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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

|                                                       |                                                                                                                                                    |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Agency name</b>                                    | Board of Long-Term Administrators; Department of Health Professions                                                                                |
| <b>Virginia Administrative Code (VAC) citation(s)</b> | 18VAC95-20<br>18VAC95-30                                                                                                                           |
| <b>Regulation title(s)</b>                            | Regulations Governing the Practice of Nursing Home Administrators<br>Regulations Governing the Practice of Assisted Living Facility Administrators |
| <b>Action title</b>                                   | Periodic review                                                                                                                                    |
| <b>Date this document prepared</b>                    | 11/16/16                                                                                                                                           |

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*.

### Subject matter and intent

*Please describe briefly the subject matter, intent, and goals of the planned regulatory action.*

As stated in the Notice of Periodic Review, the goal of this regulatory action is protection of public health, safety, and welfare and to ensure that it is clearly written and easily understandable. To that end, many of the amendments that the Board has identified in its periodic review are editorial or intended to clarify existing language.

In addition, however, the Board intends to include the Health Services Executive (HSE) credential as a qualification for licensure; the HSE is a new credential approved by the National Association of Long-Term Care Administrator Boards. The Board also intends to expand the grounds for disciplinary actions or denial of licensure to include causes that would be considered

unprofessional conduct but are not explicitly listed in the current regulation. Causes or grounds for action currently listed in regulations of other boards, such as Nursing, will be adopted in amendments for these professions. The goal would be a greater ability to fulfill its mission of public protection by citing more specific grounds for action in disciplinary cases.

### Legal basis

*Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

Regulations of the Board of Long-Term Care Administrators are promulgated 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.

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

*The general powers and duties of health regulatory boards shall be:*

- 1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§2.2-4000 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 for the Board of Long-Term Care Administrators to license nursing home and assisted living facility administrators is found in:

**§ 54.1-3102. License required.**

*A. In order to engage in the general administration of a nursing home, it shall be necessary to hold a nursing home administrator's license issued by the Board.*

*B. In order to engage in the general administration of an assisted living facility, it shall be necessary to hold an assisted living facility administrator's license or a nursing home administrator's license issued by the Board. However, an administrator of an assisted living facility licensed only to provide residential living care, as defined in § 63.2-100, shall not be required to be licensed.*

### Purpose

*Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.*

In addition to updating and clarifying the regulations, the Board will consider inclusion of the Health Services Executive (HSE) credential as a qualification for licensure; the HSE is a new credential approved by the National Association of Long-Term Care Administrator Boards (NAB). Since the HSE incorporates and broadens the current qualifications for licensure as a nursing home administrator or an assisted living facility administrator, it will provide adequate assurance of competency for practice and protection of the health and safety of the public served in those facilities.

Additionally, the Board intends to expand the grounds for disciplinary actions or denial of licensure to include causes that would be considered unprofessional conduct but are not explicitly listed in the current regulation. Causes or grounds for action currently listed in regulations of other boards, such as Nursing, will be adopted in amendments for these professions. With more specificity on unprofessional conduct, the Board will have a greater ability to fulfill its mission of public protection.

### Substance

*Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

Many of the amendments that the Board has identified in its periodic review are editorial or intended to clarify existing language. Specifically, the Board will consider changes in the following sections:

**Chapter 20: Regulations Governing the Practice of Nursing Home Administrators (NHA)**

**18 VAC 95-20-10. Definitions.**

- Include additional definitions to clarify references in regulations.

**18 VAC 95-20-175. Continuing Education Requirements.**

- Include additional requirements for extension requests
- Include preceptor training for continuing education credit

**18 VAC 95-20-180. Late renewal.**

- Eliminate mail requirement for late renewal request (can be online)

**18 VAC 95-20-220. Educational and training requirements for initial licensure.**

- Consider addition of designation as Health Services Executive by NAB as category that meets qualifications for initial licensure as NHA

**18 VAC 95-20-221. Required content for coursework.**

- Require official transcript from accredited college or university
- Rename content area categories to align with those in Domains of Practice

**18 VAC 95-20-225. Qualifications for licensure by endorsement.**

- Consider inclusion of requirement that applicant pass a Board-approved national credentialing examination for administrators of nursing home facilities

**18 VAC 95-20-230. Application package.**

- Require submission of Domains of Practice form with application
- Include employer verifications as documents that are not required to be part of the application package to be submitted at the same time

**18 VAC95-20-300. Administrator-in-training qualifications.**

- Require that registered preceptors provide training
- Require submission of Domains of Practice form with application
- Clarify references to NHA Administrator-In-Training (AIT) program

A new section may be added to set out requirements for preceptors which many include training for preceptors using preceptor training modules now available through NAB

**18 VAC95-20-310. Required hours of training.**

- Consistent reference to NHA AIT program

**18 VAC 95-20-400. Reporting requirements.**

- Clarify timing and submission of progress reports
- Clarify references to NHA AIT program

**18 VAC 95-20-430. Termination of program.**

- Clarify requirements and timing of written explanations to be provided to the Board upon termination of NHA AIT program

**18 VAC 95-20-470. Unprofessional conduct.**

- Retitle regulation/section
- Define license to include registrations and certificates for purposes of section
- Add enumerated causes that would permit Board to refuse, deny, suspend, revoke, or otherwise impose discipline

**Additional section:**

- Consider addition of section and/or language related to reinstatement of licenses following disciplinary action

**Chapter 30: Regulations Governing the Practice Assisted Living Facility Administrators (ALFA)**

**18 VAC 95-30-10. Definitions.**

- Include additional definitions to clarify references in regulations.

