



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC90-20-10 et seq.
Regulation title	Regulations Governing the Practice of Nursing
Action title	Periodic review
Document preparation date	6/28/05

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) 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.

In response to deficiencies in the regulations identified by staff and board members, the Board of Nursing began a periodic review of Chapter 20, Regulations Governing the Practice of Nursing. The Special Conference Education Committee has encountered situations in which it was apparent that nursing education programs were not adequately preparing students for passage of the national examination or nurses for safe, competent practice. In some cases there was insufficient specificity in regulation about the expectation for programs and inadequate requirements for accountability to enable the Board to appropriately address those situations. To that end, there is a need for establishment of additional standards for programs and for the clinical practice of students. Other amendments are recommended to address changes in the renewal process and the multistate licensure compact and to make the requirements clearer for applicants and licensees.

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:

...

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 authorization to set standards and approve educational programs is found in the Nurse Practice Act in the following section:

§ 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:

- 1. To prescribe minimum standards and approve curricula for educational programs preparing persons for licensure or certification under this chapter;*
- 2. To approve programs that meet the requirements of this chapter and of the Board;*
- 3. To provide consultation service for educational programs as requested;*
- 4. To provide for periodic surveys of educational programs;*
- 5. To deny or withdraw approval from educational programs for failure to meet prescribed standards;*
- 6. To provide consultation regarding nursing practice for institutions and agencies as requested and investigate illegal nursing practices;*
- 7. To keep a record of all its proceedings;*
- 8. To certify and maintain a registry of all certified nurse aides and to promulgate regulations consistent with federal law and regulation. The Board shall require all schools to demonstrate their compliance with §/n 54.1-3006.2 upon application for approval or reapproval, during an on-site visit, or in response to a complaint or a report of noncompliance. The Board may impose a fee pursuant to § 54.1-2401 for any violation thereof. Such regulations may include standards for the authority of licensed practical nurses to teach nurse aides;*
- 9. To approve programs that entitle professional nurses to be registered as clinical nurse specialists and to prescribe minimum standards for such programs;*

10. To maintain a registry of clinical nurse specialists and to promulgate regulations governing clinical nurse specialists;

11. To certify and maintain a registry of all certified massage therapists and to promulgate regulations governing the criteria for certification as a massage therapist and the standards of professional conduct for certified massage therapists;

12. To promulgate regulations for the delegation of certain nursing tasks and procedures not involving assessment, evaluation or nursing judgment to an appropriately trained unlicensed person by and under the supervision of a registered nurse, who retains responsibility and accountability for such delegation;

13. To develop and revise as may be necessary, in coordination with the Boards of Medicine and Education, guidelines for the training of employees of a school board in the administration of insulin and glucagon for the purpose of assisting with routine insulin injections and providing emergency treatment for life-threatening hypoglycemia. The first set of such guidelines shall be finalized by September 1, 1999, and shall be made available to local school boards for a fee not to exceed the costs of publication;

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

15. To collect, store and make available nursing workforce information regarding the various categories of nurses certified, licensed or registered pursuant to § 54.1-3012.1.

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. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

Amendments may be proposed in the following sections:

18VAC90-20-10. Definitions.

Several words and terms used in the regulation, such as “accreditation” and “NCLEX,” need to be defined in Section 10. Other definitions, such as “clinical nurse specialist,” will be eliminated and provisions incorporated into the regulation.

Part II. Nursing Education Programs.

18VAC90-20-40. Application.

Amendments are recommended to require the program seeking board approval to provide a projection of the number of students it expects to enroll and then to provide information indicating that the program not only has faculty and clinical training facilities available but that

they will be sufficient to provide classroom instruction and clinical supervision for the number of students specified by the program. The board may also propose to require submission of an enrollment plan specifying the beginning dates and number of students for each class for a two-year period from the date of initial approval in order to indicate that it has adequately planned for resources, faculty and facilities.

18VAC90-20-50. Provisional approval.

Clarifying amendments may be proposed.

18VAC90-20-60. Program approval.

The board may propose to set a standard for approval that includes not only that the first graduating class has taken the licensure examination, but that the cumulative passing rate for the program's first-time test takers taking the NCLEX over the first four quarters following graduation of the first class is not less than 75%. The requirement for a survey visit by a representative of the board needed to be more explicit, so it is clear that the visit and report indicate satisfactory compliance with all requirements for program approval.

