Virginia Regulatory Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	Boards of Nursing and Medicine / Department of Health Professions
VAC Chapter Number:	18 VAC 90-30-10 et seq. & 18 VAC 90-40-10 et seq.
Regulation Title:	Regulations Governing the Licensure of Nurse Practitioner & Regulations Governing Prescriptive Authority
Action Title:	Evidence of continuing competency
Date:	12 / 8 / 00

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Boards of Nursing and Medicine have adopted proposed regulations in response to a need to provide assurance to the public that nurse practitioners who have the authority to prescribe controlled substances have continued to be competent to provide patient care. The Board of Medicine, in response to a statutory mandate in § 54.1-2912.1 that the Board "prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and /or any other requirement" has promulgated regulations for evidence of continued competence for all other professions that it regulates. In addition, House Bill 818 passed by the 2000 General Assembly included a provision requiring that the Boards of Nursing and Medicine to promulgate regulations pursuant to prescriptive authority that "ensure continued nurse practitioner competency" which may include the use of new pharmaceuticals, patient safety, and appropriate communication with patients.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

18 VAC 90-30-10 et seq. and 18 VAC 90-40-10 et seq. were promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 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 or licensure 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 or license qualified applicants as practitioners of the particular profession or professions regulated by such board.

4. To establish schedules for renewals of registration, certification and licensure.

5. To levy and collect fees for application processing, examination, registration, certification or licensure 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 (§ 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 and Chapter 25 of this title.

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

8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.

9. To take appropriate disciplinary action for violations of applicable law and regulations.

10. To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.

11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.

12. To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.

The specific statutory mandate for the Board of Medicine to adopt regulations for practitioner continued competency is found in:

§54.1-2912.1 (Chapter 227) as enacted by the 1997 General Assembly **mandates** that the Board promulgate regulations for the establishment of continuing education requirements.

§ 54.1-2912.1. Continued competency requirements.

A. The Board shall prescribe by regulation such requirements as may be necessary to ensure continued practitioner competence which may include continuing education, testing, and/or any other requirement.

B. *In promulgating such regulations, the Board shall consider (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system..*

C. The Board may approve persons who provide or accredit such programs in order to accomplish the purposes of this section.

The Boards are also authorized by § 54.1-103 to specify additional training for licensees seeking renewal.

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

The mandate for the Board of Nursing is found in House Bill 818, passed by the 2000 General Assembly, which amended § 54.1-2957.01 to provide the following:

The Board of Medicine and the Board of Nursing shall be assisted in this process by an advisory committee composed of two representatives of the Board of Nursing and one nurse practitioner appointed by the Board of Nursing, and four physicians, three of whom shall be members of the Board of Medicine appointed by the Board of Medicine. The fourth physician member shall be jointly appointed by the Boards of Medicine and Nursing. ***Regulations promulgated pursuant to this section shall include, at a minimum, such requirements as may be necessary to ensure continued nurse practitioner competency which may include continuing education, testing, and/or any other requirement, and shall address the need to promote ethical practice, an appropriate standard of care, patient safety, the use of new pharmaceuticals, and appropriate communication with patients****, and (ii) requirements for periodic site visits by physicians who supervise and direct nurse practitioners who provide services at a location other than where the physician regularly practices.*

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

With nurse practitioners assuming increasing responsibilities for patient care and an expanding authority to prescribe certain schedules of drugs, the Boards of Medicine and Nursing concur that some evidence on continued competency is essential to protect public health and safety.
The purpose of any regulation of a profession is "for the exclusive purpose of protecting the public interest" (§ 54.1-100). According to the Code of Virginia, regulation is necessary to protect the health, safety or welfare of the public when the potential for harm is recognizable. In the practice of a nurse practitioner, there exists a clearly recognized potential for harm and a need to protect the public.

Regulation is further authorized when the practice of the profession requires specialized skills and assurances of initial and **continuing professional and occupational ability.** The Boards of Nursing and Medicine do not believe that current regulations provide such assurances, and that regulations requiring mandatory continuing competency are in keeping with its statutory responsibility to protect the public.

