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Final Regulation
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 changes
Document preparation date	6/15/07

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.*

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

As a result of a thorough review of regulations governing the practice of nursing, the Board has proposed a number of amendments relating to nursing education that provide more specificity to the requirements for nursing education programs, add an application fee for program approval, set a minimum NCLEX passage rate for approved programs and a minimum number of clinical hours, and clarify the responsibilities in the clinical practice of students. Additional grounds for disciplinary action are proposed to address issues relating to unprofessional conduct for nurses. Finally, the Board has also increased the number of hours for an approved medication administration program from 24 to 32.

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 May 15, 2007, the Board of Nursing adopted final amended regulations 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 law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, 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.

18VAC90-20-10 et seq., Regulations Governing the Practice of Nursing 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 promulgate regulations for approval of nursing programs and licensure of nurses is found in the Nurse Practice Act including 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 § 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;

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;

16. To expedite application processing, to the extent possible, for an applicant for licensure or certification by the Board upon submission of evidence that the applicant, who is licensed or certified in another state, is relocating to the Commonwealth pursuant to a spouse's official military orders;

17. To register medication aides and promulgate regulations governing the criteria for such registration and standards of conduct for medication aides; and

18. To approve training programs for medication aides to include requirements for instructional personnel, curriculum, continuing education, and a competency evaluation.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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.

The proposed amendments result from an extensive review of nursing regulations to determine whether they are necessary and sufficient to ensure minimal competency and protect the public. The Education Special Conference Committee, which has responsibility for initial approval and continued approval of nursing education programs 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.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Amendments are proposed in the following sections:

18VAC90-20-10. Definitions.

Several words and terms used in the regulation, such as "accreditation" and "NCLEX," are defined in Section 10. Other definitions, such as "clinical nurse specialist," are eliminated and provisions incorporated into the regulation.

Part II. Nursing Education Programs.

18VAC90-20-40. Application.

Amendments are proposed to require the program seeking board approval to pay an application fee of $1,200 to cover expenses involved in the process. A program will also be required 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 proposes 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.

18VAC90-20-60. Program approval.

The board proposes 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 80%. 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.

Article 2. Requirements for Initial and Continued Approval.

18VAC90-20-70. Organization and administration.

There are some clarifying amendments proposed 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.

There are several clarifying amendments in the faculty requirements.

Changes in the process for other exceptions would be amended to permit the program to submit a request whenever an unexpected vacancy has occurred and to allow for exceptions to be made for the entire academic year rather than for one term.

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

18VAC90-20-95. Preceptorships.

Amendments are proposed to specify that faculty is responsible for the designation of a preceptor for each student and must communicate such assignment with the preceptor, and that a preceptor can not further delegate the duties of the preceptorship. However, the clinical faculty does have the authority to further delegate the duties of a preceptor to another preceptor.

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 is proposed. First, it specifies 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 specifies 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 proposes 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 Board proposes 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 is 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.*

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 proposed 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 of 80% 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. 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 are 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.

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 is 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 are amended in this action to increase the required hours from 24 to 32, which is consistent with all programs currently approved and now includes the insulin module consisting of 8 hours. While the Board has adopted a new chapter for registration of medication aides and approval of training programs, those regulations are directed to practice in assisted living facilities. These regulations will remain in Chapter 20 to be applicable to medication administration in settings other than assisted living facilities, as authorized by the Drug Control Act.

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

The Board reviewed the protocol and made one change related to emergency guidelines in immunization programs as necessary to ensure patient safety.

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.

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1) The primary advantage to the public is greater assurance that nursing education programs are adequately preparing students for practice. There are no disadvantages of the regulations.

2) Clarification and additional specificity should improve enforceability and reduce some confusion or questions about the intent of some requirements, resulting in greater efficiency for the agency. There are no disadvantages to the agency or the Commonwealth.

