of Intended Regulatory Action to clarify certain provisions and to address issues and problems that have arisen with the Nurse Aide Registry. There are no new requirements or substantive changes recommended, but it is necessary to amend regulations for a clearer understanding of the current rules.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., 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), which provides the Board of Nursing 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 authorization to promulgate regulations for the Nurse Aide Registry and approval of nurse aide education programs is found in the Nurse Practice Act in the following section:

**§ 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 §/n 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; and*

*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.*

## 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 agency has determined that the proposed regulatory action 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.*

The Board will consider amendments to requirements for nurse aide education programs (Sections 20 through 60). It does not anticipate any substantive changes, but may need to update the curriculum to be responsive to current practices and clarify certain provisions that program directors and board reviewers have found to be inconclusive.

Amendments may also be proposed in the following sections:

### **18 VAC90-25-70 Initial certification.**

Rewording may be needed to correctly express the intent of this regulation. There is no application for certification submitted to the Board separate from the application to the testing company, but subsection B refers to “making application for certification.”

Subsection C refers to a fee for initial certification by exam, but there is no fee (it is actually prohibited by federal law/regs). There is an application and fee to test for certification paid to testing company, but that is not clear in the regulation.

There is a recommendation to separate initial certification by examination and initial certification by endorsement; the requirements for endorsement are not clearly set out and difficult to find.

In the endorsement section, the recommendation is to clarify by changing or adding language consistent with our current policy in practice, which is that an applicant for certification by endorsement must have satisfactorily completed a state approved nurse aide education program

that meets federal requirements (which is defined in 54.1-3024(1) as certification in a state with requirements that are essentially similar to Virginia certification requirements).

**18VAC90-25-80. Renewal or reinstatement of certification.**

There may be a need to separate out subsection (C) to its own section, involving petitioning for removal of finding of neglect. It is currently tied to reinstatement/renewal, but it is not limited to that situation. A C.N.A. can have a finding of neglect while holding a current certificate and can petition for removal after one year. The policy is currently stated in guidance document (90-32), but needs to be set out in regulation.

In a new section needs to specify that a C.N.A. can only petition for removal once, as stated in Board policy and practice in guidance document 90-26, 90-27, and 90-32.

**18VAC90-25-100. Disciplinary provisions for nurse aides.**

The Board will consider adding a provision on unprofessional conduct as a basis for disciplinary action – providing false information to an investigator, staff or member of the Board during the course of an investigation or proceeding.

**18VAC90-25-110. Requirements for initial certification as an advanced certified nurse aide.**

There is a need to clarify that an applicant must attest that he has never had finding of abuse, neglect or misappropriation of patient property by any state, not just in Virginia as the current regulation suggests.

**18VAC90-25-120. Renewal and reinstatement of certification as an advanced certified nurse aide.**

The current regulation does not state clearly the original intent, which was that an aide must renew/maintain his current basic certification as a nurse aide in order to renew the *advanced* certification.

The Board must also remove the requirement that continuing education be verified by the employer on the renewal form, in light of similar changes recently made in renewal process for basic C.N.A. (removing independent signature of employer for verification of meeting work requirement) and implementing online renewal for advanced C.N.A.s.

Amendments may be necessary to ensure that nurse aides seeking certification in Virginia are minimally qualified and have not had a finding of abuse, neglect or misappropriation of patient property in another state. Since nurse aides typically work with a very vulnerable population of patients, it is essential that the Board protect those consumers of care to the best of its ability.

The Board will consider other changes and may modify regulations as the need arises during the development of proposed regulations or in response to a Notice of Intended Regulatory Action.

## 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.*

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As enforcement and regulatory issues have arisen, the Board has adopted policy statements or guidance documents to express its intent. While those are helpful in providing the regulated entities and the public with interpretations of Board rules and policies, they are not enforceable and may not be cited in a credentials hearing or a disciplinary proceeding. Therefore, it is necessary to clearly state Board policy in regulation and to clarify portions of regulation that generate confusion and questions from applicants, nurse aides and employers. In the development of proposed amendments, the Board will continue to look for regulations that may be stated more clearly and effectively.

### Family impact

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

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The proposed regulatory action will have no impact on the institution of the family and family stability.

### Periodic review

*If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section. If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

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There were no comments in response to the Notice of Periodic Review.

The Board has found that the regulation meets the criteria set out in Executive Orders, is necessary for the protection of public health, safety, and welfare, and, for the most part, is clearly written and easily understandable. While the regulation should be retained, recommended changes are intended to clarify certain sections for compliance by nurse aides and enforceability by the Board.