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Fast Track Regulation Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 90-20 18VAC90-25
Regulation title	Regulations Governing the Practice of Nursing Regulations Governing Certified Nurse Aides
Action title	Transfer of requirements for CNA's from Chapter 20 to Chapter 25
Document preparation date	11/17/04

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

The proposed action would transfer the regulations for certified nurse aides that pertain to 1) wearing identification on the job, 2) notification to the Board of a name or address change; and 3) requirements for advanced certification from Chapter 20, Regulations Governing the Practice of Nursing, to Chapter 25, Regulations Governing Certified Nurse Aides.

Statement of agency final action

On September 21, 2004, the Board of Nursing took action to amend 18 VAC 90-20-10 et seq., Regulations Governing the Practice of Nursing, by deleting all provisions relating to educational programs and requirements for advanced certification nurse aides and to amend 18VAC90-25-10 et seq., Regulations Governing Certified Nurse Aides, by adding the provisions deleted from Chapter 20 through the fast-track regulatory process.

On November 16, 2004, the Board of Nursing amended the fast-track action to also add section 15 to Chapter 25 to transfer the requirements that have been under Chapter 20 for nurse aides pertaining to changes in name or address and wearing identification while working. The changes will ensure that all regulatory requirements relating to nurse aides are found in one chapter.

Legal basis

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) 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:

- 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.*
- ...*
- 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 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

The specific statutory mandate for the Board to establish an advanced certification for nurse aides is found in:

§ [54.1-3025.1](#). *Advanced certification; renewal.*

A. The Board shall develop and promulgate regulations to establish a career advancement certification that will indicate enhanced competence in patient care tasks and enable certified nurse aides to expand the scope of the responsibilities and duties delegated to them. An advanced certificate shall be awarded upon successful completion of the required educational and training standards set by the Board. Each institution that desires to conduct programs to provide training for such advanced certificates shall be approved by the Board pursuant to § [54.1-3005](#).

B. An advanced certificate issued to a certified nurse aide shall be renewed biennially upon payment of any specified fee. The certified nurse aide shall submit proof of compliance with any requirements of law and regulation concerning competence as established by the Board.

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the amended regulation and that it comports with applicable state and/or federal law.

Purpose

The content of the current regulations establishing requirements for initial certification as an advanced certified nurse aide, for renewal and reinstatement, and for approval of a certification education program is not being amended. The purpose of the action is to place all regulations related to certified nurse aides in the new chapter (Chapter 25) that became effective on September 8, 2004. The current requirements are sufficient to ensure that a certified nurse aide seeking advanced certification with expanded duties has the additional education, training and experience to safely care for a vulnerable population of patients.

Likewise, the content of the regulations proposed for section 15 of Chapter 25 are identical to current requirements in section 35 of Chapter 20. Certified nurse aides are required to wear appropriate identification while working as a nurse aide and to notify the Board in writing if they have a change of name or address. Wearing identification that indicates the type of licensure or certification held by a nurse or nurse aide is important for patient protection to ensure that patients are able to know what type of individual is providing care. Maintaining current information about nurse aides will ensure that disciplinary and renewal notices are given in a timely manner.

Rationale for using fast track process

The fast-track process is being used to promulgate the amendments to Chapters 20 and 25 because the action is technical and clarifying and does not change requirements for nurse aides or the advanced certification educational programs.

During a periodic review of regulations, the Board determined that all regulations pertaining to certified nurse aides should be promulgated in a separate chapter from regulations for nurses. Therefore, it was proposed to approve a new chapter for nurse aide regulations. However, at that time, regulations for advanced certification were not yet in effect and therefore could not be transferred to the new chapter. Chapters 20 and 25, as amended during the periodic review, became effective on September 8, 2004, and the Board believes that action is necessary to make the regulations consistent and clear.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

There are no new substantive provisions or changes.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The advantage to the public is the consistency of the regulations. With this action, all regulations for certified nurse aides could be found in Chapter 25, and regulations for nurses would be found in Chapter 20. The Board does not believe that there are any disadvantages to the public of these amendments.

There are no disadvantages to the agency or the Commonwealth; the proposed regulation will be consistent with the Board’s determination that regulations for nurse aides should be in a separate chapter of regulations.

There are no other pertinent matters of interest.

Economic impact

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	The agency will incur some one-time costs (less than \$2,000) 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. There are no ongoing expenditures related to this amendment. 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.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	Certified nurse aides, advanced certification nurse aides and educational programs for advanced certification
Agency’s best estimate of the number of such entities that will be affected	There are currently 40,680 certified nurse aides, 6 persons who have graduated from an advanced CNA program and become certified, and 8 programs approved to teach the advanced certification course.
Projected cost of the regulation for affected individuals, businesses, or other entities	There is no projected cost.

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.

The only alternative would be to leave the regulations for identification, notification, and advanced certification nurse aides in Chapter 20, Regulations for the Practice of Nursing. That would be inconsistent with the promulgation of all other requirements for certified nurse aides in Chapter 25 and would be confusing to the regulated entities.