3) There are no other pertinent issues.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

There were no changes made since the publication of the proposed stage.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Proposed regulations were published in the Virginia Register of Regulations on February 5, 2007. Public comment was requested for a 60-day period ending April 6, 2007. A Public Hearing before the Board was held on March 20, 2007. Three persons provided oral comment:

Two faculty members from Eastern Mennonite University – 1) Commented on the additional requirement that faculty providing supervision to students must be on-site solely to supervise students. There may be occasions when students need to make up additional clinical time, and the faculty on-site would have responsibilities other than supervising the student; 2) Expressed concern that preceptors are not able to delegate their duties to another preceptor; requirement might cause difficulties with home health agencies and public health departments if the preceptor needs to be absent from the clinical site; 3) Asked that a mandate for 500 hours of direct client care not be mandated until clinical simulation can be included but the hours of simulation should be limited; and 4) Asked for clarification of direct client care - whether pre-assessments or data collection would be included in direct client care hours & whether that needs direct clinical supervision.

Board response: *Faculty providing supervision to students should be on-site solely to supervise their clinical practice because the supervisor is responsible for the assignment of only those duties which the student is qualified to perform; if the supervisor is not present, there is no assurance that patients are receiving appropriate care. While providing supervision, faculty may not be involved in other work duties. If the faculty member assigns a student to a preceptor experience, the faculty member does not have to be present in the clinical setting where practice by students is occurring. A faculty member can assign responsibility for a student to a qualified preceptor according to a plan developed for preceptor use. The regulations allow for the use of a preceptor with supervision by faculty, but the faculty member still maintains responsibility for the student performance.*

The Board has reviewed comments about the use of simulation labs in nursing programs for compliance with the hours of direct client care. While the Board supports development of simulation technology, it is cautious about allowing simulation to substitute for direct client care because there is currently no evidence to indicate that the experiences are equivalent. The National Council of State Boards of Nursing is conducting a study of clinical simulation versus direct client care or a combination of hours to assess equivalency and effectiveness. Clinical simulation and other technological advancements in education warrant further study, which the Board intends to consider through appointment of a Task Force on Nursing Education. Since most RN programs have 800 to 1,000 hours of clinical experience in their program, the 500-hour requirement should not present any hardship. If a RN nursing program or practical nursing program can demonstrate significant hardship in obtaining sites for the clinical hours, the Board has the ability to grant exceptions to its requirements on a case-by-case basis and to allow simulation experiences as part of the required clinical hours.

One faculty member from James Madison University asked for clarification of 500 hours of direct client care – how much of that could be met with simulation versus human patients. JMU has well over clinical hours, but others may have more difficulty with clinical placements.

See Board response above.

Written or electronic comment was received from the following persons or organizations, as summarized below:

The Virginia Hospital and Healthcare Association (signed by Susan Ward and Barbara Brown) commented on the following: 1) Supports the requirement that applicants for approval of a nursing education program submit documentation of adequate classroom and clinical resources for the projected number of students; 2) Supports a standard for program approval of a minimum passage rate but requests that the rate be no lower than 85% rather than the 80% proposed; 3) Supports permitting the program director to request an exception to faculty qualifications whenever an unexpected vacancy has occurred; 4) Requests clarification of "on site" in the requirement that the faculty be on site solely to supervise students who are giving direct care to patients – should be clear that supervising faculty should be on the clinical unit and not in the cafeteria or elsewhere in the facility; 5) Supports the requirement that programs publish passage rates on NCLEX for prospective students; 6) Suggests establishment of a minimum number of hours of direct client care that could be used in simulation facilities; 7) Suggests that failure to meet the NCLEX passage rate for three years should *require* rather than permit withdrawal of Board approval; and 8) Supports the deletion of a requirement for applicants to file no later than 60 days prior to the month of the examination, since the exam is now administered online.

Board response: *The Board appreciates the support of the VHHA for clearer standards for nursing education programs. While a requirement for 85% passage rate would be more consistent with the national average, the Board believes the 80% rate that is proposed is a reasonable benchmark for Virginia programs. While there is no mandate for closure of programs that do not meet the 80% passage rate, the Board regards the standard as an important indicator of quality and minimal competency and would be able to use the failure as grounds for closure or probation. Programs would have an opportunity to respond to a Committee reviewing the program and to present any mitigating circumstances. In regard to setting a limit on the number of hours in a simulation lab, the Board has determined that simulation is an enhancement to the clinical experience and should not be included in the 500-hour clinical requirement for RN programs or the 400-hour requirement for LPN programs. Faculty supervising students should be on-site in the clinical setting unless the student has been assigned to work with a preceptor in a practice setting (ICU, surgery, etc.)*

