



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Nursing, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC90-20-10 et seq.
<b>Regulation title</b>	Regulations Governing the Practice of Nursing
<b>Action title</b>	Requirements for approval of nursing education programs
<b>Date this document prepared</b>	6/28/11

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

The provisions for approval of nursing education programs have been reorganized to clarify in Article 1 all criteria that must be met to obtain initial approval. To attain full approval, a program is required meet the criteria of Article 1 and comply with provisions set out in Article 2. To continue to have full approval, a program is required to continue compliance with Articles 1 and 2 and to meet the criteria of Article 3. To address deficiencies and problems that the Board has encountered with educational programs in recent years, it has made more explicit rules and has incorporated current guidance on observational experiences and simulation.

Additionally, the process and procedures for granting initial or full approval, for placing a program on conditional approval, and for denial or withdrawal of approval are set out in specific sections, so it is not necessary to piece together the requirements throughout the regulation.

### Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

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LPN = licensed practical nurse

RN = registered nurse

NCLEX = National Council Licensure Examination

## 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 (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:*

- 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 (§ 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. ...*

In addition, there is statutory authority for the board to approve nursing education programs:

§ 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; ...*
- 9. To approve programs that entitle professional nurses to be registered as clinical nurse specialists and to prescribe minimum standards for such programs;...*

### 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, the environmental benefits, and the problems the proposal is intended to solve.*

The Board of Nursing has identified several problems with the quality and effectiveness of some nursing education programs and applications for approval of such programs. The intent of the regulatory action is to address problems and inadequacies that exist in some programs by requiring more accountability in reporting on clinical sites for training, in the enrollment and progression of students through the program, in oversight of programs through required site visits and surveys, and in the quality of the curriculum. By specifying certain outcome measures, the board will be better assured that programs will graduate a minimally competent entry-level nurse who practices with skill and integrity.

There is a problem in Virginia with the quality of some nursing education programs. Virginia ranks below the national average in nursing students passing the National Council Licensure Examination (NCLEX), especially graduates of the practical nursing programs. The national passage rate for practical nursing programs in 2010 was 87.06%; in Virginia the average is **77.55%**. Neighboring states far exceed Virginia in the passage of NCLEX for practical nurses: North Carolina was 95.50%; Maryland was 91.58%; Kentucky was 93.03%; Tennessee was 94.14% and West Virginia was 88.82%. The low NCLEX pass rates negatively impacts any attempts to increase the nursing workforce and leaves students with loans to pay back and no ability to practice.

In the 2010 report of NCLEX passage (from 1/1/10 to 12/31/10), **24 of the 77** practical nursing programs in Virginia fell below the 80% benchmark set by the board in current regulations; another 14 fell below the national average for passage of the licensing examination. Of the 24 programs that fell below 80% passage, 10 are proprietary (for-profit) schools. Applications for new programs are primarily from for-profit entities from areas of Virginia near bordering states.

As a result, a majority of these students reside outside of Virginia. Maryland does not approve proprietary nursing education programs; North Carolina has approved one proprietary program.

These indicators and the increase in the number of proceedings for non-compliance with Board of Nursing regulations by nursing education programs are evidence that the Board of Nursing needs to revise its regulations to add specificity and rigor to its requirements and approval process. By assuring more accountability in the academic and clinical programs, the board intends to address the issues of inadequacy in clinical sites and experiences, problems with the majority of clinical sites located outside Virginia, lack of integrity in the information provided on an application, transfer of unsuccessful students from one program to another, high failure rates in examinations, and exploitation of students for profit. By addressing these issues and strengthening regulations for program approval, the board intends to assist nursing education programs in graduating nurses who will be successful on the NCLEX and able to practice with clinical skills and nursing knowledge adequate to protect the health and safety of patients in Virginia.

### Substance

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

In order to set more specific standards to address some of the issues and problems the board has encountered in recent years, the following amendments are proposed:

- Prohibit acceptance of transfer students until a program has attained full approval to prevent a program from building a new class by accepting failing or problem students from other programs.
- Require more specificity about the clinical training sites in the application to ensure oversight and adequacy, including a percentage of the clinical experience that must be completed in a facility licensed in Virginia and more specificity about the number of students and amount of time the facility will allow for training.
- Require disclosure of actions or adverse decisions against a program in another jurisdiction. Add adverse action in another jurisdiction as grounds for denial of approval.
- Add a 12-month limitation of the length of the application process to ensure currency in the information initially provided with an expectation that the program admit students within that time frame.
- Require an analysis which describes the geographic area and population the program intends to serve, the number of nursing programs currently in the area, the number of clinical sites available for training, and the potential impact on existing schools of nursing in order to demonstrate a need for a new nursing program.
- Clarify that advertisement of a program or enrollment of students is not acceptable until full approval is given; such advertisement could be grounds for denial.

