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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Boards of Nursing and Medicine, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 90-30
<b>Regulation title</b>	Regulations Governing the Licensure of Nurse Practitioners
<b>Action title</b>	Practice by Certified Nurse Midwives
<b>Document preparation date</b>	11/16/06

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

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

The proposed action will replace the “emergency” regulations currently in effect in response to Chapter 750 of the 2006 Acts of the Assembly, which modified the supervisory relationship of physicians and certified nurse midwives.

The amendments separate regulations for the practice of certified nurse midwives from the practice of other categories of licensed nurse practitioners for the purpose of describing the appropriate relationship with a licensed physician. Senate Bill 488 (Chapter 750) defined the relationship for licensed nurse practitioners as practice “under the supervision of a duly licensed physician,” whereas a certified nurse midwife renders care “in collaboration and consultation with a duly licensed physician.” Amendments to regulations are necessary for consistency with the Code as amended.

### 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., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Boards of Nursing and Medicine 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:*

- 1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system. 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.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate, license or multistate licensure privilege which such board has authority to issue for causes enumerated in applicable law and regulations. ...*

The specific legal authority to regulate the practice of certified nurse midwives can be found in the amended Chapter 29 of Title 54.1 of the Code of Virginia – see link to legislation.

<http://leg1.state.va.us/cgi-bin/legp504.exe?061+ful+SB488ER>

## Purpose

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

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Chapter 750 of the 2006 Acts of the Assembly requires that: *The Board of Medicine and the Board of Nursing shall jointly promulgate regulations specifying collaboration and consultation among physicians and certified nurse midwives that shall include the development of, and periodic review and revision of, a written protocol; guidelines for availability and ongoing communications that define consultation among the collaborating parties and the patient; and periodic joint evaluation of the services delivered.*

The purpose of the amended regulation is to make the terminology in the regulation consistent with the amended Code of Virginia which specifies the practice of a nurse midwife is to be in collaboration and consultation with a licensed physician.

Other sections of law specify that the certified nurse midwife, along with other types of nurse practitioners, must practice with the *supervision* of a licensed physician. For example, § 54.1-2957.02 specifies that: “Whenever any law or regulation requires a signature, certification, stamp, verification, affidavit or endorsement by a physician, it shall be deemed to include a signature, certification, stamp, verification, affidavit or endorsement by a nurse practitioner.” The enactment for that new section of Code (Chapter 855 of the 2004 Acts of the Assembly) required the boards to amend regulations to “require inclusion of the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements in the written protocol between the *supervising* physician and the nurse practitioner.” Therefore, the Boards did not amend the requirement for the written protocol to include the nurse midwife’s authority for signatures, certifications, etc.

Additionally, § 54.1-2957.01 of the Code of Virginia authorizes nurse practitioners (including nurse midwives) to prescribe controlled substances provided they have “a written agreement with a licensed physician which provides for the *direction and supervision* by such physician of the prescriptive practices of the nurse practitioner. Such written agreements shall include the controlled substances the nurse practitioner is or is not authorized to prescribe and may restrict such prescriptive authority as deemed appropriate by the physician providing *direction and supervision*.” Therefore, regulations for prescriptive authority (18VAC90-40-10 et seq.) are not amended, and certified nurse midwives who prescribe drugs as a part of their practice remain subject to § 54.1-2957.01 and the Boards’ regulations that specify medical direction and supervision.

## Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

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Amendments separate regulations for the practice of certified nurse midwives from the practice of other categories of licensed nurse practitioners for the purpose of describing the appropriate relationship with a licensed physician – whether they practice under medical direction and supervision or with collaboration and consultation. Senate Bill 488 (Chapter 750) defined the relationship for licensed nurse practitioners as practice “under the supervision of a duly licensed physician,” whereas a certified nurse midwife renders care “in collaboration and consultation with a duly licensed physician.”

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

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- 1) To the extent, the change from medical direction and supervision to collaboration and consultation may facilitate the practice of certified nurse midwives, there is an advantage in increased access to obstetrical care for women in Virginia. There are no disadvantages to the public in that the statutory and regulatory definition of the relationship between physicians and CNM’s continues to include requirements for a written protocol including provisions for periodic review, guidelines for availability and ongoing communication on patient care, and periodic evaluation of services being provided.
  - 2) There are no advantages or disadvantages to the agency or the Commonwealth.
  - 3) There is no other pertinent matter of interest related to this action.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no additional costs to</p>
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	the agency for implementing inactive licensure.
<b>Projected cost of the regulation on localities</b>	None
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	The individuals that will be affected by this regulation are certified nurse midwives who do not have prescriptive authority and who will be able to practice in collaboration and consultation with a physician. The law and regulation did not change for prescriptive authority, which still requires practice under medical direction and supervision.
<b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are 192 persons licensed as nurse practitioners in the category of certified nurse midwives. Of that number, 144 also have prescriptive authority, so their practices remain under medical direction and supervision.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	There are no projected costs of the regulation.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