18VAC90-20-65. Continued approval.

This section may be repealed as duplicative of a rule stated in section 160.

Article 2. Requirements for Initial and Continued Approval.

18VAC90-20-70. Organization and administration.

There are some clarifying amendments recommended and an additional rule for the program to submit evidence ensuring that the director of the nursing education program has authority to implement the program and curriculum; oversee the admission, academic progression and graduation of students; hire and evaluate faculty; and recommend and administer the program budget, consistent with established policies of the controlling agency.

18VAC90-20-90. Faculty.

A. Qualifications.

In addition to several clarifying amendments relating to the nurse licensure compact, the board may amend the regulations to require:

For baccalaureate degree programs, that the program director must hold a doctoral degree *with at least one graduate degree in nursing* and that every member of the nursing faculty must hold a graduate degree in nursing. Currently, faculty members with a graduate degree with a major other than in nursing shall have a baccalaureate degree with a major in nursing.

For associate degree and diploma programs, the program director would be required to hold a graduate degree *in nursing* (currently "preferably" in nursing) and *every* (currently "majority") full-time member of the nursing faculty must hold a graduate degree in *nursing* (currently "preferably" in nursing). Part-time clinical members of the nursing faculty shall hold a baccalaureate or graduate degree in nursing (currently "preferably" in nursing).

For practical nursing programs, the only change recommended would be for the majority of the members of the nursing faculty shall hold a baccalaureate or graduate degree in nursing (currently “preferably” in nursing).

The regulations would set out those exceptions to faculty requirements that do not require prior approval by the board to include: a. Program directors and faculty members employed by an approved educational program on or before the effective date of regulations would not have to meet the new requirements; and b. Faculty who do not meet the requirement to teach nursing may be employed to teach related courses, provided they hold a degree that qualifies them to teach the subject matter, provided those faculty do not supervise students in the direct clinical care of patients.

Changes in the process for other exceptions that do require board would be amended to permit the program to submit a request whenever an unexpected vacancy has occurred as well as prior to the academic year.

An amendment is recommended to state explicitly the expectation that, when students are giving direct care to patients, the faculty shall be on-site solely to supervise students.

18VAC90-20-95. Preceptorships.

Amendments are recommended to specify that faculty shall be responsible for the designation of a preceptor for each student and shall communicate such assignment with the preceptor, and that a preceptor may not further delegate the duties of the preceptorship.

18VAC90-20-96. Clinical practice of students.

In response to a need for clarity about the responsibility and accountability of a clinical supervisor and of the student who is engaged in direct patient care, a new section will be proposed. First, it will specify that the student is permitted to perform tasks that would constitute the practice of nursing in accordance with § 54.1-3001 of the Code of Virginia, but that the student will be responsible and accountable for the safe performance of those direct patient care tasks to which he has been assigned. Second, it will specify that faculty members or preceptors providing supervision in the clinical care of patients are responsible and accountable for the assignment of patients and tasks based on their assessment and evaluation of the student’s clinical knowledge and skills. Supervisors must also monitor clinical performance and intervene if necessary for the safety and protection of the patients.

18VAC90-20-110. School records; student records; school bulletin or catalogue.

The board intends to require that nursing programs publish the annual passage rates on the NCLEX for the past five years, so prospective students will have that information for their consideration of which nursing program to attend.

18VAC90-20-120. Curriculum.

The section that sets out the required curriculum will be revised to reflect current nursing education and to consolidate the requirements that are applicable to all levels of nursing education – practical nursing and registered nursing. In general, the Regulatory Review Committee recommended that curriculum requirements be modified to:

- Clarify that principles of direct client care and practice includes didactic content and supervised clinical experience in nursing in a variety of clinical settings;
- Specify that concepts of the nursing process means the conduct of a focused nursing assessment of the client status that includes decision-making about who and when to inform, identifying client needs, planning for episodic nursing care, implementing appropriate aspects of client care, and contributing to data collection and the evaluation of client outcomes;
- Include behavioral sciences along with concepts of anatomy, physiology, chemistry, and microbiology;
- Include in concepts of communication, growth and development, interpersonal relations, the development of professional socialization including working in interdisciplinary teams and conflict resolution;
- Include within concepts of ethics and vocational and legal aspects of nursing, professional responsibility and history and trends in nursing and health care;
- Add concepts of client-centered care including: a) Respect for cultural differences, values, preferences and expressed needs; b) Promotion of healthy life styles for clients and populations; c) Promotion of a safe client environment; and d) Prevention and appropriate response to situations of bioterrorism and domestic violence;
- Add development of management and supervisory skills;