- Clarify that the Board has the authority to monitor and take action at any stage in the approval process for a program that is not showing progress toward meeting the requirements for approval.
- Specify that the approval by an “appropriate state agency” is approval from the Virginia Department of Education or from the State Council of Higher Education in Virginia.
- Rather than submission of the philosophy and objectives, add specific requirements and detail about the development of a written, systematic plan of evaluation that will be used by the program for program review and be available to the board to review program progress.
- Add provisions (definition and ratio) on simulation for clinical training currently contained in a guidance document.
- Specify that the information about the nursing education program must be published and provided to applicants and students and must include a grievance policy, accreditation status, and a record of complaints and their resolution.
- Specify that the curriculum content is applicable to all programs, regardless of the method of delivery (on-line or in person). Include definition and language about “direct client care” from the guidance document.
- Add prevention and response to disaster planning and intimate partner violence to the curriculum.
- Clarify that the board must be notified about a change in location for an educational program or about the addition of another location, and make arrangements for a site visit to be conducted by Board staff and approval granted by the Board before classes can be conducted at the new location. The Board must also be notified if there are other changes that may significantly impact the program’s approval status.
- Examine frequency of survey visits for approved programs to ensure that certain requirements of Virginia regulations are examined consistently for all programs.
- Specify that the requirements for closing of a nursing education program are applicable at any stage of the process and that failure to comply with such requirements may be grounds for withdrawal of approval.

## 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 indicate.*

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- 1) The most significant benefit is to the patients/clients in Virginia who are dependent on quality nursing care. Better oversight and quality control in nursing education programs, especially in the clinical experiences, may result in better trained graduates who have sufficient knowledge and skills to pass the national licensing exam and then to be

employed in the provision of safe, effective nursing care. There are definitely advantages to students and potential students, who will not experience poor quality, inadequate education that does not prepare them for licensure or practice. Many of these students are saddled with significant debt and no means by which to be employed and practice in the profession.

There will also be advantages to entities or persons who want to initiate a program or to improve the quality of an existing program. Clearer standards and processes will be a better road map to board approval. Programs will be required to engage in a systematic evaluation that will guide them to address their weaknesses, and they will have clearer standards by which to measure their progress.

There are no disadvantages to the public or to programs that intend to adequately prepare nurses. The Board works diligently with such programs on addressing any deficiencies and on plans of correction.

2. The primary advantage to the Board (the agency) and the Commonwealth is that clearer, more explicit requirements may result in fewer problematic programs that necessitate the expenditure of a great amount of time and resources to address. Persons or entities who are considering opening a nursing education program will have a clearer set of regulations to follow and will be more knowledgeable about Board expectations before they engage in the process of seeking approval. There are no disadvantages.

3. There are no other pertinent issues.

**Requirements more restrictive than federal**

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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 applicable 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.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail to Elaine Yeatts at Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements create the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b></p>	<p>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 or entities for necessary functions of regulation. There would be a one-time expense of less than \$1,000 for promulgation of the amended rule. All notifications will be done electronically to minimize the cost. On-going expenditures for initial approval, site visits or survey visits would be offset by current fees established for such activities.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>None</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>Nursing education programs and individuals or entities that may apply for approval to begin such a program.</p>
<p><b>Agency’s best estimate of the number of such</b></p>	<p>83 RN nursing education programs (3 degree types)</p>

<p><b>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.</p>	<p>77 LPN nursing education programs                  Approximately 15 applicants for new programs per year                  It is difficult to categorize nursing programs as small businesses because they are housed within a larger institution that may or may not have fewer than 500 full-time employees. For example, there are 3 RN programs operated by ECPI; the agency does not know the national employment or annual sales figures of the business. Some proprietary programs would be small businesses, operating only in Virginia, while others are national in scope.</p>
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>The Board has not identified new costs associated with revised regulations. Generally speaking, there is more specificity and greater clarity of what the Board currently requires. If a program is unable to attain full approval, has been given conditional approval or has a problem with its passage rate, it may choose to hire an educational consultant to review its deficiencies and provide direction. However, that is not required nor is it essential because board staff that reviews and visits programs sets out those specific deficiencies and works with program directors on a plan of correction.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>With more specific standards and better oversight of nursing education programs, there is significant benefit to students who will not incur debt and waste valuable time enrolling in a program that does not have adequate resources, teaching or clinical experiences to prepare them for licensure and practice. If more explicit regulations are in place, there should be a benefit to students who will have a better opportunity to pass the examination. Additionally, the Board may incur less cost in dealing with problematic programs.</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.*

