



Proposed Regulation Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC90-25-10 et seq.
Regulation title	Regulations Governing the Certification of Nurse Aides
Action title	Periodic review changes
Document preparation date	12/28/05

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*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

As a result of a review of requirements for the nurse aide program, the Board has proposed a number of amendments that clarify the intent and/or language in the regulation. There are a few substantive changes, including: 1) the addition of a program change (physical location) that would need to be reported to the Board within 10 days; 2) a reduction from 24 to 16 in the number of core curriculum hours that must be completed before a student can have direct client contact; and 3) additions to the grounds for unprofessional conduct to include providing false information to staff or board members in the course of an investigation or proceeding. A new rule that a certificate holder can only petition the Board one time for removal of a finding of neglect is a re-statement of a current guidance document and has been the policy of the Board.

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., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

18VAC90-25-10 et seq., Regulations Governing the Certification of Nurse Aides 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 registration and certification of nurse aides is found in the Nurse Practice Act in the following sections:

§ [54.1-3005](#). Specific powers and duties of Board.

2. To approve programs that meet the requirements of this chapter and of the Board;...

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 § 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; ...

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The primary purpose of the action is to resolve several issues with compliance and enforcement of the regulations where they are not as clearly stated as they could be. Staff of the Board of Nursing identified those rules that have been problematic or have raised questions from educational program coordinators, program site visitors, or the certified nurse aides themselves. The goal of the proposal is to address those areas of ambiguity in order to encourage compliance with the intent and purpose of the regulation, which is to educate nurse aides and ensure minimal competency to work with a vulnerable population of elderly clients in a manner that protects their health and safety.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The substantive changes include: 1) the addition of a program change (physical location) that would need to be reported to the Board within 10 days; 2) a reduction from 24 to 16 in the number of core curriculum hours that must be completed before a student can have direct client contact; and 3) additions to the grounds for unprofessional conduct to include providing false information to staff or board members in the course of an investigation or proceeding. A new rule that a certificate holder can only petition the Board one time for removal of a finding of neglect is a re-statement of a current guidance document adopted in 1998 and revised in 2003 (90-32) and has been the policy of the Board.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

- 1) The primary advantage to the public is the assurance that aides who work with clients in long term care facilities will be adequately trained and deemed competent by completion of an educational program and competency examination. In addition, there must accountability for the work and behaviors of aides who must practice under standards set by the Board or face possible disciplinary action. The changes to regulation are intended to make the standards more clear for educational programs and individual aides. There are no disadvantages of the regulations.
- 2) Clarification and additional specificity should improve enforceability and reduce some confusion or questions about the intent of some requirements, resulting in greater efficiency for the agency.
- 3) There are no other pertinent issues.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a	a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal fees it charges to practitioners; b) The agency will incur some one-time costs
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<p>delineation of one-time versus on-going expenditures</p>	<p>(less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going costs to the agency.</p>
<p>Projected cost of the regulation on localities</p>	<p>There are no costs to localities</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The individuals affected would be certified nurse aides, and the businesses affected would be programs that provide training for nurse aide students.</p>
<p>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. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are a total of 41,436 persons certified as nurse aide on the Registry in Virginia. Some of the nurse aide education programs located in nursing homes or hospitals may be under large corporate ownership and not be part of a small business, but the total number is 58. The total number of proprietary programs is 47. All others are located in high schools or community colleges.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There are no projected costs for affected individuals, businesses or other entities.</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.

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 has endeavored to state regulations more clearly and effectively.

Regulatory flexibility analysis

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.

The only amendment to reporting requirements for nurse aide education programs is the addition of a change that must be reported to the Board in 10 days. Knowledge of a change in the physical location of an educational program is necessary for the Board to perform its statutory responsibility to review and approve educational programs. If the location of a program is unknown to the Board, it would be impossible to fulfill that responsibility and would signal problems for students enrolled in that program. An amendment to the curriculum requirement will give programs more flexibility in preparing students for their clinical tasks.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

The Notice of Intended Regulatory Action (NOIRA) was submitted for Executive Branch review on July 22, 2005 and published by the Register of Regulations on September 19, 2005 with a request for comment until October 19, 2005. The only comment was from the Dean of Piedmont Virginia Community College in support of changes suggested in the periodic review.

Family impact

Please assess the impact of the proposed 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.