For nursing education programs preparing the student for licensure as a registered nurse, there would be the following additional curriculum requirements:

1. Didactic content and supervised clinical experiences in conducting a comprehensive nursing assessment that includes:
 - a. Extensive data collection, both initial and ongoing, for individuals, families, groups, and communities addressing anticipated changes in client conditions as well as emerging changes in a client's health status;
 - b. Recognition of alterations to previous client conditions;
 - c. Synthesizing the biological, psychological and social aspects of the client's condition;
 - d. Evaluation of the effectiveness and impact of nursing care;
 - e. Planning for nursing interventions and evaluating the need for different interventions for individuals, groups and communities;
 - f. Evaluation and implementation of the need to communicate and consult with other health team members; and
 - g. Use of a broad and complete analysis to make independent decisions and nursing diagnoses; and

2. Didactic content and supervised experiences in:
 - a. Development of clinical judgment;
 - b. Development of leadership skills and knowledge of the rules and principles for delegation of nursing tasks;
 - c. Involvement of clients in decision-making and a plan of care; and
 - d. Participation in quality improvement processes to measure client outcomes and identify hazards and errors; and
3. Concepts of pathophysiology.

Clinical practice would be set out in a separate subsection D to state: *A nursing education program preparing for licensure as a practical nurse shall provide a minimum of 400 hours of direct client care supervised by qualified faculty. A nursing education program preparing for licensure as a registered nurse shall provide a minimum of 500 hours of direct client care supervised by qualified faculty.* The hourly requirements are not changed from the current regulations.

18VAC90-20-130. Resources, facilities and services.

Changes are needed to update terminology and clarify that the resources must not only be available but sufficient to meet the needs of the program.

18VAC90-20-140. Program changes.

Additional changes that indicate a substantive change in an approved program will need to be reported to the board within 10 days, such as changes in content of curriculum, faculty or method of delivery that affects 25% or more of the hours of instruction. Other less substantive changes in curriculum or faculty may be reported to the board with the annual report.

18VAC90-20-151. Passage rate on national examination.

A new section is recommended to establish a standard for continued approval of a nursing education program and grounds for withdrawal of approval. For the purpose of continued approval by the board, a nursing education program will be required to maintain a prescribed passage rate for first-time test takers on the NCLEX, calculated on the cumulative results of the past four quarters in each year. If a program falls below that rate for two consecutive years, the board will conduct a site visit and place the program on conditional approval. If a program falls below the rate for three consecutive years, the board may withdraw program approval. The required passage rate will be set below the national norm and consistent with or below the rate set by other states with similar standards.

For the purpose of program evaluation, the board will be allowed to provide to the program the examination results of its graduates. However, further release of such information by the program will not be authorized without written authorization from the candidate.

18VAC90-20-160. Maintaining an approved nursing education program.

The requirements for maintaining approval will be amended to allow reevaluation of a registered nurse program every 6 years if it is not accredited by a recognized accrediting body. Any RN program that does not have accreditation is likely to be problematic and requires closer oversight by the board. In contrast, a program (PN or RN) that does have national accreditation will be reevaluated every 10 years (currently every 8 years) with submission of all required documentation about the study report, site visit and findings of the accrediting body. If a program fails to submit the required documentation, it will be evaluated on the schedule for a non-accredited program.

Amendments will be considered for clarification and consistency with other changes in regulation.

18VAC90-20-190. Licensure by examination.

Several amendments are necessary to eliminate outdated or inconsistent provisions. For example, it is not necessary to require submission of an application 60 days prior to the month the applicant expects to take the examination. The provision that prohibits release of examination results without written permission of the applicant or licensee will be eliminated to allow the board to release results only to the nursing programs from which the student graduated.

18VAC90-20-220. Renewal of licenses.