In its discussion of the need to require evidence of continued competency, the Committee of the Joint Boards identified three reasons why it is essential: 1) There is a statutory mandate as described above; 2) It is unprofessional conduct for a practitioner to continue treating patients without updating his knowledge and skills. Some experts estimate that the half-life of medical knowledge is seven years; others estimate that it is outdated in three to five years; and 3) In disciplinary cases before the Joint Boards, there is evidence that nurse practitioners who are guilty of practicing outside the scope of their training and certification have not maintained current or continued competency.

The Committee of the Joint Boards also determined that some evidence of current knowledge of new pharmaceuticals and appropriate prescribing practices is necessary. Legislation passed by the General Assembly expanded the prescribing authority for nurse practitioners to include Schedule V and VI drugs in 2000, Schedules IV, V and VI drugs in 2002 and Schedules III through VI in 2003. It is likely that knowledge acquired by a nurse practitioner in order to initially meet the requirements for prescriptive authority has become out-dated and may not have included drugs in schedules other than Schedule VI.

The Boards have reviewed mandatory continuing competency as required for other professions in Virginia and in regulations by other states. Among those professions whose regulations currently require continuing education or continued national certification for renewal of licensure in Virginia are doctors of medicine, osteopathy, podiatry and chiropractic, pharmacists, dentists, dental hygienists, optometrists, nursing home administrators, veterinarians, veterinary technologists, physician assistants and licensed acupuncturists. Audiologists, speech-language pathologists, psychologists and social workers are in the process of promulgating proposed regulations for continuing competency. Among other states, there are only seven that have no requirement for continued competency for advanced practice nurses. As the growth of technology and scientific knowledge escalates, it is essential for health care practitioners who make crucial decisions about the care of patients to stay abreast in their profession. Licensing boards have a statutory responsibility to not only assure minimal competency as a person enters a profession with initial licensure but to continue to provide assurance of continued competency for practitioners who renew licensure over a period of years.

Among the other states, there are ten that have some specific requirement for continued education for advanced practice nurses who have prescriptive authority or a specific hour requirement for continuing education in pharmacology. As the new drugs come on the market and new information about drug interactions and efficacy becomes known, it is essential for health care practitioners who make crucial decisions about the care of patients to stay current. Licensing boards have a statutory responsibility to not only assure minimal competency for a practitioner who is initially authorized to write prescriptions but to continue to provide assurance of continued competency for practitioners who renew that authorization over a period of years.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The substance of the proposed amendments for **18 VAC 90-30-10 et seq., Regulations Governing the Licensure of Nurse Practitioners** is a requirement that evidence of continuing competency be provided in order to renew licensure. After the effective date of the regulation, newly licensed nurse practitioners will be required to maintain current professional certification. Nurse practitioner licensed prior to that date will be required to maintain current professional certification or acquire a minimum of 40 hours of continuing education each biennium in the area of specialty practice in which they hold licensure.

The substance of the proposed amendments for **18 VAC 90-40-10 et seq., Regulations for Prescriptive Authority for Nurse Practitioners** is a requirement for at least eight hours of continuing education each biennium in pharmacology or pharmacotherapeutics. Further, there is a proposal to require at least four hours of continuing education for each year in which a practitioner license has been lapsed, not to exceed 16 hours.

Other amendments in both regulations provide for compliance requirements, requests for extensions or exemptions from all or part of the regulations, and retention of records.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

Several issues have been addressed in the development of regulations as follows:

First, the Boards considered whether continued competency requirements for all nurse practitioners were sufficient to provide assurance that those with prescriptive authority are maintaining current information on new drugs and drug interventions. Learning activities and courses addressing health issues or disease states that a nurse practitioner would encounter in his or her area of practice typically incorporate information about drug therapies, so it may be problematic to separate out the hours of pharmacology obtained during a biennium. For example, a seminar on hypertension or childhood infectious diseases would include pharmacotherapeutics in the discussion of treatment options. However, in the opinion of Assistant Attorney General, the advisory committee and board members involved in the development of regulations, HB 818 and the amendments to § 54.1-2957.01 clearly require that there be a specific measure of continued competency, so the Boards have proposed that at least 8 additional hours be specifically directed to topics of pharmacology or

pharmacotherapeutics. To verify those hours, it may be necessary for nurse practitioners with prescriptive authority to obtain additional documentation from continuing education providers on the percentage of courses or seminars devoted to those topics. For example, if a nurse practitioner takes a seminar in the management of hypertension, the course syllabus or program should indicate how much time was devoted to drug therapies.

