



Fast Track Proposed 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	Licensure by endorsement; clinical experience
Date this document prepared	3/23/09

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The Board has amended regulations for the licensure of registered nurses and licensed practical nurses to allow applicants who graduated from approved nursing education programs that did not have the requisite number of clinical hours to be licensed by endorsement provided the applicant holds a current, unrestricted license in another U. S. jurisdiction and can provide evidence of at least 960 hours of clinical practice.

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 March 17, 2009, the Board of Nursing amended 18VAC90-20-10 et seq., Regulations Governing the Practice of Nursing by a fast-track action.

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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, 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:

- 1. To establish the qualifications for registration, certification or licensure 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 or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 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. ...*

Specific regulatory authority for the powers and duties of the Board of Nursing is found in § 54.1-3005:

§ 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;

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

19. To set guidelines for the collection of data by all approved nursing education programs and to compile this data in an annual report. The data shall include but not be limited to enrollment, graduation rate, attrition rate, and number of qualified applicants who are denied admission; and

20. To develop, in consultation with the Board of Pharmacy, guidelines for the training of employees of child day programs as defined in § 63.2-100 and regulated by the State Board of Social Services or the Child Day Care Council in the administration of prescription drugs as defined in the Drug Control Act (§ 54.1-3400 et seq.). Such training programs shall be taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist.

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 the regulation 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 purpose of the proposed regulatory action is to provide an exception to the requirement for 500 clinical hours in a registered nurse educational program and 400 hours in a licensed practical nurse educational program for nurses who are licensed in another state or D.C. and have been engaged in clinical practice with an active, unencumbered license for at least 960 hours (or approximately six months). Currently, an applicant for licensure by endorsement who graduated from a nursing program without the required number of clinical hours would not qualify for licensure in Virginia. The result could be a loss in the number of nurses licensed by endorsement, which would have a negative impact on the availability of nurses in critical care, long-term care, and other health care settings and could exacerbate the workforce shortage. By requiring a minimum number of clinical hours of practice, there is some assurance that the nurse has adequate clinical skills to provide safe care to patients in Virginia.

The Board has issued a guidance document that allows licensure until December 31, 2009 for applicants who do not have sufficient supervised clinical hours but needs to have an amendment to regulations in effect by that date to be able to license such applicants by endorsement.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The issue of licensure for applicants who do not have sufficient clinical hours in an educational program has been continually discussed since the promulgation of regulations establishing a clinical hourly requirement (which became effective April 2, 2008). The Board extended implementation or enforcement of that provision for applicants for licensure until December 31, 2009. The delay will allow students in programs without a sufficient number of clinical hours to complete their educational programs or to transfer to programs that meet the board's requirements.

However, the Board needs to resolve the dilemma of insufficient clinical hours for other nurses who are now licensed and practicing in another state and may want to come to Virginia after the December 31st deadline. The exception proposed for section 200 will resolve the issue for anyone who has demonstrated a minimum of clinical skills through at least 960 hours of practice. Since the action is less restrictive and will allow more nurses to qualify for licensure, it is not expected to be controversial.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

Section 200, Licensure by endorsement is amended to allow the licensure of registered nurses and licensed practical nurses who graduated from approved nursing education programs that did not have the requisite number of clinical hours to be licensed in Virginia provided they hold a current, unrestricted license in another U. S. jurisdiction and can provide evidence of at least 960 hours of clinical practice.

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.

- 1) The primary advantage to the public is the continued availability of nurses being licensed by endorsement with the assurance that they have safely engaged in clinical practice in another U. S. jurisdiction. There are no disadvantages.
- 2) The primary advantage to the agency is the partial resolution by regulatory action of an issue that has been troublesome for one distance learning program, whose students may qualify for licensure by endorsement.
- 3) There are no other pertinent matters of interest.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected by the proposed regulation.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods for accomplishing the intent of the proposed regulation.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>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</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 fees it charges to practitioners; 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 on-going costs to the agency.</p>
<p>Projected cost of the regulation on localities</p>	<p>There are no costs to localities</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The individuals affected would be applicants for licensure by endorsement as licensed practical nurses and registered nurses from schools that did not have sufficient clinical hours in their educational program.</p>
<p>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. 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.</p>	<p>The Board licensed 5,200 RN's and 784 LPN's by endorsement during the last biennium. It is unknown how many of those nurses did not have sufficient number of clinical hours in their educational program and would need to apply under the proposed exception.</p>
<p>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.</p>	<p>There would be no additional cost.</p>

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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

As a result of changes to the Regulations Governing the Practice of Nursing (18 VAC 90-20-10 et seq.) effective April 2, 2008, the Board of Nursing voted on May 20, 2008 to publish a guidance document (90-20) saying that any student enrolled in a distance learning education program that does not meet the clinical requirements on or before April 2, 2008 must complete their program by December 31, 2009 in order to be eligible to take the NCLEX-PN or NCLEX-RN and be licensed in Virginia. After December 31, 2009, graduates of the above programs will not be able to be licensed in Virginia by examination or by endorsement.

On January 6, 2009, members of the Education Committee met to discuss the overall issue of licensing graduates from programs without sufficient clinical hours. The Committee reviewed the guidance document, excerpts from law and regulation regarding licensure by endorsement, and information from other state regarding licensure of applicants from programs without supervised clinical experience. There is a wide variety of requirements in other states; some require a supervised preceptorship, some require hours of clinical experience (2,000 hours in CO, 1,000 hours in KS, 960 hours in AZ). North Carolina currently accepts graduates by examination and endorsement without specified clinical hours but has learned that two of their major employers will not hire graduates from programs that do not have clinical experiences, so they are reviewing the issue.

In January, the Education Committee recommended and the Board voted to initiate rulemaking with publication of a Notice of Intended Regulatory Action to amend regulations in order to create a pathway for licensure by endorsement for persons who do not meet the educational requirements for licensure (including hours of supervised clinical experience) but who have demonstrated clinical competency by practice in another U. S. jurisdiction. At its March meeting, the Board voted to proceed with a fast-track action in the hope that the matter could be resolved before the end of 2009.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the family.

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	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
200	n/a	Sets out requirements for licensure by endorsement for registered nurses and licensed practical nurses	Provides that applicants who have graduated from approved nursing education programs that did not require a sufficient number of clinical hours, as required in section 120, may qualify for licensure if they can provide evidence of at least 960 hours of clinical practice with

			<p>an active, unencumbered license in another U. S. jurisdiction.</p> <p><i>The amendment will allow licensure for nurses who have engaged in active clinical practice in another state or D.C. to qualify for licensure in Virginia, even if their educational program did not meet Virginia’s requirements for clinical hours. A nurse can be licensed by endorsement if he or she satisfies the same requirements for licensure as those seeking initial licensure; the amendment allows an exception for those who did not have sufficient hours of clinical practice during their nursing education program and allows at least 960 hours (approximately 6 months) of clinical practice to substitute for the hours of clinical education.</i></p>
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