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

<b>Agency name</b>	Boards of Nursing and Medicine, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 90-30
<b>Regulation title</b>	Regulations Governing the Licensure of Nurse Practitioners
<b>Action title</b>	Practice by certified nurse midwives
<b>Document preparation date</b>	6/22/06

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 amendments to Chapter 29 of Title 54.1 and the second enactment clause of SB488 enacted by the 2006 General Assembly, which requires: “That the Boards of Medicine and Nursing shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.” Chapter 750 was enacted on April 5, 2006.

The amendments will separate regulations for the practice of certified nurse midwives from the practice of other categories of licensed nurse practitioners for the purpose of describing the appropriate relationship with a licensed physician. SB488 defines the relationship for licensed nurse practitioners as practice “under the supervision of a duly licensed physician,” whereas a certified nurse midwife renders care “in collaboration and consultation with a duly licensed physician.”

### 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.*

**18VAC90-30-10 et seq. Regulations Governing the Licensure of Nurse Practitioners** are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) 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 authority to regulate the practice of certified nurse midwives can be found in the amended Chapter 29 of Title 54.1 of the Code of Virginia – see link to legislation.

<http://leg1.state.va.us/cgi-bin/legp504.exe?061+ful+SB488ER>

### 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.*

Chapter 750 of the 2006 Acts of the Assembly requires that: *The Board of Medicine and the Board of Nursing shall jointly promulgate regulations specifying collaboration and consultation among physicians and certified nurse midwives that shall include the development of, and periodic review and revision of, a written protocol; guidelines for availability and ongoing communications that define consultation among the collaborating parties and the patient; and periodic joint evaluation of the services delivered.*

The purpose of the amended regulation is to make the terminology in the regulation consistent with the amended Code of Virginia which specifies the practice of a nurse midwife is to be in collaboration and consultation with a licensed physician.

Other sections of law specify that the certified nurse midwife, along with other types of nurse practitioners, must practice with the *supervision* of a licensed physician. For example, § 54.1-2957.02 specifies that: “Whenever any law or regulation requires a signature, certification, stamp, verification, affidavit or endorsement by a physician, it shall be deemed to include a signature, certification, stamp, verification, affidavit or endorsement by a nurse practitioner.” The enactment for that new section of Code (Chapter 855 of the 2004 Acts of the Assembly) required the boards to amend regulations to “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.” Therefore, the Boards did not amend the requirement for the written protocol to include the nurse midwife’s authority for signatures, certifications, etc.

Additionally, § 54.1-2957.01 of the Code of Virginia authorizes nurse practitioners (including nurse midwives) to prescribe controlled substances provided they have “a written agreement with a licensed physician which provides for the *direction and supervision* by such physician of the prescriptive practices of the nurse practitioner. Such written agreements shall include the controlled substances the nurse practitioner is or is not authorized to prescribe and may restrict such prescriptive authority as deemed appropriate by the physician providing *direction and supervision*.” Therefore, regulations for prescriptive authority (18VAC90-40-10 et seq.) are not amended, and certified nurse midwives who prescribe drugs as a part of their practice remain subject to § 54.1-2957.01 and the Boards’ regulations that specify medical direction and supervision.

**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	Current requirement	Proposed change and rationale
10	Sets out definitions for terms used in the regulation, including “collaboration” and “medical direction and supervision,” which are used in section 120 to specify the authorization to practice in relation to a licensed physician.	The two terms are deleted in the amended regulation because they are used selectively and differently depending on the category of nurse practitioner. Therefore, the terms are defined in the sections as they apply.
120	Sets out the authorization to	Section 120 is amended to carve out the practice of

	<p>practice in relation to a licensed physician and the standards and qualifications for practice for all licensed nurse practitioners</p>	<p>certified nurse midwives in distinction from other categories of nurse practitioners. A licensed nurse practitioner is authorized to engage in acts that constitute the practice of medicine under an exemption in § <a href="#">54.1-2901</a> if care is rendered under the supervision of a duly licensed physician. Amendments to that section in Chapter 750 of the 2006 Acts of the Assembly retain that requirement for all nurse practitioners <i>except</i> certified nurse midwives. Therefore, amendments to section 120 are intended to retain current requirements and definitions for all nurse practitioners except nurse midwives.</p>
<p>121</p>	<p>N/A</p>	<p>Section 121 is adopted to specifically address the practice of certified nurse midwives. All applicable requirements found in section 120 are repeated or transferred to section 121. In addition, the practice of a certified nurse midwife is authorized provided care is rendered <i>in collaboration and consultation with a duly licensed physician</i>. For the purposes of defining the term “collaboration and consultation” as it applies in section 121, the Boards have relied on the specific language of the statute. Chapter 750 requires that: <i>The Board of Medicine and the Board of Nursing shall jointly promulgate regulations specifying collaboration and consultation among physicians and certified nurse midwives that shall include the development of, and periodic review and revision of, a written protocol; guidelines for availability and ongoing communications that define consultation among the collaborating parties and the patient; and periodic joint evaluation of the services delivered.</i> Finally, the Standards for the Practice of Nurse Midwifery, incorporated by reference as the standard for certified nurse midwives has been revised by the American College of Nurse Midwives in 2003, so the cite taken from section 120 E is amended in section 121D.</p>

**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 are no alternatives to the adoption of regulations; it is required by the second enactment clause of SB488. In the development of regulatory language to implement the legislation, the Boards adopted rules consistent with and, in some cases, identical to the statutory language. In

the development of regulations, the Boards sought to conform language to the amended law and, where necessary, provide further guidance for the regulated entities.

### Family impact

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

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