



Virginia Department of Planning and Budget **Economic Impact Analysis**

18 VAC 90-26 Regulations for Nurse Aide Education Programs
Department of Health Professions
Town Hall Action/Stage: 5157 / 8837
February 14, 2020

Summary of the Proposed Amendments to Regulation

The Board of Nursing (Board) proposes several changes to improve the training of certified nurse aides (CNAs). These include 1) requiring instructors to have minimum of 12 hours of coursework and to take a refresher course every three years, 2) requiring nurse aide education programs to follow the Board-approved curriculum with the addition of training in mental health and substance abuse, 3) increasing the length of program from 120 to 140 hours, 4) prohibiting the primary instructors at schools from assuming other duties within the school while on-site to instruct students, 5) requiring the certificate of completion to include specific information, and 6) requiring that all clinical sites must be within 50 miles of the educational program or have Board approval.

Background

In 2016, a member of the Virginia House of Delegates sent a letter to the Director of the Department of Health Professions (DHP) requesting the convening of a stakeholder workgroup to “discuss existing practices and curricula while seeking ways to standardize and improve the training provided to the front-line (CNAs) clinicians.” In 2018, the passage rate in Virginia on the skills portion of the CNA examination was only 64 percent (2nd lowest among all states in which nurse aide education is regulated by a board of nursing). The delegate asked that specific state agencies and professional associations be included in such a workgroup. The group was provided data regarding the approved nurse aide programs in Virginia, their pass rates on the nurse aide exam, and the number of didactic and clinical hours per type of program.

The workgroup found that persons who train nurse aides need to be better trained themselves, that additional topics need to be taught in the educational programs, and that students need a sufficient number of hours of clinical training to be prepared to pass the examination and practice safely. Recommendations from this review were incorporated into a periodic review¹ of this regulation and are being proposed by the Board in this action. According to DHP, CNAs often provide care to the most vulnerable of our citizens in long-term care, home health, and other health care settings.

Estimated Benefits and Costs

The workgroup discovered that some instructors did not have knowledge on effective teaching methods and tools, and recommended the “train-the-trainer” approach. Under the proposed regulation, instructors must have a minimum of 12 hours of coursework in principles of learning, teaching methods, evaluation strategies, etc., to ensure they are competent to teach the nurse aide curriculum. As a result, instructors would be required to expend more time in their own training on effective teaching, and the programs that offer train-the-trainer coursework would have to make scheduling arrangements or add new staff if they are not already meeting the 12-hour requirement. Currently, trainers are required to have coursework on these subjects, but the Board now requires that the coursework be at least 12 hours. DHP indicates that some programs currently have very short (two-hour) coursework while some others have 12-hour coursework over two days. Train-the-trainer programs are not regulated by the Board. Thus, DHP does not have information on how many such programs exist, but believes they are available in the market.

Additionally, trainers would be required to take a refresher course every three years to remain qualified; no specific hours are prescribed for the refresher course. The required subjects to be covered in the refresher course include review of regulations, educational programs, and the skills evaluated on the certification exam. Similarly, this change would generate new business for the programs that train the trainers and would require trainers to devote additional time to complete the refresher course. However, DHP notes that while instructors would be required to spend more time on their initial course work, they could use the refresher course to

¹ <https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1636>

satisfy their continuing education hours for their own license, therefore somewhat offsetting the burden.

The other two issues the workgroup identified were that the curriculum varied significantly among the training providers and that some were inadequate in content. The Board proposes to improve uniformity and adequacy by requiring training providers follow the Board-approved curriculum as well as by incorporating training in mental health and substance abuse. These changes would primarily lead to adjustments in the subjects covered by the programs and could be satisfied by reallocating the same amount of training time as needed by each program to achieve uniformity and cover mental health and substance abuse topics.

A change in the minimum length of program to add 20 hours, an increase from 120 to 140 hours, with 20 hours specifically designated for skills acquisition is also being proposed. The nurse aide programs are offered by community colleges, high schools, proprietary (for profit) schools, and nursing homes/hospitals. The data provided by DHP on the number of programs with their current hours is presented in the table below by type of program.

	Community Colleges	High Schools	Proprietary Schools	Nursing Homes/Hospitals	Total
140 hours or more	30	68	29	17	144 (63%)
Between 120 and 140 hours	8	5	31	8	52 (23%)
120 hours	6	4	12	9	31 (14%)
Total	44	77	72	34	227

The data indicate that 144 programs (63 percent) out of 227 already meet the proposed minimum program length and would not likely be affected from this change. Programs with fewer than 140 hours would face additional costs in terms of instructional or support personnel needing to be paid for the additional hours of work, and any other costs that may arise from additional hours. DHP believes that there are 500-600 instructors statewide. The students in those programs would also have to allocate more of their time toward completing training and

may have a delayed graduation date. These anticipated impacts would be proportional to the number of hours needed to reach the 140 hours for the 52 (23 percent) programs that currently provide between 120 and 140 hours (the hours needed for this group may vary from 1-20 hours, depending on the program). The remaining 31 (14 percent) programs would face the full additional cost as they are meeting only the minimum hours currently required.