The Virginia Nurses Association (VNA) provided the following comments: 1) Supports the proposed changes, specifically those that specify the responsibility and accountability of the supervisor and student engaged in direct client care, the publication of the NCLEX passage rate, the establishment of a minimum passage rate, the increase in hours for a medication aide training program, and other changes intended to clarify the intent and requirements of regulations. 2) Requests clarification in the following rules: a) 90B – does the requirement for faculty to be on-site to supervise students apply if a preceptor is used, could be problematic in certain practice settings; b) 95C – the rule against a preceptor delegation of duties could be changed to allow delegation to another qualified preceptor if there is an unavoidable cause; there should be a prohibition on regular, routine delegation or delegation to an unqualified person; c) 120D – concern about the 500 hours of direct client care. Suggests one of two courses of action – deletion of the minimum requirement because it lacks a percentage of hours in clinical simulation and the 500 hours might become the standard, which would be a reduction for many nursing programs or requirement for the 500-hour minimum as proposed but collect information about prevailing practices before implementation and annually thereafter to assess impact on NCLEX passage rates.

Board response: *The Board appreciates the support of the VNA in its amendments to enhance accountability and clarify requirements for nursing education programs. The prohibition against delegation of preceptor responsibilities is not intended to prohibit re-assignment to another qualified preceptor provided the assignment is made by the supervising faculty member according to a plan for the clinical experience. The supervising faculty member should know where and when the student is assigned clinically. The Board understands the concern that, by setting a 500-hour requirement for clinical experience, it may actually encourage a reduction in the clinical hours now incorporated in many RN programs. The standard is expressly stated as a "minimum" requirement, so quality nursing programs should continue to exceed the minimum. This year's annual survey of nursing education programs includes specific questions regarding the number of hours of direct client care, simulation experiences and clinical observation experiences for a total number of clinical experiences. While the Board understands that the clinical experience is evolving with new technology and is varied from program to program dependent on opportunities for clinical training, it believes that a minimal standard of direct client care hours is essential for all programs.*

The Virginia Organization of Nurse Executives supported the Board's commitment to ensuring that nursing programs prepare safe and competent clinicians. The requirement for 500 clinical hours in a RN program may not be sufficient for entry into the work environment and may encourage some programs to cut hours in compliance. The VONE is also concerned about an increase in the ratio of faculty to student in the preceptor experience (from 1:10 to 1:15) as not adequate, especially in the acute care setting.

Board response: *See response to comment above about the 500-hour requirement. The 800 to 1,000 clinical experience hours in most RN programs generally includes direct client care, simulation and observation, so a requirement for 500 hours of direct client care may not encourage programs to cut hours. The current ratio of faculty to students in clinical settings with preceptors is 1 to 15; the rule is restated but not amended. The practice of a student in a precepted clinical experience shall not exceed a 1:2 ratio with the preceptor.*

Nine persons from the Medical Careers Institute sent identical letters 1) Requesting that requirement for 80% passage on NCLEX be modified to require not less than 5% below the state average for any given year. Additionally, any person who has not tested within six months of graduation should be required to document that he has completed the NCLEX review course, since graduates who wait an excessive amount of time typically do not perform as well on the test; and 2) Requesting clarification of the 500 hours of direct client care to explain what percentage of those hours could utilize simulation labs.

Board response: *See response to comments above about the passage rate and the simulation labs. If an education program is able to demonstrate that its passage rate fell below the 80% because of the number of students who failed to test within six months following graduation, the Board would consider the information as a mitigating factor.*

Six persons sent an identical letter requesting that if the Board approves a minimum passage rate on NCLEX, it should require any graduate who has not tested within six months to present documentation that he has satisfactorily completed the NCLEX review course.

Board response: *See response to comments above about the passage rate. If an education program is able to demonstrate that its passage rate fell below the 80% because of the number of students who failed to test within six months following graduation, the Board would consider the information as a mitigating factor.*

One person requested that if the Board approves a minimum passage rate on NCLEX, it should require any graduate who has not tested within six months to present documentation that he has satisfactorily completed the NCLEX review course of at least 100 hours.