The viable alternatives to proposed regulatory action are already in place and have been insufficient to address problems of quality and competency. The board has instituted a voluntary orientation program for persons/entities interested in starting a nursing education program to educate them from the outset about board requirements in regulation, pitfalls of inadequate programs, and steps to take to achieve and maintain board approval. Most programs are started



with the purpose of serving a community and addressing the need for nurses; a few as profit-making enterprises in which the education of nursing students is not the main focus of the corporate entity. Since neighboring states do not approve proprietary programs, several new programs are coming into the state, particularly in Northern Virginia, with the goal of recruiting students who will practice in D.C. or Maryland.

The board could also continue to hold proceedings to address deficiencies, place programs on conditions or initiate action to deny approval. Such proceedings are costly for the board, its members, and the respondents.

**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.*

The Board does not require educational programs to be accredited by other entities although many choose to do so. The standards for accrediting agencies do not address all the curriculum and quality components of the Board of Nursing process.

The Board has statutory authority to approve and regulate nursing education programs in Virginia. There are no alternatives to setting enforceable standards for such programs other than through regulation.

**Public comment**

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

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
53 commenters on Townhall	Expressed support for Excelsior College’s on-line nursing education program and objected to the current requirement for an approved nursing program of 500 hours of clinical experience in an RN program.	The commenters are referencing a requirement for clinical hours that became effective April 2, 2008. It has not been amended in this action. The issue of clinical RN experience has been considered by the Board and was addressed with the adoption of amendments to regulations for licensure by endorsement, effective December 31, 2009. Further, legislation passed by the 2011 General Assembly, authorizing the Board to provide provisional licenses for the purpose of obtaining clinical RN experience, is

		intended to address the issues of the commenters. Since the Board believes that clinical, hands-on experience in RN practice is essential to safe practice, no amendment to regulation was considered.
Lauren Miller	As Director of an LPN program in Virginia, the proposed changes would not impact program very much because they have already implemented changes in curriculum, admissions and preceptorships that have resulted in improved passage rates from 62% in 2008 to 100% in 2011. Proposed changes present a unique opportunity for Virginia programs to elevate the degree of competency achieved by graduates.	The Board concurs with the comment.
Sharon Farrenkopf ECPI	Questions what control of the institution (public or private) has to do with the quality of nursing instruction. NC and MD graduate far fewer nurses than VA, so is the intent to reduce the number of nursing graduates and LPN's in Virginia.	The comparisons with other states (that do not have proprietary LPN program) is simply illustrative of the need to tighten the criteria for all programs to produce qualified nurses. The Board has not proposed to eliminate private LPN nursing programs but to ensure that those programs provide students with a quality education and adequate clinical training to prepare for passage of the licensure examination and safe practice.
Andrea Lipsmeyer ECPI	Seeks clarification of some of the proposed actions.	The substance portion of the NOIRA background document only identified issues and sections that would be considered for amendments. The proposed regulations should provide the specificity and clarification the commenter is seeking.

**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 institution of the family and family stability.

**Detail of changes**

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

One of the main purposes of this regulatory action was reorganization of the Chapter to delineate the essential elements of a program that must be in place in order to attain board approval and then those criteria that must be met to maintain an approved status. Additionally, regulations are reorganized to clarify the process that is followed to place a program on probation or to deny or withdraw approval. Therefore, much of the underlined language is not new or amended regulation but placement of current regulation in a new format and order.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
10	n/a	Establishes definitions for words and terms used in regulation	Current definitions are amended for more consistency with the use of the word or term or for clarity to avoid misunderstanding of board requirements. For example, the definition of a cooperating agency is amended to mean an entity that enters into a written agreement to provide “clinical or observational” experiences, rather than the less descriptive term “learning” experiences. New terms used in amended regulations are included. For example, the terms “site visit” and “survey visit” are currently used (and a fee charged for each), but are not clearly defined.
35	n/a	Establishes requirements for identification of a person providing direct client care.	Throughout the Chapter, the terms “client” and “patient” have been used. For consistency, the Board chose to use “client” in the amended regulations. The requirement for identification to be worn is extended to students providing direct client care to ensure that clients know that the person providing care is not a licensed nurse.
40	n/a	Establishes the requirements for submission of an application for initial approval of a nursing education program.	Changes in the requirements for an application for initial approval include: 1. Provision of documentation of attendance by the program director at a board orientation on establishment of a nursing education program prior to submission of an application and fee. <i>Attendance at an orientation is now <u>strongly encouraged</u> because it is beneficial to all parties to be fully informed about requirements for an approved program and the process for obtaining approval. Such a session conserves board resources by setting clear expectations and answering questions at the outset that might be troublesome through the process. It also saves the applicants time and money to have an orientation session before submission of an application and approval fee.</i> 2. Clarifies that the application is effective for 12

