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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC90-27
VAC Chapter title(s)	Regulations for Nursing Education Programs
Date this document prepared	7/18/2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

N/A

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Regulations of the Board of Nursing are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be "[t]o promulgate regulations in accordance with the

Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system.”

Additionally, Virginia Code § 54.1-3005(1) requires the Board to “prescribe minimum standards and approve curricula for educational programs preparing persons for licensure, certification, or registration under this chapter.”

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no alternatives to regulation. The statute requires the Board to “prescribe minimum standards” for nursing education. The only manner in which the Board can impose such requirements is through regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Wendy Downey, Interim Dean Radford University School of Nursing; Jessica Fenton, Radford University Kelly Harris Brown, Radford University Patrick Reinhard Dr. Robbin Bell, ECPI University Marianne Baernholdt, University of Virginia Cynthia Banks, PhD, RN, Sentara College of Health Sciences	Comments regarding requirement for graduate degree for each member of the faculty. The requirement makes it difficult to find nursing faculty.	The Board appreciates the comment and will review this issue to see if it can be addressed in the regulatory action.

<p>Kristina Kitche, Director of Nurse Education EVCC</p> <p>Kim Dorton, Mountain Empire Community College</p> <p>Devon Nicely, Mountain Gateway Community College</p> <p>Andrea Lipsmeyer, Dean, Associate Degree RN and PN Programs, ECPI University</p> <p>Arlene J. Montgomery, Interim Dean, Hampton University</p>	<p>Commenters request that the Board increase the allowed simulation hours in clinical instruction.</p>	<p>The Board appreciates the comment and will review this issue during revision of the language. The Board notes, however, that existing evidence shows that significant increase in simulation hours for clinical requirements results in a reduction of pass percentage for the NCLEX. Therefore, the Board has decided not to increase the availability of simulation for clinical hours in the past. The Board will consider the issue, however.</p>
<p>Laurie Ann Ferguson, Dean Emory & Henry College School of Nursing</p>	<p>Requests allowance of preceptors who may not have masters degrees for community health experiences.</p>	<p>The Board appreciates the comment and will review this issue to see if it can be addressed in the regulatory action.</p>
<p>Mountain Empire Community College Practical Nursing</p>	<p>Requests using second time NCLEX PN pass rates as part of program viability.</p>	<p>The Board appreciates the comment and will review this issue to see if it can be addressed in the regulatory action.</p>
<p>Mountain Empire Community College Practical Nursing</p>	<p>Requests revision of the current 50 mile distance from school rule regarding clinical placements to allow rural students more access to clinical experiences.</p>	<p>The Board appreciates the comment and will review this issue to see if it can be addressed in the regulatory action.</p>
<p>Cindy Rubenstein, President, Virginia Association of Colleges of Nursing</p> <p>Cindy Rubenstein, Director of Nursing, Randolph-Macon College</p>	<p>Requests revision of definition of “direct client care” to align to definition used by American Nurse Association. Additionally requests revision or clarification of requirement that supervisors be “on site” in the clinical setting.</p>	<p>The Board appreciates the comment and will review this issue to see if it can be addressed in the regulatory action.</p>
<p>Melody Eaton, James Madison University</p> <p>Marianne Baernholdt, University of Virginia</p>	<p>Requests revision to use of direct, on site supervision in the regulations.</p>	<p>The Board appreciates the comment and will review this issue to see if it can be addressed in the regulatory action.</p>

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This chapter of the regulations of the Board of Nursing is necessary for the protection of public health, safety and welfare because it sets for the requirements for education of nurses in the Commonwealth. These regulations are necessary to continue to educate nurses and to approve new nursing educational programs, which the General Assembly determined is a necessary component of the provision of healthcare in the Commonwealth. The Board of Nursing has reviewed this chapter and determined that it is clearly written and understandable.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The Board will retain and amend Chapter 27. As stated immediately above, these regulations are necessary to the protection of the public. Additionally, the General Assembly directed the Board to oversee and regulate nursing education programs in the Commonwealth. The Board has noted that regulatory amendments should be initiated, however, which is the reason why the Board has determined it will amend the Chapter.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

As stated in a previous section, the regulations are still needed because of the General Assembly directive for the Board to regulate nursing education programs and the protection of the public. The comments received regarding this chapter are already summarized above. They generally pertain to nursing faculty requirements, simulation, and clinical site requirements. The regulations are not complex. The regulations do not overlap, duplicate, or conflict with state law or regulation. This is the first time this chapter, which was created in 2017, has undergone a periodic review. The chapter has been revised three times since it was created, however. The agency's decision will not minimize economic impacts on small businesses. The agency's decision to amend the Chapter, on its own, does not create an economic impact of any kind because specific amendments have not been considered or decided on by the Board.