Board response: *See response to comments above about the passage rate. If an education program is able to demonstrate that its passage rate fell below the 80% because of the number of students who failed to test within six months following graduation, the Board would consider the information as a mitigating factor.*

One person wrote to disagree with the assertion that graduates should be required to take a review course if they failed to take NCLEX within six months. Programs with high failure rates have more serious problems than delays in taking the examination; they should examine their qualifications for admissions and retention in the program.

Board response: *If an education program is able to demonstrate that its passage rate fell below the 80% because of the number of students who failed to test within six months following graduation, the Board would consider the information as a mitigating factor. For programs with high failure rates, other factors would be considered as well.*

One person opposed setting a cumulative passing rate on the licensing examination for either initial program approval or continued approval. It is an arbitrary standard subject to a variety of factors and should not be used a measure of program performance. No evidence exists to indicate that it is necessary to protect the public health, safety and welfare.

Board response: *Since the national passage rate for RN programs was 89.14% for the first quarter of 2007 and 87.03% for LPN programs, the Virginia standard of 80% is still far below the national average. For 2006, the Virginia average was 80.64% for LPN programs, and the average for RN programs in Virginia was 84.40%. Other states have already established passage rates for nursing education programs, and Virginia's standard would be consistent with or lower than the national average and other states. There will be a few programs that will have to improve on their failure rate to maintain continued approval over the next several years, but the Board believes consistently low passage rates are a sign of lesser quality in the educational preparation of nursing students. However, the Board does not consider the NCLEX passage to be the only indicator of quality and will look at other evidence in the program review. Factors that influence the inability of a program to achieve an 80% passage rate would be considered by a Committee which would have options to grant conditional approval, place a program on probation, require a plan of corrective action, approve without conditions or deny approval. If only half of the students are able to pass the examination, a great deal of time and money has been spent by persons who will be unable to be licensed and practice nursing. The Board wants to ensure that programs are doing all they can to assist students in being successful. Currently, some students incur huge loans to go through nursing school and then are unable to pass the examination and be licensed.*

One person sent a letter and a petition signed by 26 nurses requested that a perioperative program be mandated for all programs educating and training registered nurses. Operating room experience and curriculum should be required in every approved program.

Board response: *As with other areas of practice, there are aspects of the perioperative experience incorporated in the curriculum. The Board does not recommend mandating a focus on that particular area of practice in the curriculum.*

The interim Dean of Nursing at Northern Virginia Community College requested clarification of the minimum number of clinical hours – whether that means clock hours (60 minutes) or college hours (50 minutes).

Board response: *The requirement for clinical hours is clock hours, not college hours.*

One person requested the additional requirements in the curriculum for: 1) Gerontological nursing and the aging process; 2) Identification and reporting of abuse, neglect and abandonment; 3) Elder abuse as well as child abuse education; and 4) Supervisory and management education. There should be significant clinical experience in long-term care facilities as part of the clinical experience.

Board response: *As with perioperative nursing, gerontological nursing is a specialty area that nursing students are exposed to in school; the care and treatment of the elderly is integrated throughout the curriculum. The regulations specify training in care throughout the lifespan of a person, so care of the elderly is part of all programs. Clinical experiences may be obtained in a variety of settings, but the Board does not advocate directing a significant portion into long term care.*

One person commented that the LPN program should require assessment skill teaching; sees a definitive need for better assessment knowledge and skills.

Board response: *A focused assessment is part of the LPN scope of practice and curriculum in which data collection is taught, but a comprehensive assessment of a patient is the function of a RN. This key differential is part of the Model Regulations of the National Council.*

The nursing faculty at Loudoun County School of Practical Nursing sent the following comment: 1) The director does not hire or evaluate the nursing faculty; 2) Disagree with the 1:15 ratio for a preceptor, the ratio should be 1:1; 3) Disagree with requirement to publish passage rates, but if required, it should be the pass rates for the past five years – concern about students that delay taking the test or if students are ESL; 4) LPN's do limited assessments – should be educated in assessment; 5) RN clinical hours should be increased to 600 – RN graduates do not have enough clinical experience; 6) Disagree with a standard of 80% passage rate because of the variables, but approved of the three-year time period before a program is closed.

