



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Nursing/Department of Health Professions
VAC Chapter Number:	18 VAC 90-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Nursing
Action Title:	Implementation of the Nurse Licensure Compact
Date:	9-22-04

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Proposed regulations will replace emergency regulations adopted by the Board of Nursing as required to comply with the second enactment clause of Chapter 49 of the 2004 Acts of the Assembly, which states “That the Board of Nursing shall promulgate regulations to implement the provisions of the Nurse Licensure Compact to be effective within 280 days of the enactment of this act.”

Proposed regulations set out the regulations for implementation of the Nurse Licensure Compact including rules for issuance of a multistate licensure privilege, moving from one party state to another, notification of licensure denial to a former party state, limitations by disciplinary order on practice under a multistate privilege, a licensee’s access to information in the licensure information system, and inclusion of the multistate privilege in the disciplinary provisions.

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., the 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) 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:

...
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 legal mandate to promulgate the regulation for implementation of the Nurse Licensure Compact is found in:

§ [54.1-3005](#). Specific powers and duties of Board.

In addition to the general powers and duties conferred in this title, the Board shall have the following specific powers and duties:

14. To enter into the Nurse Licensure Compact as set forth in this chapter and to promulgate regulations for its implementation; ...

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

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

In 2003, the General Assembly enacted Chapter 249, which created the authorization for Virginia's membership in the Nurse Licensure Compact effective January 1, 2005. Sections 54.1-3030 through 54.1-3040 provide the legal basis for the Compact and specific statutory language for participation and administration. With so much specificity about the Compact in the Code, the only regulations that are necessary relate to procedural matters of issuing a license in a compact state, limitations of a multistate privilege after a disciplinary proceeding, and access to data on the coordinated licensure system. It is also necessary to include the multistate licensure privilege in the authority of the Board to render findings of unprofessional conduct and take disciplinary action. Without such an amendment, it would not be possible for the Board to enforce its regulations for a nurse practicing in Virginia with a multistate licensure privilege issued by another Compact state. Amended rules are necessary to protect the health and safety

of the public by ensuring that all nurses who provide care to patients in Virginia, whether they hold a license or a multistate privilege, will be held to the same standards of professional conduct.

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.)

Proposed regulations set out the rules for the issuance of a license with a multistate licensure privilege, including the evidence required to establish a primary state of residence, the procedure for changing the state of residence, and the policy for notification if a state denies licensure to an applicant. There are also new rules for limitations placed by a board on a multistate licensure privilege and for access to the coordinated licensure information system. Changes to existing regulations in Chapter 20 are intended to include those who hold a multistate licensure privilege in provisions that set out the causes for taking disciplinary action.

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.

Advantages or disadvantages to the public:

There are no disadvantages to the public; the proposed rules will ensure that nurses practicing in Virginia under a multistate licensure privilege are held to the same standards as those practicing with a Virginia license. Likewise, any limitation or monitoring required by a disciplinary order would be imposed equally. There may be some advantage to the public in that access to health care may be improved by the availability of nurses who reside in other states but will come into Virginia to work. However, the Compact also makes it easier for Virginia nurses to go to other Compact states to work, so the result may not create a net gain for health care in the state.

Advantages or disadvantages to the agency:

There are no specific advantages or disadvantages to the agency or the Commonwealth. Rules to implement the specific provisions of law will give guidance to the Board and its licensees on questions about declaration of a home state, limitations on practice and access to information.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<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>a) 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; b) 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 notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.</p> <p>There will be a significant effect on the revenue and expenditures of the Board relating to the Compact, but those effects were addressed in an action to increase fees in 2003 (Action 1307/ Stage 2453). No additional on-going expenditures are related to this action amending Chapter 20.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The entities that are likely to be affected by these regulations would be RN's and LPN's who hold a license in Virginia or in another Compact state.</p>
<p>Agency's best estimate of the number of such entities that will be affected</p>	<p>There are approximately 7,280 registered nurses (RN) and 1,688 licensed practical nurses (LPN) currently licensed in Virginia that have addresses in compact states. There is no estimate of the number of nurses licensed in other Compact states who will have a multistate licensure privilege to practice in Virginia and who would be subject to disciplinary action by the Board.</p>
<p>Projected cost of the regulation for affected individuals, businesses, or other entities</p>	<p>There are no additional costs.</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.