Second, the Boards had to determine whether the competency requirements should be related to the specialty area in which the nurse practitioner was initially certified and in which he or she currently practices. The alternative would be to have competency requirements that are more general in nature and only specify a number of continuing education or practice hours for renewal. Since nurse practitioners (unlike physicians) are licensed to practice in a specialty area (as indicated by a two-digit number added to the license), the Boards determined that it was essential for their learning activities and evidence of continuing competency to be practice-specific. Within those specialty areas of practice, there are a relatively wide range of courses and issues addressed – for example, a nurse midwife would need to update her knowledge on the treatment of hypertension in order to better manage her obstetrical patients.

Third, the Boards studied other states and the professional credentialing bodies to determine what regulations are essential to address the issue of continued competency without imposing an unnecessarily burdensome requirement on nurse practitioners. Unanimously, nurse practitioners from all specialties agreed that maintaining specialty certification is the most reasonable requirement, because most do so anyway as a requirement of their employer or for professional reasons to remain current in their practice. Currently, all nurse practitioners are required to be certified by one of the credentialing bodies to be licensed in Virginia. A survey of what is required to maintain that certification is summarized below:

Name of Board	Years certificate in effect	Requirements
ANCC (American Nurses Credentialing Center)	5 years	Practice requirements and **Option #1**: Re-examination (computer-based testing) or **Option #2**: Continuing education with majority in area of certification – must have 2 of 5 categories (or double one category): a) 75 contact hours of approved CE; b) 5 semester hours; c) presenter/lecturer – 5 presentations; d) published article or book chapter; or e) preceptorship of 120 hrs
NCC (National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties	3years	**Option #1**: Re-examination; or **Option #2**: Continuing education - 45 contact hours of approved credit courses with 30 primary hours (in specialty) and 15 related hours in nursing.
ACNM Certification Council (American College of Nurse Midwives)	8 years	**Option #1**: Re-examination and 2 approved CE activities; or **Option #2**: Completion of 3 self-study modules and 2 CEU's (20 contact hours)

CRNA (Council on Recertification of Nurse Anesthetists)	2 years	40 hours of approved continuing education; minimum of 850 hours of active practice in anesthesia
AANP (American Academy of Nurse Practitioners)	5 years	**Option #1**: Re-examination; or **Option #2**: 75 contact hours and minimum of 1,000 hours of clinical practice (Prescribers' Letter – 1.2 hrs. of pharmacology per issue)
PNP/N (National Certification Board of Pediatric Nurse Practitioner and Nurses)	6 years	**Option #1**: 2 Self-Assessment Exercises within first 4 years; or **Option #2**: 10 hours annually in approved course with clinical pediatric content; or **Option #3**: Combination of PNP clinical practice and documentation of at least 5 contact hours; or **Option #4**: Re-examination

Fourth, the Boards had to devise a reasonable requirement for those nurse practitioners who were initially "grandfathered" and who do not qualify by education for certification by a specialty board. (Prior to January 21, 1988, nurse practitioners were not required to have certification by a specialty board in order to become licensed; since that time licensure in Virginia is based on specialty certification by a national credentialing body). If initial licensure was obtained without professional certification, it would be unreasonable to impose that as a requirement for renewal. Likewise, if a nurse practitioner has allowed her professional certification to lapse, re-examination would be required for re-certification and could be a burdensome requirement to retain a license to practice. Therefore, the Boards determined that nurse practitioners licensed prior to the effective date of the regulations should have the option of meeting continuing competency requirements by obtaining hours of continuing education rather than a requirement for professional certification.

Fifth, the Boards considered whether any provision should be made for waivers or extensions for good cause shown, what is required for record-keeping and enforcement, and whether to also adopt provisions for inactive licensure. The Boards adopted provisions for record-keeping, audits, extensions, and exemptions similar to those in effect for physicians under the Board of Medicine, but it elected not to institute an inactive license. It reasoned that the continuing education/certification requirements are minimally necessary to remain current in one's practice. Even if a nurse practitioner is not currently practicing, he should maintain national certification if he intends to be rehired and resume practice at some point in the future.