Board response: *A requirement for the Director to be in charge of a nursing program is in current regulation and not a new proposal. The maximum ratio of preceptor to student is 1:2; it is the ratio of faculty to students who are under a preceptor that is 1:15. The publication of passage rates is very important to prospective students who need to assess whether graduation from a particular program will adequately prepare them to pass the national examination. The response to the comment on assessments in the LPN curriculum is the same as above. The need for increased clinical hours was noted, but the 500-hour requirement is set as a minimum standard. The response to the comment on the 80% passage rate is the same as above.*

The James Madison Nursing Program made the following comments: 1) Need to clarify whether the faculty member on-site solely to supervise students applies if a preceptor is used – it may not be feasible to have the faculty member on-site in certain practice settings; 2) Agree that the preceptor may not delegate his duties routinely, but some exceptions should be allowed; and 3) concerned about the 500 hours of direct client care supervised by qualified faculty – JMU requires 880 hours and specifying a number might lower the standard for clinical nursing education in the future.

Board response: *The response to the written comments from JMU program are noted above in the response to comments by Eastern Mennonite and JMU faculty at the public hearing. Preceptors working with students would typically be working in their usual capacity in the practice setting with the student participating in the duties of the preceptor in that setting. Faculty providing supervision must be on-site and not assigned to other duties other than the clinical supervision of the student.*

The Virginia Beach School of Practical Nursing sent the following comment: 1) Concerns that program fees might be cost-prohibitive to non-accredited programs; the $2500 fee might lead to program closures. The Board should charge a fee to persons who are found guilty in a disciplinary hearing. 2) Should require a graduate who does not test within six months to document completion of the NCLEX review course.

Board response: *The commenter has misunderstood the new fee for program approval; it will not be assessed on current programs but only on a new program seeking initial approval. The Board currently does not have authority to charge a fee to persons who are found guilty in a disciplinary proceeding. As stated above, all circumstances that might lead to a program's failure to meet the 80% passage rate will be considered.*

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10	n/a	Defines words and terms used in the chapter	Adds a definition of "accreditation" and "NCLEX" for use in proposed regulations and eliminates the definition of "clinical nurse specialist" which includes requirements now stated in sections 275 and 280.
35	n/a	Requires nurses to wear identification that clearly indicates the person's name and appropriate title under which he is practicing while providing direct patient care.	Adds that the identification must be clearly visible. *Necessary to clarify the intent of the Board is for the patient/client to be able to know who is providing care and the level of their license or certification. Some persons have been wearing identification tags turned over or in pockets.*
40	n/a	Sets out the application requirements and process for a nursing education program seeking Board approval	Changes in Subsection A: 1) Adds a fee of $1,200 for an institution applying for board approval of a nursing education program. *The costs of approval of nursing education programs have always been borne by nurses through their renewal fees. The Board believes that nursing programs should take responsibility for the costs incurred rather than shifting costs to individual nurses. In addition, the multistate licensure compact has resulted in fewer nurses licensed by Virginia for which the costs can be shared. In determining an appropriate fee, it was calculated that at least 4 full days of staff time is spent in reviewing an applicant program, including the time and expense of 2 site visits. If*

			the program is initially given provisional approval, a third visit must be conducted. Expenses also include a meeting of board members on the Education Special Conference Committee, so per diem and travel expenses are included. The fee of $1,200 is in the middle of the range of fees charged by other jurisdictions, including a fee of $5,000 charged by the District of Columbia. There is no fee proposed for continued approval of nursing education programs. Adds clarification for what constitutes: 1) "adequate resources" in relation to the projected number of students; 2) "availability of qualified facility;" 3) "budgeted faculty positions;" and 4) "availability of clinical sites." *In working with applicants for program approval, board staff finds that there is a lack of clarity and specificity about the application information required by regulation. Applicants often request more guidance about the meaning of the rules. In addition, the addition of more specific requirements for copies of contracts or letters of agreement with clinical sites is in response to comment from the Va. Hospital and Healthcare Association (VHHA) asking that the Board require more concrete evidence of sufficient availability of clinical experiences for the number of students before approving a nursing education program. The Board is also proposing an enrollment plan for each program as an indicator of viability and sufficient resources.*
50	n/a	Sets out requirements for provisional approval of nursing education programs	*Changes proposed are grammatical rather than substantive.*
60	n/a	Sets out the requirements for final program approval.	Adds a requirement for final approval to include evidence of a 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 of not less than 80%; and clarifies that the final survey visit and report must be satisfactory and must verify that the program is in compliance with board requirements. *In response to a comment from the VHHA and for consistency with model rules from the National Council, the Board has added a requirement that the NCLEX passage rate be at*

