



## Final Regulation 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>	10/18/07

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

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The proposed action will replace the “emergency” regulations currently in effect in response to Chapter 750 of the 2006 Acts of the Assembly, which modified the supervisory relationship of physicians and certified nurse midwives.

The amendments 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. Senate Bill 488 (Chapter 750) defined 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.” Amendments to regulations are necessary for consistency with the Code as amended.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On September 18, 2007, the Board of Nursing and on October 18, 2007, the Board of Medicine adopted final amended regulations 18VAC90-30-10 et seq., Regulations Governing the Licensure of Nurse Practitioners, specifying practice by a certified nurse midwife in collaboration with a physician.

### 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 numbers, 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, 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:*

- 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.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate, license or multistate licensure privilege which such board has authority to issue for causes enumerated in applicable law and regulations. ...*

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 explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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 identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.*

Amendments 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 – whether they practice under medical direction and supervision or with collaboration and consultation. Senate Bill 488 (Chapter 750) defined 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.”

**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 there are no disadvantages to the public or the Commonwealth, please indicate.*

- 1) To the extent, the change from medical direction and supervision to collaboration and consultation may facilitate the practice of certified nurse midwives, there is an advantage in increased access to obstetrical care for women in Virginia. There are no disadvantages to the public in that the statutory and regulatory definition of the relationship between physicians and CNM’s continues to include requirements for a written protocol including provisions for periodic review, guidelines for availability and ongoing communication on patient care, and periodic evaluation of services being provided.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) There is no other pertinent matter of interest related to this action.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

There were no changes made since the publication of the proposed stage.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

Proposed regulations were published in the Virginia Register of Regulations on June 11, 2007. Public comment was requested for a 60-day period ending August 10, 2007. A Public Hearing before the Board was held on May 15, 2007. A Public Hearing before the Board of Nursing was held on July 17, 2007.

At the public hearing, Brenda Brickhouse, Certified Nurse Midwife, spoke in support of the proposed regulations.

In comment posted on the Virginia Regulatory Townhall, Carola Bruflat with the Virginia Council of Nurse Practitioners (VCNP) supported the proposed regulations.

**All changes made in this regulatory action**

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

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 practice in relation to a licensed physician and the standards and qualifications for practice for all licensed nurse practitioners	Section 120 is amended to carve out the practice of 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.
121	N/A	Section 121 is adopted to specifically address the

		<p>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></p> <p>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> <p><b>Change from emergency regulation:</b>  <i>In response to public comment on the Notice of Intended Regulatory Action, the Boards, in the adoption of the proposed regulation amended the definition of "Collaboration and consultation" to eliminate the reference to chart review as a method for periodic joint evaluation of services.</i></p>
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**Family impact**

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

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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.