Advantages and Disadvantages

Advantages to the licensees:

The proposed continuing competency requirements are intended to provide some assurance to the public that licensees of the Board are maintaining current knowledge and skills, while providing the maximum amount of flexibility and availability to licensees. Members of the Boards estimate that the vast majority of practitioners already maintain professional certification or engage in enough

continuing education to meet the requirements and should only have to maintain documentation of that certification and/or hours. The resources for earning the hours and engaging in the required learning are numerous and readily available in all parts of Virginia.

Disadvantages to the licensees:

For a small minority of practitioners who do not currently engage in any continuing learning in their profession, these requirements will represent an additional burden. However, it was determined by enactment of the statute and by the Boards' concurrence that those practitioners and their patients would greatly benefit from continuing education requirements, and that the public is better protected if there is some assurance of that effort.

Advantages or disadvantages to the public:

There are definite advantages of the proposed amended regulations to the public, which will have greater assurance that the licensees for the Board are engaged in activities to maintain and improve their knowledge and skills in providing care to their patients.

Advantages or disadvantages to the agency:

With the adoption of these regulations, the agency will be in compliance with a statutory mandate for evidence of continued competency for nurse practitioners. By recognizing the certifying bodies already named in regulation, it will not be necessary for the Boards to engage in the review and approval of continuing education courses and providers. Such an activity can be very time-consuming and costly to a board. The primary disadvantage lies in the need to verify compliance for a percentage of licensee selected in a random audit and the potential effect on non-compliance on the disciplinary caseload of the Committee of the Joint Boards.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

(i) Fund source: As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than $3,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.

Ongoing expenditures are difficult to estimate because costs related to enforcement of these regulations will depend on the level of compliance with the requirements. There will be expenditures associated with a biennial audit of approximately one to two percent of the 3,900 licensed nurse practitioners in Virginia. Each practitioner selected for the audit will be required to submit the required documentation of continuing competency compliance. There will be some staff time involved in review of the documentation and in communicating with licensee about their deficiencies. No additional personnel will be required to accomplish this activity.

It is also expected that a small percentage of licensees selected for audit will result in a disciplinary case being opened. From the experience of boards within the agency that currently have continuing competency requirements for renewal, the majority of those cases (estimated to be 20 per biennium) will probably be settled with a pre-hearing consent order. In those cases, the costs would be for charges back to the Board from the Administrative Proceedings Division (APD) of the Department. Costs for cases that do result in an informal conference committee proceeding (estimated to be five or less per biennium) would include travel expenses and per diem for board members as well as costs for the services of APD. Informal conference committees typically hear several cases in a day, so the costs per case for board member and APD time would be minimized.

Cost estimates for disciplinary cases related to the failure to comply with continuing competency regulations range from $100 to cases resulting in pre-hearing consent orders to $500 per case for those that result in an informal conference committee. All expenses relating to enforcement of these regulations can be absorbed in the existing budget of the Board of Nursing.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be persons licensed as nurse practitioners, nurse anesthetists, or nurse midwives. Of that number, those who hold authorization to prescribe controlled substances would have to direct some of their continuing education to courses in pharmacology or pharmacotherapeutics.

Estimate of number of entities to be affected:

Currently, there are approximately 3,900 persons licensed as nurse practitioners, nurse anesthetists, or nurse midwives. Of that number, approximately 1,800 hold authorization to prescribe controlled substances.

Projected costs to the affected entities:

The cost for compliance will vary depending on the practitioner and the method for gaining re-certification or the type of continuing learning activities chosen.

Costs for re-certifying range from $160 (member) and $290 (non-member) with the American Nurses Credentialing Center (ANCC - certificate is valid for 5 years) to $15 (member) and $30 (non-member) with the Council on Recertification of Nurse Anesthetists (CRNA - certificate is valid for 2 years). The American College of Nurse Midwives has an annual activity fee of $55, for which the credentialing body provides approved courses and certificates.

The nurse practitioner typically has more than one option to choose from in determining the method for re-certification with re-examination being the most costly. If a nurse practitioner chooses re-examination as the method of being re-certified, costs would range from $285 with the National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties (NCC) with certification valid for three years to $95 with the American Academy of Nurse Practitioners (AANP) with certification valid for five years.

