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Regulatory
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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Boards of Nursing and Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 90-30
Regulation title	Regulations Governing the Licensure of Nurse Practitioners
Action title	Authorization by practice agreement with supervising physician for nurse practitioner to sign certain documents
Document preparation date	5/18/04

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

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*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.*
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

The adoption of an “emergency” regulation by the Boards of Nursing and Medicine is required to comply with the third enactment clause of Chapter 855 of the 2004 Acts of the Assembly, which states “That the Board of Medicine and Board of Nursing shall amend regulations governing the licensure of nurse practitioners to be effective within 280 days of enactment of this act. Such amendments shall require inclusion of the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements in the written protocol between

the supervising physician and the nurse practitioner.” The law was enacted on April 14, 2004, the day HB 855 was signed by the Governor.

Subsection C is added to section 120, which establishes the criteria for practice by a nurse practitioner. The new rule will require that the written protocol between the supervising physician and the nurse practitioner must include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements provided the signing of documents is 1) In accordance with the specialty license of the nurse practitioner and with the scope of practice of the supervising physician; 2) Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and 3) Not in conflict with federal law or regulation.

Legal basis

Other than the emergency authority described above, 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 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 legal mandate to promulgate the regulation for the licensure of nurse practitioners is found in § 54.1-2957.

§ 54.1-2957. Licensure of nurse practitioners.

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 this Commonwealth unless he holds such a joint license.

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 this Commonwealth.

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

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.

Currently, section 120 of the regulation provides that the practice of a nurse practitioner must be based on specialty education preparation as a nurse practitioner in accordance with standards of the applicable certifying organization and written protocols with the supervising physician. Therefore, it is necessary for any documentation signed by a nurse practitioner to be in accordance with the specialty license of the nurse practitioner and with the scope of practice of the supervising physician.

In addition, there are certain attestations by physicians that are required by state or federal law and will continue to be only within the purview of the physician and not delegable to a nurse practitioner (such as signing a death certificate). Therefore, the caveat is added that the signature must be permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia and not be in conflict with federal law or regulation. For example, § 54.1-2972 sets out when a person is deemed medically and legally dead and makes the determination of death. It specifically provides that death is determined “in the opinion of a physician duly authorized to practice medicine in this Commonwealth.” Under certain circumstances a registered nurse can pronounce death, but only a physician can determine the cause of death and sign the death certificate. This regulation could not authorize a nurse practitioner to perform a function reserved to “a physician duly authorized to practice medicine.” Likewise, Medicare does not permit certain documents to be signed by anyone other than the treating physician.

The purpose of the legislation and the enabling regulation is to permit licensed nurse practitioners to sign various forms and certificates and provide medical information or treatment in certain situations, including situations involving the immunization of children, examination of persons suspected of having tuberculosis, prenatal tests, nursing homes, release of certain privileged medical information, competency for driver licenses, release of certain veterinary records, and assisted living facilities. In many circumstances, it is the nurse practitioner who has performed the evaluation or examination upon which an attestation is made or a form signed. Therefore, it is reasonable that the nurse practitioner rather than the physician (who has not seen the patient) be the one authorized to sign certain papers. Public health and safety are sufficiently balanced with greater access to health care by nurse practitioners who are practicing within their specialty training and licensure and working in collaboration with supervising physicians who must periodically review their care of the patients.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
120	New subsection C	Sets out the requirements for the practice of a nurse practitioner in collaboration with and under the medical supervision and direction of a supervising physician. Requires practice in accordance with a written protocol with the supervising physician (s).	Adds a provision that the written protocol must include authorization for the nurse practitioner to sign certain documents in lieu of the physician. Sets out the legal and practice-specific requirements for such authorization to include that it must be: 1) In accordance with the specialty license of the nurse practitioner and with the scope of practice of the supervising physician; 2) Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and 3) Not in conflict with federal law or regulation..

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.

There were no alternatives to the adoption of an amended regulation; it was specifically required by Chapter 855 of the 2004 Acts of the Assembly, which requires in the third enactment that “Such amendments shall require inclusion of the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements in the written protocol between the supervising physician and the nurse practitioner.” In addition, the second enactment clause provides that the law authorizing a nurse practitioner to sign certain forms and documents cannot become effective until regulations have been enacted. It reads as follows: “That this act shall take effect 60 days following the effective date of the regulations promulgated by the Board of Medicine and Board of Nursing required by the third enactment clause of this act.”

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

There is no impact of the emergency regulatory action on the institution of the family and family stability.