**18 VAC 95-30-70. Continuing Education Requirements.**

- Include additional requirements for extension requests

**18 VAC 95-30-80. Late renewal.**

- Eliminate mail requirement for late renewal request (can be online)

**18 VAC 95-30-100. Educational and training requirements for initial licensure.**

- Consider streamlining/placement of language for hourly training requirements for ALF AIT program to avoid duplication and confusion regarding how many hours of ALF AIT program training are needed for which education and training level

- Consistent reference to ALF AIT *program*
- Require official transcript of accredited college or university coursework
- Make coursework references consistent with terminology in NAB Domains of Practice

**18 VAC 95-30-130. Application package.**

- Require submission of Domains of Practice form with application
- Include employer verifications as documents that are not required to be part of the application package to be submitted at the same time

**18 VAC95-30-140. Training Qualifications.**

- Require that registered preceptors provide training
- Require submission of Domains of Practice form with application

**18 VAC95-30-150. Required hours of training.**

- Consider increase in required years of full-time employment in (B)(1)-(3)
- Consider streamlining/placement of language for hourly training requirements for ALF AIT program to avoid duplication and confusion regarding how many hours of ALF AIT program training are needed for which education and training level
- Consistent reference to ALF AIT *program*

**18 VAC 95-30-170. Training facilities.**

- Consider inclusion of requirement that training not occur at provisional or provisionally licensed facilities as defined by the Department of Social Services; include definition of provisional/provisional licensure.

**18 VAC 95-30-180. Preceptors.**

- Consider increase in required years of full-time employment for registration as a preceptor
- Consider increase in weekly face-to-face instruction and review time with trainee or acting administrator trainee
- Require training for preceptors using preceptor training modules now available through NAB

**18 VAC 95-30-190. Reporting requirements.**

- Clarify timing and submission of progress reports
- Clarify paragraph structuring of enumerated requirements

**18 VAC 95-30-200. Interruption or termination of program.**

- Clarify requirements and timing of written explanations to be provided to the Board upon termination of ALF AIT program

**18 VAC 95-30-210. Unprofessional conduct.**

- Retitle regulation/section
- Define license to include registrations and certificates for purposes of section
- Add enumerated causes that would permit Board to refuse, deny, suspend, revoke, or otherwise impose discipline

**Additional sections:**

- Consider addition of section and/or language related to reinstatement of licenses following disciplinary action
- Consider addition of section regarding delegation to agency subordinate

**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.*

Since the requirements for licensure and practice are set in regulation, amendments are necessary to make any changes. There are no alternatives that meet the essential purpose of protection of the public.

**Public participation**

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency’s contact if you’re interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website , [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to Elaine Yeatts, Agency Regulatory

Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or [elaine.veatts@dhp.virginia.gov](mailto:elaine.veatts@dhp.virginia.gov) or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

A regulatory panel will not be used to develop the proposed regulation, which will be drafted by the Regulatory Committee of the Board in consultation with representatives of the nursing home and assisted living organizations.

### Periodic review and small business impact review report of findings

*If this NOIRA is the result of a periodic review/small business impact review, use this NOIRA to report the agency's findings. 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 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

1) A notice of periodic review was posted on the Virginia Regulatory Townhall on June 26, 2016 with comment requested until July 26, 2016. The notice was also published in the Register of Regulations and sent to interested parties on the Board's public participation guidelines mailing list. There were no public comments.

2) The regulation for licensure is necessary for the protection of a population of very vulnerable residents for whom long-term care in a nursing home or assisted living facility is required. Administrators of such facilities are accountable for the safety and health of those residents and are required to be licensed by the Board in accordance with the Code of Virginia. Regulations are generally clearly written and easily understandable as evidenced by the lack of comments or suggestions for amendments as a result of the notice of periodic review.

3) The Board has identified some provisions that may be clarified or streamlined and will include those changes in the adoption of amendments.

4) There is no overlap, duplication, or conflict with state law or regulation.

5) These regulations have been amended 12 times in the last ten years to maintain their currency and effectiveness. Amendments proposed in 2012 and effective in 2013 were the result of a periodic review and were clarifying in nature or intended to make the requirements somewhat less restrictive. For example, the Board allowed credit towards completion of a nursing home administrator-in-training program for an applicant with years of service as a licensed assisted



living administrator and included acceptance of continuing education offered by a government agency.