Most nurse practitioners seeking re-certification will choose the continuing education option as the method for meeting the requirements. Likewise, those licensees who are currently not certified by a credentialing body will choose continuing education as the method for compliance with board regulations. Through its regulations, the boards have recognized the six professional accrediting as the bodies for approval of continuing education courses and providers. All accrediting bodies permit non-members to take and receive credit for CE offerings, so it is not necessary to belong to an accrediting group to meet the requirements of the board.

Cost for compliance will depend on the type of courses chosen, ranging form seminars lasting over a several day time period to accredited continuing education offered on-line at no cost. For example, the ANCC has a catalog of offerings via the Internet which the practitioner can complete and return for review and certification. A number of courses are free (adolescent health, smoking cessation, etc.), and the other costs $10 for members and $15 for non-members for approximately 2 hours of continuing education. From the current Internet listing, a licensee could obtain 20.8 hours of CE at a cost not to exceed $120.

In many organizations where nurse practitioners are employed, such as hospitals or clinics, attendance at in-service courses and presentations are expectations of employment and part of the employee's evaluation. Courses are available without any charge through a hospital or other health care organization, which provides continuing education for persons on staff. For those nurse practitioners who do not have such in-service training readily available, the Virginia Nurses Association has state conferences in different parts of Virginia which offer a number of continuing education hours and are available to nurse practitioners.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by

the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

18 VAC 90-30-10 et seq., Regulations Governing the Licensure of Nurse Practitioners is amended as follows:

18 VAC 90-30-20. Delegation of authority is amended to delegate to the Executive Director of the Board of Nursing the authority to grant extensions for compliance with continuing competency requirements.

18 VAC 90-30-100. Renewal of licensure is amended to specify that a nurse practitioner must attest compliance with continuing competency requirements in order to renew a license each biennium.

18 VAC 90-30-105. Continuing competency requirements. This new section requires for biennial renewal of licensure current professional certification in the area of specialty practice for all nurse practitioners initially licensed after the effective date of the regulations. If licensed prior to the effective date, the licensee must either hold current certification or obtain at least 40 hours of continuing education in the area of specialty practice as approved by one of the certifying agencies so designated in regulation. In addition, the regulation provides for retention of records for 4 years and a random audit by the board and for an extension or exemption for all or part of the requirements.

18 VAC 90-30-220. Grounds for disciplinary action against the license of a licensed nurse practitioner is amended to include failure to comply with continuing competency requirements as grounds for possible disciplinary action by the boards.

18 VAC 90-40-10 et seq., Regulations for Prescriptive Authority for Nurse Practitioners is amended as follows:

18 VAC 90-40-20. Authority and administration of regulations is amended to delegate to the Executive Director of the Board of Nursing the authority to grant extensions for compliance with continuing competency requirements.

18 VAC 90-40-100. Renewal of prescriptive authority is amended to specify that a nurse practitioner must attest compliance with continuing competency requirements in order to renew a license each biennium.

18 VAC 90-40-55. Continuing competency requirements. This new section requires that the licensee 1) address certain issues relating to patient safety, ethical practice, and standards of care and 2) obtain at least 8 hours of continuing education in the area of specialty practice as approved by one of the certifying agencies so designated in regulation for each biennium. In addition, the regulation provides for retention of records for 4 years and a random audit by the board and for an extension or exemption for all or part of the requirements.

18 VAC 90-40-60. Reinstatement of prescriptive authority is amended to require at least fours hours of continuing education in pharmacology or pharmacotherapeutics for each year in which a license has been lapse, not to exceed a total of 16 hours.

18 VAC 90-40-130. Grounds for disciplinary action is amended to include failure to comply with continuing competency requirements as grounds for possible disciplinary action by the boards.

Alternatives

Please describe the specific 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 the Boards engaged in the process of developing competency requirements for nurse practitioners, they considered those currently in effect in other states and among other boards within the Department of Health Professions. Among those states that have requirements for evidence of continued competency for renewal of licensure, 32 states require recertification by a national certifying body. Many of those states also have requirements for hours of continuing education, pharmacology course work and/or hours of practice in their specialty. Two other states have enabling legislation and are in the process of enacting continuing competency requirements. Eight states have some requirement for continuing education as a prerequisite for renewal of licensure. Seven states (including Virginia) have no requirements, and one state provided no information. Several states have specific requirements for continuing education courses in infection control or pharmacology.