		<p>months (currently states that the application must be submitted 12 months in advance of expected opening date). If the program does not attain program approval within 12 months, a new application must be submitted.</p> <p><i>If an applicant has not met the requirements for approval within a 12-month period, much of the information provided has become out-dated and a new application is necessary for board review. By having clear expectations and requirements set at the orientation session, an applicant should have information ready prior to the initial submission.</i></p> <p>3. Sets out the required information on the <u>organization and operation</u> of a nursing education program, including:</p> <p>a. A copy of a business license and zoning permit to operate a school in a Virginia location, a certificate of operation from the State Corporation Commission, evidence of approval from the Virginia Department of Education, and documentation of accreditation, if applicable;</p> <p><i>Evidence of approval to operate in a physical location and evidence of approval by DOE is necessary to verify the legitimacy of the program.</i></p> <p>b. The organizational structure of the institution and its relationship to the nursing education program therein;</p> <p><i>Currently required in section 40, but reorganized under “organization and operation of a nursing education program”</i></p> <p>c. The type of nursing program, as defined in 18VAC90-20-10;</p> <p><i>Currently required in Section 40.</i></p> <p>d. 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 including: (1) the planned number of students in the first class and in all subsequent classes; and (2) the planned frequency of admissions. Any increase in admissions which are not stated in the enrollment plan must be approved by the board. Also, transfer students are not authorized until full approval has been granted to the nursing education program;</p> <p><i>An enrollment plan is currently required in Section 40, but the amended requirement is more specific about the information to be included in the plan. A prohibition on transfer students prior to full approval is current regulation.</i></p> <p>e. A tentative time schedule for planning and initiating the program through graduation of the first class and the program’s receipt of results of the NCLEX examination.</p> <p><i>Currently required in Section 40 but modified for</i></p>
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		<p><i>more specificity about the period of time covered.</i></p> <p>4. Sets out evidence required to document <u>adequate resources</u> for the projected number of students and the ability to provide a program that can meet the requirements of Part II of this chapter (for full approval) to include the following information:</p> <p>a. The results of a community assessment or market analysis which demonstrates the need for the nursing education program in the geographic area for the proposed school. The assessment or analysis shall include employment opportunities of nurses in the community, the number of clinical facilities/employers available for the size of the community to support the number of graduates, and the number and types of other nursing education programs in the area;</p> <p><i>Adequacy of resources and the community need for a nursing education program are key elements of predicting the success and compliance of such a program. Establishment of a program for which students cannot expect to have adequate clinical facilities or employment would be a disservice and wasteful of their time and money.</i></p> <p><u>b. A projection of the availability</u> of qualified faculty sufficient to provide classroom instruction and clinical supervision for the number of students specified by the program;</p> <p><i>Since faculty have not yet been hired, it is unrealistic to report on availability, but a projection of availability is possible and important in the planning of a new program.</i></p> <p>c. Budgeted faculty positions sufficient in number to provide classroom instruction and clinical supervision; <i>Current language.</i></p> <p>d. Availability of clinical training facilities for the program as evidenced by copies of contracts or letters of agreement specifying the responsibilities of the respective parties and indicating sufficient availability of clinical experiences for the number of students in the program, <u>the number of students and clinical hours permitted at each clinical site and on each nursing unit</u>;</p> <p><i>The Board currently requires information about the availability of clinical training facilities but it is important to know how many students and how many hours are the facilities willing to accommodate as a predictor of how many students a program can appropriately educate.</i></p> <p>e. Documentation that at least 80% of all clinical experiences are to be conducted in Virginia, unless an exception is granted by the board. There shall be documentation of written approval for any clinical experience conducted outside of Virginia by the</p>
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			<p>agency that has authority to approve clinical placement of students in that state. The use of any clinical site in Virginia located 50 miles or more from the school shall require board approval;</p> <p><i>Use of clinical sites outside of Virginia may be necessary in border communities, but it is generally discouraged because the Virginia Board has not authorization over the licensees at that site. Likewise, it is very burdensome to students to plan for the use of clinical sites located 50 or more miles from the school, so such an arrangement would have to be approved as an exception.</i></p> <p>f. <del>Availability</del> <u>A diagram or blueprint showing the availability</u> of academic facilities for the program, including classrooms, <u>skills</u> laboratory, and <del>library</del> <u>learning resource center.</u></p> <p><i>“Availability” of academic facilities is not specific enough for applicants to know what information is necessary, so the requirement is modified. The word “library” is deleted and “learning resource center” is used to update terminology in some educational institutions.</i></p> <p>This information shall include the number of restrooms for the student/faculty population, classroom and skills laboratory space large enough to accommodate the number of the student body, and sufficient faculty office space that meets FERPA requirements;</p> <p><i>Additional information on facilities is included because the Board has encountered programs in which the facilities were woefully inadequate to meet the legal, physical and educational space needs for the student population.</i></p> <p>g. Evidence of financial resources for the planning, implementation and continuation of the program with <u>line-item</u> budget projections for <u>the first</u> three years <u>of operations beginning with the admission of students.</u></p> <p><i>More specificity added to evidence of financial resources to address problems staff has seen with applications.</i></p> <p>5. Respond to the board's request for additional information <u>within a time frame established by the board.</u></p> <p><i>Response to request must be received within a specified time frame in order to keep the process moving along and completed within the 12 months.</i></p>
50	n/a	Sets out the conditions and process for provisional approval.	Repealed; the process for initial approval is reorganized towards the end of Article 1 in Section 130.
60	n/a	Sets out the conditions and process for full approval.	Repealed; the process for initial approval is reorganized and placed in Article 2 in Section 133.
70	n/a	Sets out the requirements organization and	Changes to Section 70 include:

		administration of a program	<p>Specification that the governing or parent institution offering <u>Virginia</u> nursing education programs must either be approved by <u>the Virginia Department of Education</u> or accredited by an accrediting agency recognized by the United States Department of Education.</p> <p>Clarification that the director must hold a current license or multistate licensure privilege <u>without any disciplinary action that currently restricts practice</u> (<i>more specific than “unencumbered” which is the current term</i>);</p> <p><i>Further responsibilities</i> for the program director of the nursing education program to include:</p> <p>Assurance that faculty are qualified by education and experience to teach in the program and/or to supervise the clinical practice of students in the program; and</p> <p>Maintenance of a current faculty roster, a current clinical agency form, and current clinical contracts, available for board review and subject to an audit; and</p> <p>A person is only allowed to be the program director at one location or campus for the program.</p> <p><i>Amendments are necessary to ensure that the director has actual, programmatic authority rather than serving in a token position for an owner or entity.</i></p> <p>An amendment to the use of an advisory committee (newly defined in Section 10) to eliminate the optional language - “if one exists.”</p> <p>An amendment to the evidence of financial support and resources to specify what “evidence” is necessary, i.e., a copy of the current annual budget or a signed statement from administration specifically detailing its financial support and resources.</p>
80	n/a	Sets requirements for written statements of philosophy and objectives	<p>Amendments add that the program director should be involved in formulation and specify how those written statements become the basis for planning, implementing and evaluating the total program <u>through the implementation of a systematic plan of evaluation that is documented in faculty and/or committee meeting minutes.</u> <i>Without a systematic plan of evaluation that is documented in minutes, it is difficult to determine whether the objectives are being used to plan, implement and evaluate. The amendment provides programs with a specific standard to follow.</i></p>
90	n/a	Sets qualifications for all faculty in different types of nursing education programs	<p>Subsection A is amended to clarify that “unencumbered” means “without any disciplinary action that currently restricts practice.” There is a new requirement for faculty to have had at least two years of direct client care experience as a registered nurse prior to employment by the program. <i>Everyone in the profession acknowledges that there is so much to be learned in post-licensure clinical practice that cannot be taught in an educational program. Therefore, it is</i></p>