			least 80% for first-time test takers. A program that consistently falls below 80% should not receive full approval but needs to be examined for deficiencies and, if not able to remediate, should not be approved. It is a disservice to students to spend their time and money enrolling in a marginal program without a high probability of passing the licensure examination. Through the 3rd quarter of 2005, the national average for practical nursing programs is 89.87 % passing; for Virginia, the average was 83.20%. Neighboring states had higher passage rates (KY- 93.99; MD – 96.15; NC – 93.81; SC – 94.50; TN – 92.86; WV – 94.69). In RN programs, the national average was 87.88%; for Virginia the average was 87.48%. Neighboring states had similar or higher passage rates (KY- 90.45; MD – 87.45; NC – 89.25; SC – 89.17; TN – 92.27; WV – 87.47). All of those states currently have the NCLEX passage rate as a criterion for program approval. In several programs in Virginia, where there has been a recent focus on program quality and the NCLEX, there has been marked improvement in the percentage of passage, resulting in a net increase in the number of nurses available for licensure and practice.
65	n/a	States that the Board accepts evidence of accreditation by a nationally recognized accrediting body for continued approval	*Repeals section 65 because it is restated in section 160.*
70	n/a	Sets out the requirements for the organization and administration of a nursing education program.	Specifies that the program director must hold an unencumbered license or multistate privilege and that the director has specific authority over the curriculum, students, faculty, and the program budget within the policies of the institution. *The amendments are necessary to clarify that the director is not only a registered nurse but holds an unencumbered license. The position should not be held by someone who has a license restricted by disciplinary action.* *The specificity about the authority of the program director is essential to ensure that the person who is responsible to the board for program compliance has actual authority over key elements and can effect change if necessary.* *The amendment in subsection E adds to the meaning of the rule to specify that the financial support and resources must be sufficient to meet*

			the program goals.
90	n/a	Sets out the licensure and degree for program directors and faculty in nursing education programs.	An amendment is necessary to clarify that the director and the faculty are not only registered nurses but hold unencumbered licenses. Those positions should not be held by someone who has a license restricted by disciplinary action. In the section on an initial request for exception. (1) The program director shall submit a request for initial exception in writing prior to the academic year during which the nursing faculty member is scheduled to teach or whenever an unexpected vacancy has occurred. *Currently, there are no provisions for requesting an exception to fill a vacancy that occurs in the middle of a term or an academic year.* (4) Any request for continuing exception shall be considered by the committee, which shall make a recommendation to the board. *Continuing exceptions must be granted by the committee and are based on progress towards a degree. The Education Special Conference Committee currently considers such requests and makes recommendations to the board.* Subsection B. Number. 2. When students are giving direct care to patients, the ratio of students to faculty shall not exceed 10 students to one faculty member, and the faculty shall be on-site solely to supervise students. 3. When preceptors are utilized for specified learning experiences in clinical settings, the ~~ratio shall not exceed 15 students to one~~ faculty member may supervise up to 15 students. *There are clarifications in this section to specify the board's intent for the supervision of students engaged in clinical training giving direct patient care.*
95	n/a	Sets out the requirements for preceptorships	There is a new subsection C, which states that: Faculty shall be responsible for the designation of a preceptor for each student and shall communicate such assignment with the preceptor. A preceptor may not further delegate the duties of the preceptorship.