The Boards also considered comment received following the Notice of Intended Regulatory Action (sent to approximately 1100 persons on the PPG mailing list for the Board of Nursing and 250 persons on the list for the Board of Medicine) and sought advice from the Committee of the Joint Boards and its Advisory Committee, representing various categories of nurse practitioners and physicians who supervise nurse practitioners.

Similar to rules adopted by the majority of other states, the Boards determined that a requirement for recertification by the specialty board that initially certified the licensed nurse practitioner was the most reasonable alternative for the licensees, the agency and the public. Although there is no data on the number of nurse practitioners who do maintain certification for professional reasons, it is estimated by the members of the Committee of the Joint Boards that the vast majority do. First, many institutions and physicians who employ nurse practitioners require them to have current certification in order to be initially hired and to continue to practice. Hospitals require nurse practitioners to maintain current certification in order to maintain employment. Second, once a nurse practitioner has obtained specialty certification, it is far easier to maintain certification than to allow it to lapse and have to become recertified. For example, if a person is practicing as a CRNA (Certified Registered Nurse Anesthetist), it would be necessary for him/her to continue to be certified in order to use that title in the course of his employment.

While each certifying board has its own practice-specific requirements for recertification, they typically include retesting and/or meeting clinical practice and continuing education

requirements. Some boards require a self-assessment learning exercise to help the nurse practitioner identify areas where additional learning needs to occur. The period of time for certification to remain valid varies with specialty boards, generally ranging from recertification every two years to every eight years. The National Council of Boards of Nursing has been working with certifying bodies to encourage some commonality among their requirements and to ensure that testing is psychometrically sound. The Boards reviewed the recertification requirements for each specialty board currently recognized for the licensure of nurse practitioners to determine the adequacy and reasonableness of those requirements.

The Boards also considered hours of continuing education in one's specialty practice area as an alternative to continued certification for those nurse practitioners who are currently licensed. At issue was the number of hours that should be required and various alternatives were considered. The Boards felt strongly that continuing education should not be a less strident alternative than national certification, the 20 hours each biennium was proposed. For example, CRNA requires 40 hours every 2 years to maintain national certification as a nurse anesthetist. In addition, the number of continuing education in pharmacology or pharmacotherapeutics was discussed with 8 hours each biennium being minimal and reasonable. Eight hours translates into two half-day seminars or one full-day seminar each biennium, and the Boards did not believe that was burdensome for a practitioner engaged in prescribing controlled substances.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

An announcement of the Board's intention to require some evidence of continuing competency for renewal of licensure and prescriptive authority was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the Boards (which is approximately 1100 persons on the PPG mailing list for the Board of Nursing and 250 persons on the list for the Board of Medicine). Public comment was accepted until October 11, 2000.

During the 30-day comment period, no comments were received from members of the public on the Notice of Intended Regulatory Action.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

An Ad Hoc Committee, comprised of nurse practitioners from various specialties was appointed to work on draft regulations, which were then reviewed and recommended by the Committee of the Joint Boards, representing various categories of nurse practitioners and physicians who supervise nurse practitioners. The Assistant Attorney General who provides counsel to the Board of Nursing has been involved during the development and adoption of proposed regulations to

ensure clarity and compliance with law and regulation. Since the regulations were drafted and approved by the practitioners who will have to comply with the stated requirements, the Boards are satisfied that the regulation is clearly written and will be easily understandable by the individuals affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Public participation guidelines require the Boards to review regulations each biennium or as required by Executive Order. Regulations governing prescriptive authority for nurse practitioners are currently under review, and regulations governing the licensure of nurse practitioners will be reviewed during the 2001-02 fiscal year.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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 proposed regulatory action would not strengthen or erode the authority and rights of parents, encourage or discourage economic self-sufficiency, or strengthen or erode the marital commitment. There may be a slight decrease in disposable family income for those nurse practitioners who have to fulfill certain requirements (testing/self-assessment modules/continuing education) in order to maintain national credentialing and continuing education in pharmacotherapeutics to maintain authorization to prescribe controlled substances (See fiscal impact above).