Family impact

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

There is no impact on the institution of the family and family stability.

Detail of changes

Current section number	Current requirement	Proposed change and rationale
90-20-35	<p>A. Requires any person who provides direct patient care, while on duty, to wear identification which clearly indicates the person's first and last name and the appropriate title issued to such person by the board under which he is practicing in that setting.</p> <p>B. Requires a person who has changed his name to submit as legal proof to the board a copy of the marriage certificate or court order evidencing the change. A duplicate certificate is issued by the board upon receipt of such evidence.</p> <p>C. Requires a person to maintain a record of his current mailing address with the board, and to submit in writing any change of address within 30 days of such change. All notices required by law and by this chapter to be mailed by the board to any certificate holder are validly given when mailed to the latest address on file with the board.</p>	<p>Same requirement is stated in 18VAC90-25-15 A</p> <p>Same requirement is stated in 18VAC90-25-15 B</p> <p>Same requirement is stated in 18VAC90-25-15 C</p>
90-25-		

<p>100</p> <p>90-20-361</p>	<p>Sets out the disciplinary provisions for nurse aides.</p> <p>Requirements for initial certification as an advanced certified nurse aide.</p> <p>In order to be certified as and use the title of “Advanced Certified Nurse Aide,” an applicant must meet the qualifications established in this section which include: 1) current certification as a certified nurse aide in Virginia; 2) certification for at least three years as a certified nurse aide; 3) no finding of abuse, neglect or misappropriation of patient property entered on the Nurse Aide Registry and no disciplinary actions taken within the five years preceding application for advanced certification; 4) a recommendation for advanced certification from a licensed nurse who has supervised the applicant in providing direct patient care for at least six months within the past year; and 5) Successful completion of a minimum of 120 hours of advanced training in an approved program which includes a competency evaluation acceptable to the board.</p> <p>An application fee of \$25 is established.</p>	<p>The board has added performing acts beyond those authorized for an advanced certified nurse aide or assuming the duties of an advanced certified nurse aide without adequate training and competency to the list of acts for which it may deny, revoke or suspend a certificate or otherwise discipline a certificate holder. <i>Language is the same as promulgated in section 360 of Chapter 20.</i></p> <p>Will become 18VAC90-25-110.</p>
<p>90-20-362</p>	<p>Renewal and reinstatement of certification as an advanced certified nurse aide.</p> <p>To be eligible to renew as an advanced certified nurse aide, a person must renew concurrently with basic certification as a nurse aide in Virginia and submit a completed renewal form and renewal fee of \$20. At least three contact hours per year of continuing education is required for renewal in any of the competency areas identified in the advanced certification training program as verified by the employer on the renewal form. The board may grant an extension or waiver of the continuing education requirement based on good cause</p>	<p>Will become 18VAC90-25-120</p>

<p>90-20-363</p>	<p>shown by the certified nurse aide.</p> <p>An advanced certified nurse aide may renew certification for 90 days following the expiration date by meeting the renewal requirements.</p> <p>After 90 days, the advanced certification may be reinstated if the applicant for reinstatement by submission of a completed application, providing evidence of continuing education and payment of a reinstatement fee of \$30.</p> <p>Requirements for an approved advanced certification education program.</p> <p>An advanced certification education program must also be an approved nurse aide education program as set forth in 18 VAC 90-25-20.</p> <p>An advanced certification education program must consist of a minimum of 120 hours including a minimum of 40 hours of clinical skills instruction in direct client care with on-site supervision by instructional personnel. When nurse aides are engaged in direct client care in the course of advanced certification training, the ratio shall not exceed 10 students to one instructor. The instructional personnel and the curricula in an approved advanced certification education program must meet the same requirements for those in a basic nurse aide education program.</p> <p>Each advanced certification program must develop an individual record of major skills taught and the date of performance by the student and must provide that to the student at the completion of the program.</p> <p>An advanced certification education program must develop and submit to the board a competency evaluation based on the required curriculum content. The evaluation must include both a written test on the curriculum and an assessment of manual skills. The program is required to keep a record of the reports of graduates' performance for a minimum of three years.</p> <p>The review of the program must be in</p>	<p>Will become 18VAC90-25-130.</p>
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<p>90-20-364</p>	<p>accordance with requirements of 18 VAC 90-25-60 and conducted concurrently with the on-site review of the basic nurse aide education program. Loss of board approval for the basic nurse aide education program automatically results in the loss of approval for the advanced certification education program.</p> <p>If an advanced certification education program closes, the provider must notify the board of the date of closing and submit a list of all graduates with their date of graduation.</p> <p>Required curriculum content for an advanced certification education program.</p> <p>The curriculum for an advanced certification education program must include classroom and clinical instruction in: 1) Leadership and mentoring skills; 2) Care of the cognitively impaired client; 3) Restorative Care; and 4) Wound Care.</p> <p>Written objectives for each unit of instruction must be stated in behavioral terms that are measurable and are reviewed with the students at the beginning of each unit.</p>	<p>Will become 18VAC90-25-140.</p>
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