The Board has assessed the impact of the proposed regulatory action and does not believe there will be any impact on the family or family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

15	n/a	Requires CNA to wear identification that clearly indicates the person’s name and appropriate title under which he is practicing while providing direct patient care.	Adds that the identification must be clearly visible. <i>Necessary to clarify the intent of the Board is for the patient/client to be able to know who is providing care and the level of their license or certification. Some persons have been wearing identification tags turned over or in pockets.</i>
20	n/a	Requires a program to report all substantive program changes within 10 days	Adds a change in the physical location of the program as a substantive change. <i>Necessary for the Board to be able to track and evaluate programs that are approved for nurse aide education. A change in the location of the program would be a substantive change for accountability to students and the Board.</i>
30	n/a	A. Establishes requirements for the program coordinator. B. Establishes requirements for the primary instructor.	Includes a registered nurse practicing with a current Virginia license or a multistate licensure privilege to the requirement for a coordinator or primary instructor. <i>Necessary to clarify that the RN has to have a current, unrestricted license or multi-state privilege. Is not a new requirement for programs but has not been specifically stated.</i>
40	n/a	Requires 24 hours of core curriculum before a nurse aide student can have direct client contact	Reduces requirement to 16 hours in core curriculum. <i>16 hours was required prior to direct client contact but it was increased to 24 hours when the overall curriculum was changed from 80 to 120 hours. Programs do not believe the additional 8 hours in the initial curriculum is necessary and would prefer to have additional time with students in the other learning areas. The amended regulation will continue to require 24 hours of instruction before a student can provide direct client care, but only 16 of those hours will have to include subjects in the core curriculum.</i>
50	n/a	Requires a student to receive a copy of his record and a certificate of completion of a program.	Specifies that the program is obligated to provide the record and certificate. <i>Amended to clarify some confusion about responsibility for providing certain documents to each student who completed a program.</i>
60	n/a	Requires a site visit every two years and sets out the process for continued approval of programs.	A. Specifies that the board can review a program at any time it deemed necessary to ensure continued compliance. <i>Necessary to ensure that programs are</i>

			<p><i>aware that a site visit may be authorized whenever there are issues or questions about a program’s compliance with Board requirements.</i></p> <p>B. A new subsection is created to more clearly specify that the Committee has authority to recommend conditional approval with terms or to refer a recommendation of denial to the board or a panel of the board.</p> <p><i>The current structure of subsection A does not clearly lay out the process and authority of the Committee to make recommendations on program approval. Changes are proposed for clarity.</i></p>
70	n/a	Requires persons who have completed a nurse aide education program to complete the competency evaluation prior to making application for certification to the Board.	<p>Changes the terminology to requiring completion of the competency evaluation prior to <i>being certified</i>.</p> <p><i>Rewording necessary to correctly express the intent of this regulation. There is no application for certification separate from the application to the testing company to take the competency evaluation.</i></p> <p>Subsection C was added to clarify and inform the regulants that initial certification is for two years.</p>
70 C	71	Subsection C sets out the requirements for initial certification by examination and endorsement.	<p><i>Subsection C is restated as new section 71 to make the requirements easier to find in the regulation.</i></p> <p><i>It also 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, to that has been clarified in the regulation by adding the word “testing.”</i></p>
70C	72	Subsection C sets out the requirements for initial certification by examination and endorsement.	<p><i>The Board proposes to separate initial certification by examination and initial certification by endorsement; the requirements for endorsement are not clearly set out and difficult to find.</i></p> <p>In the endorsement section, the proposed amendment would add language consistent with the board’s 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</p>

			requirements (as defined in 54.1-3024(1) as certification in a state with requirements that are essentially similar to Virginia certification requirements).
80B	n/a	Sets out the requirements for reinstatement of certification	<i>Changes are grammatical and not substantive.</i>
80C	81	Subsection C establishes the conditions for petitioning the board for removal of a finding of neglect.	<p><i>Currently subsection (C), involving petitioning for removal of finding of neglect is tied to reinstatement/renewal, but it is not limited to that situation. A CNA 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.</i></p> <p><i>The new section also specifies that a C.N.A. can only petition for removal <u>once</u>, as stated in Board policy and practice in guidance document 90-32.</i></p>
100	n/a	Sets out the grounds for a finding of unprofessional conduct in taking disciplinary action.	<p>In subdivision i, a violation of professional boundaries would include taking advantage of a client’s family as well as the client.</p> <p><i>The Board has also added 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.</i></p>
110	n/a	Sets out the requirements for certification as an advanced certified nurse aide.	<i>Necessary 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.</i>
120	n/a	Sets out the requirements for renewal and reinstatement of certification as an advanced certified nurse aide.	<p><i>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.</i></p> <p><i>The Board has also removed 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.</i></p>

			<i>(removing independent signature of employer for verification of meeting work requirement) and implementing online renewal for advanced C.N.A.s.</i>
130	n/a	Requires a student to receive a copy of his record and a certificate of completion of an advanced nurse aide program.	Specifies that the program is obligated to provide the record and certificate. <i>Amended to clarify some confusion about responsibility for providing certain documents to each student who completed a program.</i>