		<p><i>essential that those who teach in such programs have some “real-life” direct client care experience in practice as an RN.</i></p> <p>Members of the faculty who supervise the clinical experiences of students will be required to provide evidence of education and/or experience in the specialty area and, prior to supervision, will be required to complete a clinical orientation to the unit in which supervision is being provided.</p> <p><i>The availability of clinical sites has been problematic in recent years; health care facilities must be assured that students are going to be properly supervised by a faculty member who has sufficient knowledge of the practice on a unit to ensure safety and quality in student practice. This additional requirement for supervising faculty offers some measure of assurance.</i></p> <p>Professional development of faculty is currently required; amendments will specify that documentation of such continuing development/learning be maintained in employee files and available to the board for review.</p> <p><i>Without documentation, a surveyor to a program would have no ability to check for compliance with the current rule.</i></p> <p>For the various types of degree programs in nursing, the following changes are proposed:</p> <ul style="list-style-type: none"> <li>• BS (or a pre-licensure graduate degree program) – the program director must have a doctorate <u>with a graduate degree (Masters or PhD) in nursing</u>; and the majority of the faculty must have a graduate degree in nursing.</li> <li>• Associate or diploma (RN) programs – all members of the faculty must have a BS or a graduate degree with a major in nursing (current regulations state “preferably” with a major in nursing)</li> <li>• Practical nursing programs – the program director must have a BS with a major in nursing (current regulations state “preferably” with a major in nursing)</li> </ul> <p><i>The Board has determined that better prepared faculty will result in better preparation of students and better results in the clinical experiences and on the licensure examination. The majority of faculty and program directors will meet these requirements, which will apply to new hires after the effective date of the regulations. The Board will continue to allow programs to request exceptions if there are extenuating circumstances or unavailability of qualified faculty in a particular area of the state.</i></p> <p>The provision in Section 90 for exceptions to faculty requirements has been moved to Article 2 because exceptions are only granted after full approval of a program.</p> <p>In subsection C, the functions of the faculty are not</p>
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			substantially amended but are modified to provide further specificity. For example, faculty are required to participate in academic advising and counseling; an amendment will specify in accordance with FERPA requirements. <i>Such specificity is necessary because Board staff has found situations in which students are not afforded the privacy required by federal law. Additionally, unless compliance with evaluation of curriculum and teaching effectiveness are not documented, there is no evidence that such evaluations of program review have actually occurred.</i>
95	n/a	Sets requirements for preceptorships	Section 95 is repealed because its provisions fit more logically after the provisions for the curriculum and are not found in Section 121 and 122.
96	n/a	Sets requirements for the clinical practice of students	Section 96 is repealed because its provisions fit more logically after the provisions for the curriculum and are not found in Section 121 and 122.
100	n/a	Establishes requirements for admission, promotion and graduation of students	<p>The title of Section 100 is amended to more accurately describe its content. Subsection A now references the educational prerequisites for admission to an RN program, and subsection B references the educational requirements for an LPN program.</p> <p>Subsection D will require a criminal background check for admission to a program. <i>There are no barrier crimes for admission to a program but there are for employment in certain health care facilities, particularly long-term care. Some facilities will not allow a preceptorship for clinical practice for someone with a criminal background. Most facilities in which clinical experiences are conducted require a criminal background check prior to allowing students to practice. Programs may find that a student who has been admitted and has finished much of his coursework is unable to complete the program because he is barred from clinical practice. There may also be barriers to licensure and to certain types of employment. Therefore, it is important for a potential student to be informed by a program of the barriers he or she will face before admission.</i></p> <p>Subsection E reiterates the provision that transfer students may not be accepted before a program has received full approval by the Board.</p>
110	n/a	Sets out requirements for school records and publications	<p>Provisions on maintenance of records in Section 110 belong in Article 2 which contains the requirements for full approval of a nursing education program and may now be found in Section 136.</p> <p>Section 110 in proposed regulations now states the requirements for resources, facilities, publications and services.</p> <p>Subsection A includes requirements for resources and facilities currently found in Section 130. Added to current provisions is the inclusion of requirements for private areas for conferences and specific requirements for the physical facilities. <i>Specificity</i></p>

			<p><i>about the facilities is necessary because a few programs have been set up in buildings and places that do not meet federal and state requirements and are not conducive to learning in an educational environment.</i></p> <p>Subsection B is restated from Section 130.                  Subsection C is restated from Section 110 C with two additions and one deletion. The student grievance policy and information about implication of criminal convictions would be required information in a publication about the program for potential students. The annual passage rate on NCLEX for the past five years is deleted, because Article 1 contains the requirements for initial approval of a program, and those figures would not yet be available. The passage rate in publications would be found in Article 2 in Section 136.</p>
120	n/a	Establishes the requirements for the curriculum of an approved program	<p>Subsection A clarifies that both classroom and on-line curricula are included.                  Subsection B is applicable to both RN and LPN programs; an amendment makes that more explicit. Amendments relating to the content of the curriculum include:</p> <ul style="list-style-type: none"> <li>• Adding “evidence-based” before didactic to describe the content of a curriculum</li> <li>• Specifying the variety of clinical settings and life cycle that must be covered by the content and supervised clinical experiences in a program</li> <li>• Adding reporting and documentation of collected data and care to the subject area of nursing assessment</li> <li>• Adding client privacy and confidentiality to the subject area of ethics</li> <li>• Adding to the subject of prevention of abuse, neglect &amp; abandonment – through the life cycle – and including instruction on recognition, intervention and reporting</li> <li>• Clarifying professional responsibility to include the role of the professional and practical nurse</li> <li>• Adding content on professional boundaries including use of social media and electronic technology</li> <li>• Adding content in pharmacology on dosage calculation &amp; medication administration</li> <li>• Under concepts of client-centered care, adding 1) response to disasters and partner/family violence; 2) use of critical thinking and judgment; and 3) care of clients with multiple, chronic conditions</li> <li>• Under development of management and supervisory skills, adding a) use of technology in medication administration and documentation of client care; b) participation</li> </ul>

