Economic Impact Analysis
Virginia Department of Planning and Budget

18 VAC 90-30 – Regulations Governing the Licensure of Nurse Practitioners
18 VAC 90-40 – Regulations Governing Prescriptive Authority for Nurse Practitioners
Department of Health Professions
August 27, 2008

Summary of the Proposed Amendments to Regulation

As a part of the periodic review process, the Joint Boards of Nursing and Medicine (Joint Boards) propose to amend their Regulations Governing Licensure of Nurse Practitioners and Regulations Governing Prescriptive Authority for Nurse Practitioners to make several clarifying and substantive changes. The Joint Boards propose to:

1) clarify and update regulations with current terminology and other DHP board practices,[1]
2) specify the evidence of coursework leading to specialty licensure that must be submitted with an initial application,
3) clarify that a copy of the written protocol agreement between nurse practitioners and the doctors that supervise them must be maintained, [2]
4) modify the definition of supervision to clarify that both the licensed nurse practitioner and the supervising physician are responsible for the patient and for collaboration on the patient's course of treatment,
5) provide a definition of a "nonprofit health care clinic",
6) add rules for prescribing for self and family by nurse practitioners with prescriptive authority,

[1] For example, this includes such changes as allowing hearings to be conducted by agency subordinates, and eliminating extensions "for good cause shown" due to the inherent difficulty of enforcing such language.

[2] This provision is being inserted due to a 2007 audit in which the board found that some nurse practitioners were unaware that they were required to maintain a protocol with a supervising physician.

7) require that one member of the Joint Boards of Nursing and Medicine (one representative from the Board of Nursing) be a nurse practitioner,
8) allow category 1 continuing medical education to be used to meet continuing competency requirements for nurse practitioners,
9) allow submission of continuing education as evidence of competency for reinstatement and
10) allow for "regular" rather than "monthly" chart reviews.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Several of the changes that the Joint Boards propose to make as a part of the periodic review process (specifically, those encompassed by bullet points one through five on the list above) aim to bring greater clarity to these regulations. These changes are either standing Board policy being moved to regulation or other clarifications; for example, the Joint Boards propose to add language that explicitly states that licensees may not practice with a lapsed (or otherwise invalid) license, as required by the Code of Virginia, rather than assuming that this rule is understood and does not need to be in the text of the regulations. These changes ought not represent a change in practice for regulated entities of the Joint Boards and, so, regulated entities will likely not incur any costs on account of these changes. Having these rules more clearly spelled out ought to, however, provide a benefit for individuals who are either affected by these regulations or are interested in knowing the rules under which nurse practitioners must operate.

Current regulations do not have explicit rules that nurse practitioners must follow when prescribing medication for themselves or for family members. Doctors who supervise nurse practitioners, however, do have explicit rules for such prescriptions. Currently, doctors may not prescribe any drugs, other than schedule VI drugs, unless 1) the prescribing occurs in an emergency situation or in isolated settings where there is no other qualified practitioner available to the patient, or 2) it is for a single episode of an acute illness through one prescribed course of medication. Whether prescribing schedule VI drug or prescribing other drugs in exceptional circumstances, doctors must maintain statutorily required patient records. The Joint Boards propose to amend current regulations so that rules identical to those that apply to doctors when

prescribing for themselves or family members are also explicitly laid out for nurse practitioners. Current prescribing practice of nurse practitioners should already be consistent with that of supervising doctors. The Department of Health Professions (DHP) reports that, to the extent that practices between nurse practitioners and doctors now diverge, nurse practitioners may not be prescribing for themselves or family members even to the extent allowed because they erroneously believe that it is against the rules to write such prescriptions at all. To the extent that nurse practitioners are ignorant of current (Board of Medicine) rules for prescribing for self and family, this regulatory change will provide the benefit of clarity.

Current regulations direct the president of the Board of Nursing and the president of the Board of Medicine to each appoint three members to the Joint Boards of Nursing and Medicine which administers regulations for nurse practitioners. Current regulations are silent on the professional licensure of those appointed. During the last legislative session, the General Assembly mandated that at least one member of the Board of Nursing be a nurse practitioner. The Boards propose to amend these regulations to also require that one of the Board of Nursing's representatives to the Joint Boards be a nurse practitioner. This proposed change will not require a change to the current composition of the Joint Boards as two members are already nurse practitioners. There is likely a benefit in having at least one nurse practitioner on the Joint Boards as this individual (these individuals) will likely be better able to speak to how any new rulemaking activity will impact the practice of other nurse practitioners.

Current regulations require nurse practitioners to complete 40 hours of continuing education biennially and have a list of allowable sources for that continuing education. The Joint Boards propose to add American Medical Association (AMA) approved Category 1 continuing medical education to the list of approved continuing education options from which nurse practitioners may choose. No regulated entity is likely to incur any costs on account of this regulatory change. Nurse practitioners will likely benefit from this change as it will allow them a wider array of educational opportunities to choose from. This may also allow licensees to obtain required continuing education at reduced cost if additional continuing education options include some that cost less than those that are currently approved.

Current regulations require nurse practitioners who are seeking license reinstatement to submit, among other things, "evidence of current certification" (acceptable for Virginia

licensure) or licensure or certification from another jurisdiction. The Joint Boards propose to add the option of providing proof of "continuing education hours taken during the period in which the license was lapsed, equal to the number required for licensure renewal during that period, not to exceed 120 hours". This proposed change will benefit nurse practitioners as it will allow greater flexibility in choosing the least costly and/or most convenient path to reinstatement should their licenses lapse.

Current regulations require that supervising physicians conduct monthly, random reviews of patient charts on which nurse practitioners (that they supervise) have entered prescriptions for approved drugs or devices. DHP notes that doctors and nurse practitioners likely engage in "on-going collaboration and consultation on patient care" that is likely as frequent as it needs to be for individual patients (at each visit for patient they see frequently or every couple of months for patients who are on maintenance medication and only see their doctors quarterly). Under those circumstances, requiring monthly records reviews likely add unnecessarily to doctors' workload and record keeping burden. The Joint Boards propose to only require random patient record review on a regular, rather than monthly, basis. This change will benefit doctors and nurse practitioners by allowing them greater freedom to agree on a schedule of random record checks that takes into account their specific patients' needs.

Businesses and Entities Affected

The Department of Health Professions (DHP) reports that the Joint Boards currently license 5,504 nurse practitioners; 3,184 of these licensees also have prescriptive authority.

Localities Particularly Affected

No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment

To the extent that changes to the requirements for reinstatement of licensure encourages more nurse practitioners to hold current Virginia licenses, this regulatory action may slightly increase the number of licensed nurse practitioners in the Commonwealth. Since nurse practitioners can not practice independently, this regulatory action will likely only increase employment in this field if there are currently doctors who want to have nurse practitioners in their practices but do not currently because none are available for hire.

Effects on the Use and Value of Private Property

This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects

Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact

Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs

This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

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 36 (06). 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.