There are no alternatives to the adoption of regulations; it is required by the second enactment clause of SB488. In the development of regulatory language to implement the legislation, the Boards adopted rules consistent with and, in some cases, identical to the statutory language. In the development of regulations, the Boards sought to conform language to the amended law and, where necessary, provide further guidance for the regulated entities.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

A Notice of Intended Regulatory Action was published on September 4, 2006 with comment until October 4, 2006. The following comments were received:

Carola Brulat, on behalf of the Virginia Council of Nurse Practitioners (VCNP) wrote in support of the proposed emergency regulations governing the practice of certified nurse midwives (CNMs). “We are pleased the proposed regulations will clarify the relationship between a licensed physician and a certified nurse midwife as one of collaboration and consultation. CNMs

are skilled nurse practitioners who have undergone extensive educational preparation and training in order to meet the rigorous demands of the practice of midwifery. The proposed regulations serve as recognition of their knowledge and expertise and will enable CNMs to provide greater care to more people throughout the Commonwealth.”

Anna Lee, on behalf of the Virginia Chapter of the American College of Nurse Midwives, wrote in support of the proposed emergency regulations governing the practice of certified nurse midwives. In requesting the change in the Code of Virginia, our members deliberately removed the phrase, "e.g., periodic chart review" from § 54.1-2957 B because many CNMs and their (supervising) physicians experienced situations in which physicians expressed concern about their own liability in reviewing charts on patients that they personally had not seen. Keeping a broader statement that is now stated in the Code as "periodic joint evaluation of the services delivered" better describes the manner in which collaborating physicians and CNMs can determine effectiveness of care delivered. We recommend the removal of the phrase "e.g., periodic chart review."

Jessica Jordan, on behalf of the Virginia Chapter of the American College of Nurse-Midwives, wrote in support of the proposed emergency regulations governing the practice of certified nurse-midwives. One phrase of concern was "e.g. periodic chart review" in the definition of collaboration. Physicians do not like reviewing the charts of patients they have not seen. Chart review is generally done for consultation purposes on higher risk clients. It is also one element of joint evaluation of our services, which is already covered in a broader sense in the regulations. Mentioning it specifically leads to burdensome policies for the physicians who work with CNM's.

The Committee of the Joint Boards of Nursing and Medicine met on October 18, 2006 and voted to recommend the proposed amendments to nurse practitioner regulations with the deletion of the reference to “chart reviews”.

**Family impact**

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

There is no impact of the proposed regulatory action on the institution of the family and family stability.

**Detail of changes**

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

Current section number	Current requirement	Proposed change and rationale
10	Sets out definitions for terms	The two terms are deleted in the amended regulation

	<p>used in the regulation, including “collaboration” and “medical direction and supervision,” which are used in section 120 to specify the authorization to practice in relation to a licensed physician.</p>	<p>because they are used selectively and differently depending on the category of nurse practitioner. Therefore, the terms are defined in the sections as they apply.</p>
<p>120</p>	<p>Sets out the authorization to practice in relation to a licensed physician and the standards and qualifications for practice for all licensed nurse practitioners</p>	<p>Section 120 is amended to carve out the practice of certified nurse midwives in distinction from other categories of nurse practitioners. A licensed nurse practitioner is authorized to engage in acts that constitute the practice of medicine under an exemption in § <a href="#">54.1-2901</a> if care is rendered under the supervision of a duly licensed physician. Amendments to that section in Chapter 750 of the 2006 Acts of the Assembly retain that requirement for all nurse practitioners <i>except</i> certified nurse midwives. Therefore, amendments to section 120 are intended to retain current requirements and definitions for all nurse practitioners except nurse midwives.</p>
<p>121</p>	<p>N/A</p>	<p>Section 121 is adopted to specifically address the practice of certified nurse midwives. All applicable requirements found in section 120 are repeated or transferred to section 121. In addition, the practice of a certified nurse midwife is authorized provided care is rendered <i>in collaboration and consultation with a duly licensed physician</i>. For the purposes of defining the term “collaboration and consultation” as it applies in section 121, the Boards have relied on the specific language of the statute. Chapter 750 requires that: <i>The Board of Medicine and the Board of Nursing shall jointly promulgate regulations specifying collaboration and consultation among physicians and certified nurse midwives that shall include the development of, and periodic review and revision of, a written protocol; guidelines for availability and ongoing communications that define consultation among the collaborating parties and the patient; and periodic joint evaluation of the services delivered.</i></p> <p>Finally, the Standards for the Practice of Nurse Midwifery, incorporated by reference as the standard for certified nurse midwives has been revised by the American College of Nurse Midwives in 2003, so the cite taken from section 120 E is amended in section 121D.</p> <p><b>Change from emergency regulation:</b>  <i>In response to public comment, the Boards amended the definition of "Collaboration and consultation" to eliminate the reference to chart review as a method for periodic joint evaluation of services.</i></p>