			The purpose of the amendment is to specify the responsibility of the nursing faculty for the assignment of preceptors and to affirmatively state that the duties of a preceptor cannot be delegated.
n/a	96	n/a	A. In accordance with § 54.1-3001 of the Code of Virginia, a nursing student, while enrolled in an approved nursing program, may perform tasks that would constitute the practice of nursing. The student shall be responsible and accountable for the safe performance of those direct patient care tasks to which he has been assigned. B. Faculty members or preceptors providing supervision in the clinical care of patients shall be 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 shall also monitor clinical performance and intervene if necessary for the safety and protection of the patients. *These new provisions are intended to address issues that often arise about clinical practice by nursing students and the responsibility of the clinical instructor or preceptor for that practice. Questions have arisen about the accountability of a preceptor or faculty member for the clinical care of patients. Because of the lack of specificity in regulation, some have been reluctant to assume that role and responsibility. The proposed regulation will make clear the relative responsibility of the student and the supervisor for their actions.*
110	n/a	Sets requirements for the information about the program that must be published and made available to students, applicants and the board.	In section C, adds requirement that passage rates on NCLEX must be published and made available to applicants. *Openness about NCLEX passage may encourage students to make better choices about their nursing education, so they will choose programs with high passage rates and have a better chance at passing the licensure exam.*
120	n/a	Sets requirements for the curriculum in a practical nursing and a registered nursing program.	Subsection B is amended to include the concepts and topics that all nursing programs (RN and PN) must include in their curricula. Subsection C is amended to specify those *additional* areas that the RN student must learn, including data collection, making independent

			decisions, developing clinical judgment, delegation of nursing tasks, and pathophysiology. Subsection D specifies the minimum number of hours of clinical training in direct patient care that each type of program must include – 400 hours for PN programs and 500 for RN programs. *Following the Model Rules, the Board proposes to add more specificity to the curriculum requirements to reflect information and topics, such as working in interdisciplinary teams and conflict resolution that are appropriate to the modern practice of nursing in health systems. Current curriculum content, such as "concepts of the nursing process" does not provide sufficient guidance about the didactic and clinical experiences nursing students should have to prepare them for NCLEX and for practice. The additional specificity will enable the Board to better assess the quality of the curriculum and hold programs accountable.* *Establishing a benchmark for hours in direct client care is necessary to ensure that students have sufficient supervised clinical training to enable them to translate what they have learned in the classroom into a clinical setting. Currently, most PN programs (those in community colleges and public schools) have at least 400 hours with only a few proprietary programs that have between 350 and 400 hours. RN programs have a wider range of required hours in direct client care, with one program requiring 1,300 hours. In some states (Texas for one), a LPN cannot be licensed by endorsement if his program did not require at least 400 clinical hours. The Board is establishing a minimal standard, the programs can exceed the minimum if appropriate. It is expected that most RN programs will continue to exceed the minimum of 500 hours of direct client care in order to give students clinical experiences with simulation and observation.*
130	n/a	Establishes the resources, facilities and services that must be offered by an approved program	*There are only grammatical or clarifying changes in section 130.*
140	n/a	Establishes the program changes	The additional changes that must be reported

		that must be reported to the board within certain time frames.	within 10 days include: • A change in content of curriculum, faculty or method of delivery that affects 25% or more of the hours of instruction; *The Board does not need to be informed within 10 days whenever there are relatively minor modifications, but if more than 25% of the major elements of the educational program have been changed since the last annual report, it is important for the Board to have that information in a timely manner as it may affect continued compliance. It is necessary to report the method of delivery so the Board will know whether courses are being offered live or on-line.* • A change in financial resources that could substantively affect the nursing education program; • A change in the physical location of the program. *Information about financial resources that could affect the viability of the program and the physical location of the program is also necessary information for the agency that approves and oversees the programs.*
n/a	151	n/a	In the section on program approval, the standard of 80% passage on NCLEX is set; in this section, the Board establishes that continued approval may depend on maintaining that rate of passage. If the standard is not met for two consecutive years, a site visit is required and the program is placed on conditional approval. If the program falls below 80% for three years, the Board is authorized to withdraw approval. *Marginal programs that <u>consistently</u> do not prepare students to pass the licensure examination are taking advantage of students' time and money and not adequately preparing them for licensure or practice. With a standard to meet and with proper guidance, it is possible for such programs to achieve the established goal.*
160	n/a	Sets the criteria and schedule for evaluating a nursing education program and a process for the Education Special Conference Committee to follow in a case decision on continued approval.	The amended regulation provides that: A program that <u>has not achieved accreditation as defined</u> in 18VAC90-20-10 must be reevaluated at least every eight years <u>for a practical nursing program and every six years for a registered nursing program</u> by submission of a comprehensive self-evaluation report and a survey visit. *The current schedule of a comprehensive review and site visit every 8 years is sufficient for PN programs, but a RN program*

