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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC90-20
Regulation title(s)	Regulations Governing the Practice of Nursing
Action title	Name tag requirement
Date this document prepared	11/17/16

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The Board is considering an amendment to 18VAC90-20-35, which requires: *Any person regulated by this chapter who provides direct client care shall, while on duty, wear identification that is clearly visible and indicates the person's first and last name and the appropriate title for the license, registration, or student status under which he is practicing in that setting. Any person practicing in hospital emergency departments, psychiatric and mental health units and programs, or in health care facilities units offering treatment for clients in custody of state or local law-enforcement agencies may use identification badges of first name and first letter only of last name and appropriate title.*

A petition for rulemaking requested an amendment to allow use of first name and last initial on a name tag for nurses in all settings. The Board’s intent is to gather additional information about requirements in other states and other boards in Virginia and to solicit comment from employers.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

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 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. (Effective until January 1, 2017) 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.

Among the powers and duties of the Board of Nursing is a statutory provision relating to name tags for nurses in certain employment settings:

§ 54.1-3005. Specific powers and duties of Board.

In addition to the general powers and duties conferred in this title, the Board shall have the following specific powers and duties:...

20. In order to protect the privacy and security of health professionals licensed, registered or certified under this chapter, to promulgate regulations permitting use on identification badges of first name and first letter only of last name and appropriate title when practicing in hospital emergency departments, in psychiatric and mental health units and programs, or in health care facility units offering treatment for patients in custody of state or local law-enforcement agencies;

Purpose

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of the proposed action is to promulgate a rule that adequately protects nurses but also offers sufficient information for patients who need to know what type of practitioner is providing care and how to identify the practitioner in case there is evidence of unprofessional conduct. The Board must balance nurses’ concern about their privacy and personal security with its responsibility to adopt regulations that protect the public health and safety.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

At its meeting on November 15, 2016, the Board decided to issue a Notice of Intended Regulatory Action (NOIRA) in order to initiate rulemaking. The Board recognized the strong support for such a change but decided it needed to consider various options and to gather additional information. Those options may include, but are not limited to: 1) maintaining the current language (which requires first and last name and title to indicate the category of nursing under which you are practicing, with exceptions for nurses in certain employment settings); 2) amending to require first name and last initial on a name tag; 3) amending to require identification of the title under which one is practicing (RN, LPN, etc.) but leaving the decision about a name to the nurse and/or his employer; 4) eliminating the name tag requirement completely.

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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The petition requested a less burdensome and intrusive alternative to current regulations, so changes to achieve that purpose must be accomplished by amendments to Chapter 20.

On the Virginia Regulatory Townhall, there were 139 comments in favor of the petitioner’s request for an amendment; there were two additional comments received by email. In a survey conducted by the Virginia Nurses Association of nurses throughout the Commonwealth (n=320), 81% agreed with the petitioner's recommendation. The remaining 19% felt the ID badges should remain unchanged (including both full first and last names). Of the 81% in support of change, concerns with safety and an increase in stalking were cited time and again.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the

alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or by mail to Elaine Yeatts, 9960 Mayland Drive, Suite 300, Henrico, VA 23233; by email to elaine.yeatts@dhp.virginia.gov; by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.