			<p>in quality improvement processes and systems to measure client outcomes and identify hazards and errors; and c) supervision of certified nurse aides, registered medication aides and unlicensed assistive personnel.</p> <p>Subsection C enumerates curriculum that must be included in an RN program; amendments add content and supervised experiences in unit management, delegation of nursing tasks, and supervision of LPN's. Subsection D is deleted because content is included in subsection B.</p> <p>Subsection E is deleted because requirement is included in Section 121.</p>
n/a	121	Sets out the requirements for a program's curriculum in direct client care	<p>Subsection A sets the hours in direct client care for the two types of licensure, consistent with current regulation (subsection E of section 120).</p> <p>Subsection B allows for LPN's transitioning into an RN program to receive 150 hours credit towards the 500-hour requirement for RN clinical experience. (Currently found in Guidance Document 90-28)</p> <p>Subsection C clarifies the use of observational experiences.</p> <p>Subsection D incorporates current guidance (Guidance Document 90-24) on simulation hours.</p> <p><i>In proposed regulations, the Board has set out all requirements/guidance for direct client care or clinical experiences in nursing education programs in one section for ease of compliance. There is no new policy or interpretation of regulation in the proposed language.</i></p>
n/a	122	Sets out the requirements for clinical practice of students	<p>Subsection A is identical to current regulation found in subsection A of Section 96.</p> <p>Subsection B provides that faculty must ensure students only perform skills or services for which they have received instruction and found to be proficient; a skills checklist for each student is required.</p> <p><i>Since students are providing direct client care, instruction and proficiency in services are essential to protect clients in health care facilities. Without some documentation of skills, preceptors in a clinical setting would not be assured that a student has some basic knowledge in how to perform a task assigned.</i></p> <p>Subsection C is identical to current regulation found in subsection B of Section 96.</p> <p>Subsection D is identical to current regulation found in Section 95.</p> <p>Subsection E provides that the preceptors (as well as faculty) have evidence of competence to supervise clinical experiences in a specialty area and that the preceptor be licensed at or above the level for which the student is preparing. <i>As with faculty teaching and supervising students, it is necessary for client safety and quality of care that the preceptor (who may be in charge of the student on the unit) has the competency</i></p>

			<p><i>to supervise students in services being provided. To that end, it is not appropriate for an LPN to supervise the clinical experience of an RN student.</i></p> <p>Subsection F is a restatement of subsection B in Section 90. <i>While the ratios and requirements are already in the section on faculty, the Board has included similar language in the section on clinical practice so the reader can find the information in either section.</i></p> <p>Subsection G is a restatement of current regulation found in Section 95 with the addition of “the dates of each experience” in the requirement for evaluation, and the addition of “a skills check list detailing” in the requirement for performance of skills.</p>
130	n/a	Sets out the resources, facilities and services an approved program must provide	<p>The title and content of the section is revised to set out the process for initial approval of a nursing education program.</p> <p>The process for approval of nursing education programs has not been clearly set out in regulation, so board counsel and legal staff of the board worked to develop language that would delineate the requirements and procedures in chronological order. In Section 130, the conditions that must be met are enumerated so it is not required that an applicant search through the regulations to determine what is required. In subsection B, the program is given authority to advertise the program and admit students once initial approval is granted. Quarterly reports are required for progress towards full program approval. <i>Language currently found in Section 50 is moved into Section 130.</i></p>
n/a	131	Establishes the process for denying or withdrawing initial program approval	<p>In proposed regulations, the conditions for approval, the steps to be taken by the program and/or the board, and the process of an informal conference or formal hearing are set out in an orderly fashion in regulation. Subsection A delineates what steps are taken if initial approval is denied, including following the process set out in the Administrative Process Act (APA). Subsection B delineates causes for withdrawal of initial program approval and again, sets out the steps to be taken in accordance with the APA.</p>
n/a	132	Establishes the causes for denial or withdrawal of approval	<p>The Board has set out causes for denial or withdrawal affirmatively based on requirements for approved programs found in Articles 1 and 2. Currently, causes for denial or withdrawal are not stated specifically in regulation. In the process of creating and adopting a board order, the explicit causes for denial or withdrawal can be more fairly and clearly cited. While most of the causes are currently applicable, there are a few that are added based on integrity issues the board has experienced with a few programs - for example, having the program director or owner/operator of a program convicted of a felony or misdemeanor involving moral turpitude or having his professional license disciplined by a regulatory body</p>