There were no alternatives to the adoption of an amended regulation; it was specifically required in the second enactment clause of Chapter 49 of the 2004 Acts of the Assembly for the Board to promulgate regulations as required for implementation of the Compact.

To develop the amended regulations necessary for licensure and issuance of a multistate licensure privilege and for the administration of the Compact, the President appointed an ad hoc committee of the Board. That committee reviewed rules established by boards of other member states and the Model Rules and Regulations for the Nurse Licensure Compact approved by the Compact Administrators in January of 2000. A number of states have adopted a separate set of regulations for the Compact, but the Board did not adopt that process.

Emergency regulations that were adopted by the Board are very similar to the Model Rules but are adapted to be applicable to Virginia for inclusion in the current regulations governing the practice of nursing. Proposed regulations are identical to the emergency regulations currently in effect. Key provisions from the Model Rules that are included in the amended regulations include: definitions as necessary for an understanding of terminology used in Compact rules, rules for issuance of a license or a multistate privilege by a party state, limitations on a multistate licensure privilege, and access to information in the licensure information system. In addition, provisions set out the rules for a disciplinary proceeding and the causes for a finding of unprofessional conduct, as necessary to ensure that nurses practicing in Virginia under a multistate privilege are held to the same standards as a nurse who currently holds a license to practice.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

An announcement of the Board's intention to amend its regulations pursuant to recommendations of the periodic review was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the Board. Public comment was accepted from July 26, 2004 to August 25, 2004. During the 30-day comment period, there was no public comment on the Notice of Intended Regulatory Action.

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

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10	n/a	Establishes definitions for words & terms used in the regulation	Adds a reference to words and terms already defined in § 54.1-3030 for the Nurse Licensure Compact and defines the term “primary state of residence” as the state of a person’s declared permanent or principal home for legal purposes. That term is used in the context of issuance of a multistate privilege by the board.
n/a	181	n/a	Sets out the rules for issuance of a multistate licensure privilege Subsection A provides the rule for issuance based on evidence necessary for a determination of primary state of residence, such as a driver’s license, voter registration card, or tax return. Under the Compact, the Board can only issue a multistate privilege if a nurse declares Virginia as his primary state of residence. If a nurse currently holds a Virginia license but resides in another Compact state, he will declare that state as his primary state and be issued a multistate privilege by that board. If a nurse currently holds a Virginia license but resides in a non-Compact state, he will retain his Virginia license as a single-state license. Subsection B provides the regulations governing the multistate privilege of a nurse moving from one party state to another. Practice under the former home state license and multistate privilege is allowed for up to 30 days to allow for processing of licensure in Virginia, unless the nurse is under a pending investigation by the former state. In that case, the licensure application is held and the 30-day authorization stayed until the case is resolved. A license issued by a former home state is no longer valid upon issuance of a license by Virginia; and if Virginia denies licensure, it must notify the former home state, where action may be initiated in accordance with laws and regulations of that state.
n/a	182	n/a	Section 182 sets out the limitations on a multistate privilege Included in all disciplinary orders that limit practice or require monitoring would be the requirement that the licensee subject to the order shall agree to limit practice to Virginia during the period in which the order is in effect. A nurse may be allowed to practice in other party states while an order is in effect with prior written authorization from both the board and boards of other party state. This provision is necessary to conform Virginia’s disciplinary orders to the Compact and ensure that all party states are aware of any limitations on practice.
n/a	183	n/a	Section 183 sets out the rules for access to information in the coordinated licensure information system by a licensee. It provides that a licensee may submit a request in writing to the

300	n/a	Sets out the authorization for taking disciplinary action and the definitions of unprofessional conduct	<p>board to review the public data relating to the licensee maintained in the coordinated licensure information system. In the event a licensee asserts that any related data is inaccurate, the burden of proof would be upon the licensee to provide evidence that substantiates such claim. The board must verify and correct inaccurate data in the information system within ten business days.</p> <p>Amendments ensure that: 1) persons practicing under a multistate licensure privilege are subject to the same disciplinary provisions as those holding a single state license, and 2) it is clear that a violation of regulations could be considered unprofessional conduct and subject a licensee or multistate licensure privilege holder to disciplinary action.</p>
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