



Economic Impact Analysis Virginia Department of Planning and Budget

18 VAC 90-20 – Regulations Governing the Practice of Nursing
Department of Health Professions
September 7, 2006

Summary of the Proposed Regulation

The Board of Nursing (board) proposes to amend its Regulations Governing the Practice of Nursing in several substantive ways. The board proposes to change rules governing nursing education so that:

- Any institution that wants to establish a new nursing education program must pay a \$1,200 application fee.
- Graduating students at all nursing education programs, old and new, will be required to maintain an 80% first-time test taker pass rate on the National Council of State Boards of Nursing's National Council Licensure Examination (NCLEX).
- Nursing education programs will be required to provide its graduates' NCLEX pass rates to potential students.
- The board's Educational Conference Committee may consider requests for continuing exceptions to the boards nursing program staffing rules.
- There are specific numbers of clinical hours that students must work during their degree program. The number of hours required differ according to whether students are working toward a practical nursing or registered nursing degree.
- Nursing education programs will have to report certain program changes to the board within 10 day.
- Nursing education programs that maintain their accreditation status need only apply for re-approval every 10 years. Non-accredited registered nursing education programs will be re-evaluated by the board every six years.

In addition to these substantive changes, clarifying language was added to many sections of the board's nursing education program rules.

The board also proposes to:

- Eliminate a requirement that applications for licensure by examination be submitted no later than 60 days before a planned examination.
- Increase the number of hours required in administration of medication training from 24 to 32.
- Add language that disallows renewal of a Virginia nursing license for licensees whose primary residence is in a State that is part of the Compact agreement.

Result of Analysis

The benefits likely exceed the costs for this proposed regulatory change.

Estimated Economic Impact

The Department of Health Professions (DHP) estimates four full days of staff time are spent evaluating any potential new nursing education program that applies for board approval. This includes time spent reviewing all required paperwork as well as time spent on two (sometimes three) onsite visits. Currently, the expenses incurred by DHP during this process are paid by initial licensure fees and license renewal fees paid by nurses statewide.

As a matter of equity, the board proposes to shift the cost of program approval to the parties seeking approval; the board proposes to institute a \$1,200 fee that will be paid by the institutions or entities that are seeking to start a nursing education program. Although this regulatory change certainly represents a cost increase for entities considering starting a program, it may also lead to more efficient allocation of available resources. Since the costs incurred by DHP in processing program approvals has, up to this point, been an externality that institutions were not forced to consider when deciding whether or not their resources were best devoted to educating nurses or to some other purpose, some resources may have been inefficiently allocated. Now that these costs (through the \$1,200 fee) will be paid by those applying for program approval, some institutions may choose to direct their time, money and effort toward some other use that yields a greater net benefit for them. Additionally, DHP expects that the number of nurses seeking Virginia licensure will decrease slightly because of a recently

instituted compact agreement that allows nurses from signatory states to practice in any signatory state with a license from their state of primary residence. This means that nurses who live in Maryland or North Carolina, for instance, would not need a Virginia nursing license to work within the Commonwealth's borders. If the number of nurses licensed drops, but the number of board activities that those fees cover stays constant, nurses would likely be subject to a fee increase in short order. Licensed nurses in the Commonwealth will likely benefit from this regulatory change because they are less likely to see fee increases to pay for program approval.

Currently regulation does not allow the board to use student success at passing the NCLEX exam as a criterion when approving or re-approving nursing education programs.

The board proposes to add a requirement for final approval of any new nursing education program 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 80%". To maintain program approval, nursing education programs will have to maintain an 80% pass rate. If a program failed to meet this standard for two consecutive years, the board will place the program on conditional approval and conduct a site visit and suggest remedial action to help improve test performance. Any program that failed to meet this standard for three consecutive years would lose its approval to operate. The proposed regulation will also require that all nursing education programs provide potential students with past NCLEX pass rates.

The average nationwide first-time test taker pass rate on the NCLEX practical nurse exam for the first two quarters of 2006 was 86%; first-time takers of the NCLEX registered nurse exam had an average pass rate of 85% during the same period. The average Virginia first-time practical nurse test taker pass rate for the third quarter of 2005 was 83.2%; the pass rate for Virginia first-time test takers on the NCLEX registered nurse exam was 87.48%. Although current nursing education programs in the state appear, on average, to already be meeting the new pass rate requirement, lower performing schools may find their program approval at risk. While these individual programs may, if education issues are not remediated, be closed, students will likely benefit as these proposed changes may reduce the chance of nursing students wasting their time and money on programs that are not teaching them what they need to know in order to be successful nurses. These changes will also enable potential nursing students to make better informed decisions about what programs would best serve their needs.

Current rules allow nursing education programs that need to fill faculty jobs on an emergency basis to apply to the board for exception to the normal faculty requirements so long as this application is filed before the start of the school term. There is no provision in current regulation for applying for exception during an academic term. The proposed regulation will allow programs to file for exception at times other than before the start of academic term, will allow the board to approve exceptions for the entire academic year rather than for just a term and also will allow the Education Special Conference Committee to approve continuing exceptions. These changes will benefit nursing education programs in that they will now have the flexibility to remain fully staffed under all circumstances.