			or submitting fraudulent documents to statements to the board would now be explicit causes for denial or withdrawal.
n/a	133	Establishes conditions for full approval of a program	The provisions of Section 133 are a restatement of current provisions found in Section 60, but now placed more accurately and chronologically in the chapter
n/a	134	Establishes the process for denial of full approval	Again, the actions of the board, the steps to be taken by the program, and the process of an informal conference or formal hearing and an appeal of the board's decision are set out in an orderly fashion in regulation.
n/a	135	Sets out conditions for making requests for exceptions to the qualifications for faculty	Currently, the conditions and process for exceptions are found in subsection A of Section 90, but the provisions more correctly belong in Article 2 since exceptions are not granted until a program has been fully approved.
n/a	136	Sets out the requirements for records and provision of information	While there are requirements for records and provision of information at the applicant stage, there are also continuing requirements that could not be met until a program is fully approved and operational with students enrolled. Those recordkeeping requirements include accreditation data, course outlines, faculty and committee meetings and disposition of complaints – all information needed by the Board to determine continued compliance for approval. Subsection C relates to records that need to be maintained on each student. Students have had significant issues with the failure of programs to maintain and secure their records; these regulations are intended to ensure that records are complete, protected and available to the Board. In subsection D, information about the program about annual passage rates and accreditation status is added to the basic requirements stated in Section 110
n/a	137	Sets out requirements for evaluation of resources and written agreements with cooperating agencies	The requirements of Section 130 are an extension of the requirements of proposed Section 40, which establishes the criteria for initial approval. Periodic evaluations are currently required in Section 130, but subsection A of this new section includes employer evaluation of graduates and assurances that at least 80% of the clinical experiences are conducted in Virginia. Subsection B is a restatement of the current subsection E of Section 130. Subsection C requires a summary of the clinical agency utilized by the program. Subsection D requires documentation of board approval for use of clinical sites located 50 or more miles from the school or of sites outside of Virginia. <i>All requirements for continued evaluation and reporting are necessary to ensure continued compliance with criteria for program approval.</i>
140	n/a	Establishes rules for notification to the Board of changes in the	The section is amended to list in order of priority and to add notification of adverse action taken by a licensing authority and of conviction of a felony or

		educational program	misdemeanor involving moral turpitude. Changes that must be reported within 10 days of occurrence are those that could affect the program’s approval status or might be grounds for denial or withdrawal.
151	n/a	Sets the rule for a passage rate of 80% for	Changes to subsection A are intended to clarify the requirement consistent with the Board’s current interpretation. Changes to subsection B more clearly specifies the Board action for failure to achieve an 80% passage rate, ranging from a plan of correction after one year, conditional approval with terms and conditions after two years, and possible withdrawal of approval after 3 years.
160	n/a	Sets out the requirements for maintenance of an approved program	Currently an unaccredited program is reevaluated at least every 8 years; an amendment will change that to every 5 years because an unaccredited program is not receiving oversight by the accrediting agency in addition to the Virginia board and may be more likely to develop problems. The reevaluation of an accredited program remains at 10 years and the Board is given the option of conducting a survey visit. The procedural provisions set out in subsection C are deleted and restated in new sections on continuance or withdrawal of approval.
n/a	161	Establishes criteria and procedures for continuing and withdrawing full approval	Subsection A sets the criteria for continuing full approval provided a program has remained in compliance with regulations. Subsection B states the options of the Board if a program is not maintaining compliance, to include conditional approval with conditions to be met in a specified time frame, or withdrawal of program approval. Subsection C sets out the process for due process in accordance with the provisions of the APA. Subsection D requires that no additional students can be admitted if approval has been withdrawn and that the program must submit quarterly reports until the program is closed.
170	n/a	Establishes the process and requirements for closing an approved program	Amendments require that the program continue to provide quarterly reports regarding progress toward closure.