			that does not have national accreditation is likely to be struggling or marginal in some manner and therefore demands closer scrutiny by the Board. 2. A program that has maintained accreditation must be reevaluated at least every ten years by submission of a comprehensive self-evaluation report as provided by the board. *The current requirement is a review every 8 years, so the amended rule is less burdensome. Although a program has maintained national accreditation, there are aspects of nursing education that are not reviewed by accrediting bodies, so the Board must retain its statutory responsibility for oversight and approval.* As evidence of compliance with specific requirements of its rules, the board may accept the most recent study report, site visit report and final decision letter from the accrediting body. *The amended rule makes clearer what information from the accrediting body must be submitted in lieu of a comprehensive self-study report and site visit.* If a program fails to submit the documentation from the accrediting body, it must then undergo the study and site visit required for a non-accredited program. Subsection C clarifies that the Education Special Conference Committee can make a recommendation to the board to take one of three actions: grant continued approval, place the program on conditional approval or withdraw approval. *Other changes in this section are clarifying and not substantive.*
190	n/a	Establishes the requirements for an applicant seeking licensure by examination	In subsection C, the requirement for the application and fee to be received no later than 60 days prior to the first day of the month in which the examination is taken is stricken; it is unnecessary with the advent of computerized exams which can be scheduled on a day suitable to the applicant. There is an addition to the requirement for the transcript to include the date of graduation or conferral of the degree. Subsection F is stricken and replaced with language in section 151 which allows the board to provide programs with their students'

			examination results but prohibits further release by the program.
200	n/a	Establishes the requirements for an applicant seeking licensure by endorsement	Adds a provision that an applicant for licensure by endorsement can only be issued a single state license rather than a multistate licensure privilege. *The amendment is necessary for consistency with requirements of the Compact which requires passage of NCLEX for all persons holding a multistate privilege. There are a few non-Compact states in which applicants do not take NCLEX; Virginia would still be able to license such an applicant; however, they would not be afforded the multistate licensure privilege..*
220	n/a	Sets the requirements for renewal of licensure	*In addition to changes in wording for consistency with on-line renewal, the Board has added a requirement for declaration of primary state of residency. It is currently required as part of the Compact agreement, but has not been affirmatively stated in regulation. A nurse may hold only one license with multistate privilege from a Compact state and that must be the state in which he has his primary residence.*
230	n/a	Establishes the requirements for reinstatement of licensure	*The title is amended to make it clear that this section includes provisions for reinstatement of a lapsed license and a license that has been suspended or revoked.*
275	n/a	Sets out the provisions for approval of clinical nurse specialist education programs	The proposed changes in subsection A reflect the addition of a definition for "accreditation" and change the requirement from a "master's" to a "graduate" degree in recognition that some programs offer a doctoral rather than a master's. The proposed change in subsection B will allow the Board to register a clinical nurse specialist who has graduated from a program that has not yet been accredited but has not been denied accreditation – similar to nurses who graduate from a nursing education program that has provisional approval by the Board. Other changes are technical or are necessary to incorporate language currently found in definition.
300	n/a	Sets out the disciplinary provisions for the Board to deny licensure or take action against a licensee	Adds to the grounds for professional boundary violations taking advantage of the vulnerability of a patient's family and adds grounds for providing false information to staff or board members in the course of an investigation or proceeding. *The Board has identified acts that warranted disciplinary action but are not specifically listed as grounds.*

370	n/a	Establishes the requirements for approval of a medication administration training program	Revises the minimum number of hours from 24 to 32 hours. *Currently, all approved programs offer at least 32 hours, which is a minimal time for covering all aspects of the curriculum.*
410	n/a	Establishes the requirements for approval of a protocol for administration of adult immunization	The proposed amendment would add that emergency guidelines must include a signed medical directive for medical treatment. *Regulations currently require a signed medical directive (#4); the additional language would ensure that that directive include direction for emergency treatment. Most protocols already follow that format.*

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The Board has assessed the impact of the proposed regulatory action and does not believe there will be any impact on the family or family stability.