Current regulation does not specify any particular level of clinical experience for students of either practical nursing education or registered nursing education programs. The proposed regulation will require student practical nurses to complete 400 hours working with patients in a clinical setting before graduating from their program; student registered nurses will be required to complete 500 clinical hours. DHP reports that all registered nursing programs and most practical nursing programs operating in the state already have students complete at least the number of clinical hours that will be required. A few private practical nursing programs require only 350-400 hours of clinical experience. Costs for these programs will likely increase as they will have to arrange for extra clinical time to be available for their students.

Currently, nursing education programs must report to the board within 10 days if there is a change in program directors, governing body or parent institution, if their accreditation status changes or if they receive a final report with findings and recommendations from an accrediting body. The proposed regulation will add to this list. Nursing education programs will be required to report (within 10 days) “changes in content of curriculum, faculty or method of delivery that affects 25% or more of the hours of instruction”, any “change in financial resources that could substantively the nursing program” and any change in the physical location of a nursing program. Nursing programs will incur a very slight increase in reporting costs. Nursing students in particular and the public in general are likely to benefit from the board being more knowledgeable about these reported changes.

All approved nursing programs, whether accredited or not, must currently seek re-approval every eight years. The proposed regulation will only require programs with

accreditation to seek re-approval every 10 years. Practical nursing programs without outside accreditation will still have to seek program re-approval every eight years but non-accredited registered nursing programs will have to seek re-approval every six years. The board reports that non-accredited registered nursing programs tend to be deficient in some way and so should be watched more closely. Accredited registered nursing programs will likely experience a decrease in costs as they will have to apply for program re-approval less often. Conversely, non-accredited registered nursing programs will likely experience an increase in costs as they will have to apply for re-approval more frequently.

Currently, any individual who plans to take a nursing licensure exam must submit an application for licensure at least 60 days before a scheduled exam date and any nurse that practices in Virginia must hold a license issued by the Commonwealth. DHP now has computerized exams which can be taken at the convenience of the examinee. Virginia has also recently become a party to an interstate nursing compact which allows nurses from signatory states to practice in any other signatory state using a license issued by their home state. Because of these changes, the proposed regulation will completely eliminate the 60 day requirement and disallow Virginia re-licensure for nurses with primary residence in another compact state. Both of these changes represent a lessening of regulatory requirements that will benefit the regulated community.

Current regulation requires that unlicensed individuals receive 24 hours of medication administration training. The proposed regulation will require 32 hours of this training. DHP reports that this change reflects the number of hours that all medication administration training programs already require. Because of this, the regulated community will likely not incur any extra cost because of this regulatory change.

Businesses and Entities Affected

The proposed regulation will affect all nursing education programs in the Commonwealth as well as all registered nurses and practical nurses who are currently licensed by the board or who will seek licensure at some point in the future. Currently there are 68 nursing education programs that train practical nurses and 47 programs that train registered nurses. DHP estimates that five or six new practical nursing education programs and one or two new registered nursing education programs apply to the board for program approval each year. Currently there are

82,370 registered nurses and 27,198 practical nurses licensed by the Commonwealth. DHP estimates that they receive approximately 5,500 applications for licensure of registered nurses and 2,400 applications for licensure of practical nurses each year.

Localities Particularly Affected

The proposed regulation will affect all localities in the Commonwealth

Projected Impact on Employment

To the extent that the new \$1,200 approval fee discourages new nursing education programs from opening, future employment in the field of nursing education may grow more slowly than it otherwise would have. Any impact on employment is likely, however, to be minuscule since the cost of this fee is dwarfed by other costs associated with opening such a program.

Effects on the Use and Value of Private Property

The few private, for-profit nursing programs, that have not been having nursing students work the number of clinical hours that will be required by the proposed regulation, will likely see their costs rise as they change their programs to adapt. These programs will likely see a decrease in profits as they will either have to absorb these costs or they will likely have fewer enrollees as they pass these cost increases on to their students.

Small Businesses: Costs and Other Effects

There are 17 nursing education programs in the Commonwealth that are private, for-profit and meet the criteria for small businesses. These programs may incur costs for securing available clinical space/more clinic hours so that their students can fulfill the board's direct client care/clinical hours requirement.

Small Businesses: Alternative Method that Minimizes Adverse Impact

While the board has the option of not specifying the number of clinical hours that must be completed by nursing students, it is not at all clear that this option would not just transfer adverse impacts to the students who will likely eventually be practicing nurses. Since most other states require a set number of clinical hours worked (while a student) as one criterion for licensure, nurses whose programs did include sufficient required clinical hours will have to maintain records to prove this in order to be licensed through endorsement or reciprocity. Nurses whose

training did not include sufficient clinical hours will not be able to move freely and still work in their chosen field.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.