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Fast-Track Regulation Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC90-20-10 et seq.
Regulation title(s)	Regulations Governing the Practice of Nursing
Action title	Evidence of competency for reactivation or reinstatement
Date this document prepared	8/3/16

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

In response to a petition for rulemaking, the Board has amended sections 225 and 230 on reactivation of an inactive licensure and reinstatement of a lapsed license to ensure that the requirements for evidence of continuing competency are consistent with those for renewal of an active license as a nurse.

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On July 19, 2016, the Board of Nursing adopted an amendments to 18VAC90-20-10 et seq., Regulations Governing the Practice of Nursing.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Chapter 24 of Title 54.1 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations.

§ 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...

6. To promulgate regulations in accordance with the Administrative Process Act (§2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system...

12. To issue inactive licenses or 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 licenses or certificates.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

On April 13, 2016, a petition for rulemaking was received requesting that the Board consider amending the sections on reactivation and reinstatement because requirements in those sections appear to allow a person to let his license lapse and then pay the reinstatement fee without meeting the requirements for continued competency for renewal of licensure.

The Board concurred with the petitioner and voted to amend by a fast-track action. While the Board currently expects nurses reactivating or reinstating within one renewal cycle to meet the continuing competency requirements, the regulations do not specifically include that provision.

As such, regulations may not adequately ensure the current competency of a person seeking reactivation or reinstatement. To protect the health and safety of the patients, the Board must require some evidence that the nurse is competent to resume active practice.

Rationale for using fast-track process

Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

There was only one comment on the petition for rulemaking; a comment in support was received from the petitioner. Therefore, the Board is confident that the rulemaking is noncontroversial and should be promulgated as a fast-track action.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

The amendments to sections 225 and 230 will clarify that when a nurse reactivates an inactive license or reinstates a lapsed license with one renewal period of going inactive or allowing the license to lapse, he must provide evidence of completion of at least one of the learning activities or courses specified in [18VAC90-20-221](#) during the two years immediately preceding reactivation or reinstatement.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

- 1) The primary advantage of the amendment is better assurance that nurses returning to active practice have minimal competency to provide services to patients in Virginia. There are no disadvantages.
- 2) There are no advantages or disadvantages to the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to “promulgate regulations in accordance with the Administrative Process Act (§2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system.” There is no restraint on competition as a result of promulgating this regulation. The language is clarifying the current process for reactivation or reinstatement within one renewal cycle.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative methods consistent with health and safety of the public.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>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</p>	<p>There are no cost for implementation and enforcement, since the proposed regulation clarifies the Board’s current policy.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs to localities</p>

<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Nurses who want to return to active practice after allowing their licenses to lapse or become inactive for less than one renewal cycle (two years).</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There is no estimate of the number of nurses who want to reinstate or reactivate who may be affected. Nurses typically are employees of hospitals or health systems; they are not small businesses.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>If a nurse has not kept his knowledge and skills current during the time of inactivity, he will have to obtain at least 30 hours of continuing education to reactivate or reinstate a license. If the nurse has actively practiced in another state and is returning to Virginia to reinstate his license, he will be able to count 640 hours of active practice and obtain 15 hours of CE (consistent with the current requirement for renewal of an active license). There are a myriad of resources and providers available for meeting continuing competency requirements of section 221 at a very reasonable cost. For example, the National Council of State Boards of Nursing offers courses on-line, such as a course on Medication Errors; Detention and Prevention at a cost of \$30 for 6.9 contact hours.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Consistent requirements for evidence of continuing competency for nurses seeking to reactivate or reinstate a license may clarify the Board’s expectation for applicants.</p>

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. 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 regulation.

There are no viable alternatives to the proposed regulatory action that would achieve the intent of making continued competency requirements for persons who do not hold an active license to practice consistent with competency requirements for nurses who do hold an active license. The rule should clearly state the Board’s expectation and intent for evidence of continuing competency in order to reactivate or reinstate at license.

Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Family impact

Please assess the impact of this 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 family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
225	Sets our provisions inactive licensure including the requirements for reactivation.	An amendment in subsection A will clarify that a nurse whose license is inactive may reactivate within one renewal period by paying the difference between the inactive renewal and the active renewal fee; <u>and an attestation of completion of at least one of the learning activities or courses specified in 18VAC90-20-221 during the two years immediately preceding reactivation.</u>
230	Sets out the requirements for reinstatement of a license.	Subsection A is amended to clarify that a nurse whose license has lapsed may be reinstated within one renewal period by

		<p>paying the current renewal fee and the late renewal fee; and attestation of completion of <u>at least one of the learning activities or courses specified in 18VAC90-20-221 during the two years immediately preceding reinstatement.</u></p> <p><i>The petitioner recommended elimination of the grace period, so a licensee who allowed his license to lapse for any period of time (one week) would have to apply for reinstatement. The Principles for Fee Development, adopted by the Department, have been followed by all boards and recommend a grace period of one renewal cycle during which a licensee can renew by meeting the requirements for renewal and payment of a late fee. Regulations of the Board of Nursing inadvertently omitted the continuing competency requirements in stating the necessary elements for reactivation or reinstatement within one renewal cycle.</i></p> <p><i>As currently written in regulation, a nurse could allow her license to lapse, then pay the renewal and late fee, and be issued an active license with no evidence of continued competency. Likewise, she could request an inactive license at ½ of the active licensure fee, and then reactivate by payment of the other ½ and be issued an active license with no evidence of continued competency. This action corrects that oversight and makes the regulation consistent with the Board’s intent.</i></p>
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