Amendments are needed to reflect the current renewal process in which licensees are sent a notice and encouraged to renew on-line. In addition, implementation of the Compact has necessitated an amendment that states: Upon renewal, all licensees shall declare their primary state of residence. If the declared state of residence is another Compact state, the licensee is not eligible for renewal.

18VAC90-20-230. Reinstatement of licenses.

Clarify that this section includes provisions for lapsed licenses and for licenses that have been suspended or revoked.

Part IV. Clinical Nurse Specialists.

Amendments to regulations for clinical nurse specialists are necessary to: 1) Clarify that the board approves programs that offer a graduate degree (which may be a doctorate rather than a masters); 2) Allow registration of clinical nurse specialists who have graduated from a school that is in the process of being accredited; 3) Ensure that the applicant actually holds a graduate degree in nursing; and 4) Include provisions that are currently in the definition section.

18VAC90-20-300. Disciplinary provisions.

An amendment will be proposed to express the intent of the board that it may be a violation of professional boundaries to take advantage of the vulnerability of a patient's family as well as the patient himself. All provisions of unprofessional conduct will be considered to address issues that have arisen in disciplinary cases before the board.

Part VII. Medication Administration Training Program.

The regulations for medication administration training programs will not to be amended in this action but will need to be modified as the regulations for the registration of medication aides are developed. These regulations will remain in Chapter 20 to be applicable to medication administration in settings other than assisted living facilities.

18VAC90-20-410. Requirements for protocol for administration of adult immunization.

The Board will review the protocol and consider questions and problems that have arisen with immunization programs to determine whether clarifications are needed to ensure patient safety.

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.

In reviewing nursing education programs, board staff and site visitors are often called upon to interpret the regulations and the intent of the board. In some situations, it is apparent that programs have not provided adequate resources, faculty, clinical opportunities or other essential elements for educating a competent nurse; but regulations have lacked the specificity or content necessary to hold those programs accountable. On occasion, the Education Special Conference Committee has been unable to withhold approval or take action related to an education program because the regulation did not provide adequate grounds for such a decision. In addition, nursing education must continue to evolve to meet the changing demands of practice and to prepare the student for practice in modern health care systems where the nurse may be part of an interdisciplinary team and may have responsibility for overseeing patient care delivered by other regulated and unregulated individuals. Without some amendment to regulation, the board will continue to be unable to appropriately provide guidance for educational programs and to take action to place those programs that do not adequately prepare students on terms and conditions.

To address the gaps in content and accountability, the Regulatory Review Committee has talked with educators, considered public comment on the NOIRA and studied the Model Regulations of the National Council of State Boards of Nursing. As proposed regulations are promulgated, the board will continue to involve interested parties and seek comment.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action will have no impact on the institution of the family and family stability.

Periodic review

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section.

If this NOIRA is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Commenter	Comment	Agency response
Carrie Eddy from the Center for Quality Health Care Services and Consumer Protection (VDH)	Continuing education requirements should be mandated.	During the previous review, the Board considered continuing education requirement and concluded that most nurses do get CE as a part of the in-service training required by an employer.
Susan Ward on behalf of the Virginia Hospital and Healthcare Association	1) Need for clearer evidence of clinical resources to establishment a nursing program; should require a report on number of available positions & hours available to program; report should be updated biennially to mitigate current problems with a shortage of clinical sites; 2) Should require data on program effectiveness to include 80% passage rate on NCLEX for 3 of past 4 quarters; should allow require report on number of dropouts.	The Regulatory Review Committee is recommending changes to require more information and accountability from educational programs relating to sufficiency of clinical training sites and passage on the NCLEX as a measure of performance.
Mary Fox on behalf of Assembly of Hospital Schools of Nursing	Request to allow a registered nurse who holds a bachelor’s degree in nursing and a master’s degree in a field other than nursing and a certificate program of at least 18 credits in nursing to meet the requirement to qualify as nursing faculty for a diploma program.	Regulatory Review Committee will consider whether a certificate program is equivalent to a graduate degree in nursing and whether an additional exception is necessary

The Board has found that the regulation meets the criteria set out in Executive Orders, is necessary for the protection of public health, safety, and welfare, and, for the most part, is clearly written and easily understandable. While the regulation should be retained, recommended changes are intended to set more clearly-defined standards for nursing education and to increase accountability to enable the Board to review and take action on deficiencies if necessary.