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

<b>Agency name</b>	Board of Nursing, Department of Health Professions
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18VAC90-19
<b>VAC Chapter title(s)</b>	Regulations Governing the Practice of Nursing
<b>Action title</b>	Implementation of 2022 periodic review
<b>Date this document prepared</b>	March 21, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

This regulatory action is initiated to implement amendments identified during the 2022 periodic review of this Chapter. The changes being considered include the following:

- Remove outdated provisions that conflict with Code or are redundant of requirements in Code throughout the Chapter;
- Add clarifying language and terms regarding authorization letters, modes of Board communication, and nursing refresher courses in 18VAC90-19-10, 18VAC90-19-110, 18VAC90-19-150, 18VAC90-19-160, and 18VAC90-19-170;
- Remove fees and references to CNS registrations 18VAC90-19-30;
- Expand the time applicants may practice while their application for licensure is being processed in 18VAC90-19-110 and 18VAC90-19-120;

- Review and revise provisional licensure requirements in 18VAC90-19-140 for consistency with nursing education regulations in Chapter 27;
- Potentially combine requirements for inactive licensure and reinstatement of such inactive licenses, currently in 18VAC90-19-180 and 18VAC90-19-190, into one section;
- Review requirements for restricted volunteer licenses and registration for voluntary practice in 18VAC90-19-140 to ensure regulations are necessary and comport with the Code;
- Review and revise disciplinary provisions to clarify receiving unauthorized assistance is unprofessional conduct and to add a requirement for proper documentation in 18VAC90-19-230; and
- Make other general edits throughout the Chapter for ease of reading and clarity, but which will not change the effect of such regulations.

### Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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RN = registered nurse

LPN = licensed practical nurse

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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The impetus for this regulatory change is the 2022 periodic review conducted by the Board of Nursing of this Chapter.

### Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

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Regulations of the Board of Nursing are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be "[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system."

Virginia Code § 54.1-3005 lists additional specific powers of the Board, many of which form the legal basis for the regulations noticed for potential changes in this action.

## Purpose

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

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The Board did not make such a determination. The General Assembly determined that RNs and LPNs must be regulated by the Board of Nursing.

## Substance

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

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- Remove fees and references to CNS registrations 18VAC90-19-30;
- Expand the time applicants may practice while their application for licensure is being processed in 18VAC90-19-110 and 18VAC90-19-120;
- Review and revise provisional licensure requirements in 18VAC90-19-140 for consistency with nursing education regulations in Chapter 27;
- Potentially combine requirements for inactive licensure and reinstatement of such inactive licenses, currently in 18VAC90-19-180 and 18VAC90-19-190, into one section;
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## Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

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Licensure and regulation of RNs and LPNs by the Board of Nursing is mandated by statute. See Va. Code §§ 54.1-3005. These are existing regulations; to amend them requires a regulatory action. There is no alternative to this regulatory action.

### **Periodic Review and Small Business Impact Review Announcement**

This NOIRA is not being used to announce a periodic review or a small business impact review.

### **Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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The Board of Nursing is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Erin Barrett, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or [erin.barrett@dhp.virginia.gov](mailto:erin.barrett@dhp.virginia.gov) or by fax to (804) 915-0382. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.