Between the different types of programs, proprietary schools appear to be the ones that would need to expend relatively more than others; 31 programs would have to increase their hours by a portion (1-19 hours) and 12 would have increase their hours by 20. This particular change has a delayed effective date; affected programs would have two years to adjust schedules and plan for the personnel and other costs once the change becomes final. It is more than likely that the programs would pass at least a portion of these additional costs to their students, leading to an increase in tuition. The expected benefit is having more nurse aides pass the competency examination and becoming more qualified in their skills.

The workgroup found out that trainers at high schools often were assuming other duties (such as serving as the school nurse) concurrently while on-site to instruct students. The Board proposes to prohibit simultaneously assuming other duties within the school. This amendment may necessitate scheduling changes to make sure trainers can focus undistracted entirely on training, or if the scheduling could not address the conflict hiring of additional personnel to handle those other duties.

Additionally, the Board proposes a requirement for the certificate of completion to include specific information on the name of the program, the approval number from the Board, and the signature of the primary instructor or program coordinator as well as a requirement that all clinical sites must be within 50 miles of the educational program or have Board approval (current policy of the Board). DHP has indicated that some of the programs, especially those owned by individuals, do not issue a certificate of completion to their graduates. The fifth change is intended to address that deficiency. The sixth change is to prevent programs imposing unreasonable burdens on their students if the clinical site is too far away. However, the proposal allows programs to obtain a waiver in cases where there is no clinical site within the 50-mile radius.

Overall, the Board believes the benefits of more specific training for instructors and more hours in skills acquisition would result in an increase in passage rates on the skills portion of the national competency examination. In turn, the Board believes this will increase the number of CNAs, and the quality of the training they receive, which will respond to the growing needs of the Commonwealth and its most vulnerable members. There would also be a benefit to nurse aide students if their instructors are better trained and more knowledgeable, and the curriculum has additional time devoted to developing clinical skills, which would in turn improve their chances of passing the certification exam. The expected costs include an increase in the number of hours which would likely necessitate changes in scheduling, an increase in the staff time needed to ensure an ongoing program operation, an increase in the time needed for CNAs to complete the program, a possible delay in graduation, and a likely tuition increase.

Businesses and Other Entities Affected

The proposed amendments apply to nurse aide programs currently offered by 44 community colleges, 77 high schools, 72 proprietary (for profit) schools, and 34 nursing homes/hospitals. 144 programs already meet the most significant proposed change, an increase from 120 to 140 training hours; accordingly, they and their students would likely be the least affected. 52 programs would have to increase their hours by less than 20 and they and their students would be more affected. 31 programs would have to increase their training hours by 20 hours and their students would likely be the most affected. To the extent programs cannot pass all of the additional compliance costs to their students, an adverse impact would be indicated for them. Similarly, an adverse impact would be indicated for students to the extent the costs of compliance (e.g. additional time to complete training, delays in graduation, increase in tuition) exceed the benefits to them (e.g. higher exam pass rates).

Similarly, train-the-trainer programs (indirectly) and the trainers themselves would be affected as there would be a minimum 12 hours of initial coursework and a required refresher course every three years. The Board indicates train-the-trainer programs are available in the marketplace and there are 500-600 trainers.

Additionally, high schools and community colleges generally receive state and local funding. Therefore, there may be some fiscal impact on the state and/or local governments depending on the particular effect on the programs in a given locality.

Small Businesses² Affected:

Types and Estimated Number of Small Businesses Affected

DHP has no information on which programs are small businesses. However, it is probable that at least some of the proprietary schools and some of the train-the trainer programs would fall under the small business category.

Costs and Other Effects

The proposed amendments would increase compliance costs for small proprietary schools. Some programs would need to increase the length of their training by up to 20 hours. An adverse economic impact³ on small affected programs is indicated to the extent they cannot pass a portion of their costs to the students because there do not appear to be any offsetting direct benefits to these small businesses. Similarly, some of the train-the trainer programs are believed to offer shorter than proposed 12 hour initial trainer coursework and may have to make scheduling changes or add more staff. To the extent increased costs to them are not passed on to the trainers, an adverse impact would be indicated.

Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both reduce adverse impact on proprietary and train-the-trainer programs and meet the intended policy goals.

Localities⁴ Affected⁵

The proposed amendments potentially affect programs in all 132 localities. The increased costs on high schools may have fiscal implications for the locality they are in. Accordingly, some local funds may be required. Consequently, an adverse economic impact⁶ on localities would be indicated to the extent affected high school programs necessitate additional local funding because there do not appear to be any offsetting direct benefits to these local governments.

² Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

³ Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

⁴ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁵ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

⁶ Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

Projected Impact on Employment

The proposed amendments would increase the demand for trainers and/or program support staff, but also may reduce supply of nurse aides as they would be spending more time in classroom and may choose to work fewer hours during the duration of their training. The net impact on total employment is not clear.

Effects on the Use and Value of Private Property

The additional compliance costs placed on programs would have a negative impact on the asset values of 72 private proprietary schools and 34 nursing homes/hospitals to the extent they cannot pass a portion of the costs to their students. Consequently, the asset value of some these firms may be reduced. The proposed amendments do not affect real estate development costs.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.