



## 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) citation</b>	18VAC90-20-10 et seq.
<b>Regulation title</b>	Regulations Governing the Practice of Nursing
<b>Action title</b>	Requirements for evidence of continued competency
<b>Date this document prepared</b>	3/16/10

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

Along with national organizations and commissions, the Board of Nursing has been studying the issue of competency assessment for continuation of licensure. After a review of national recommendations, reports and regulatory models, the board has concluded that there should be evidence of continued competency for renewal of a nursing license. While there may be value to an individual nurse in obtaining continuing education (CE), the board does not intend to rely solely on the CE model for demonstration of competency. The goal is to engage the nurse in a continuum of learning and renewal of knowledge and skills through a variety of practical and didactic experiences.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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

- 1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege 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, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege 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 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

## Need

*Please detail 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, delineate any potential issues that may need to be addressed as the regulation is developed.*

The National Council of State Boards of Nursing (NCSBN) defines continued competence as “the ongoing ability of a nurse to integrate knowledge, skills, judgment and personal attributes to practice safely and ethically in a designated role and setting in accordance with the scope of nursing practice.” The mission of a licensing board is to protect public health, welfare and safety by assuring that persons are minimally competent to practice at initial licensure and that they remain competent and safe throughout their careers. At the present time, there is no regulatory requirement that nurses demonstrate any measure of competency following initial licensure.

A 2009 report on continued competence from NCSBN states that maintaining competency to practice is a responsibility shared by the individual nurse, his or her employer, and the regulatory

entity that must answer to the public. Given this, the board has determined that there should be some regulatory framework for demonstrating continued competency.

### Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

---

While specific requirements have not been developed, a special board committee on continued competence recommended that the Board of Nursing consider the following:

- Regulations should offer options for measurement of continued competence which may include: 1) evidence of specialty certification from a board-approved entity; 2) nursing related coursework for academic credit or a refresher course; 3) a combination of continuing education and practice hours in a two-year period while holding an unencumbered license; and 4) evidence-based nursing related research and publication.
- Evidence of continued competency should be required for renewal of an active nursing license regardless of whether the nurse is employed for compensation.
- Regulations should not rely solely on specific continuing education courses as a tool in assessing competency.

Although regulations for other Board of Nursing professions (licensed nurse practitioners and certified massage therapists) include an audit of 1% of licensees, the board may consider an alternative assessment method for registered nurses and licensed practical nurses because of the volume and workload of an audit for such a large number of licensees. For example, the board may request evidence of continued competence during the investigative process if a complaint has been filed against a practitioner. Regulations would require nurses to maintain evidence of their participation in and completion of continued competency activities.

In the development of regulations for continued competency, the board will utilize the NCSBN Guiding Principles and Regulatory Model for Continued Competence, review regulations established in other states and continue to involve nursing professional organizations and employers of nurses.

### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

---

National bodies and entities, such as the AARP, the Citizens Advocacy Center, and Pew Health Professions Commission have advocated for a process that will address the need for ongoing competency for post-entry health care professionals. In 2007, the Virginia Chapter of AARP conducted a survey which showed that 90 of private citizens thought health care professionals (including nurses) were already undergoing post-entry competency assessment.

The Virginia Board of Nursing has worked through a committee to discuss the need for regulatory actions and options for measuring competency. Rebecca Shaulis, a Virginia Commonwealth University School of Nursing graduate student, researched publications and compared continued competency requirements for 45 boards of nursing in the US and Canada. According to her report, 30 states and the District of Columbia have required some evidence of course work and/or practice for renewal of an active nursing license. States such as North Carolina and Virginia have specified evidence of continued competency for reactivation of an inactive license or reinstatement of a lapse license.

At its meeting in November, the Continued Competency Committee established the following timeline for their work:

- January 2010 – full report to the Board of Nursing.
- March 2010 – consideration of a Notice of Intended Regulatory Action.
- Late spring/fall 2010 – joint Board of Nursing/Virginia Nurses Association continued competence conference.

Based on available research, including the 2009 Continued Competence Regulatory Model for Nursing developed by NCSBN, the results of a conference with members of the nursing profession, and comments received on the NOIRA, the board will develop regulations to achieve the intent of a regulatory framework for competency throughout a career in nursing.

## Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include 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 on this notice.*

---

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) 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 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Elaine J. Yeatts, Senior Policy Analyst, Virginia Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or by email to [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov). Written comments

must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held **after publication of proposed regulations**, and notice of the hearing may be found on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)). Both oral and written comments may be submitted at that time.

### Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.*

---

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