



Economic Impact Analysis Virginia Department of Planning and Budget

18 VAC 90-20 – Regulations Governing the Practice of Nursing
Department of Health Professions
August 22, 2011

Summary of the Proposed Amendments to Regulation

The Board Nursing (Board) proposes to reorganize and amend the portions of its regulations that govern approval of nursing education programs. The Board proposes numerous clarifying changes as well as several substantive changes for these regulations; In addition to clarifying changes, the Board specifically proposes to 1) require entities that are applying for approval as nursing schools to submit the results of a community assessment or market analysis, 2) require that all nursing students undergo a criminal background check as a requirement for admission to nursing school and 3) require 80% of clinical hours to be conducted in Virginia.

Result of Analysis

Benefits likely outweigh costs for most of these proposed regulatory changes. There is insufficient information to determine whether benefits will outweigh costs for several of the proposed changes.

Estimated Economic Impact

Most of the proposed changes to these regulations are not substantive. Portions of the regulations are being moved around so that they more closely follow the chronological order of the approval process for nursing schools and some requirements that are already in guidance are being moved into the regulatory text; the Board is, for instance, moving the requirement that school “faculty shall provide evidence of education and/or experience in the specialty area in which they supervise students’ clinical experience” from guidance documents into regulation. Changes such as these will likely not subject regulated entities to any additional costs as those entities already have to follow all regulations and Board guidance to gain approval of nursing

education programs now. These changes will likely benefit anyone who has to read and understand the rules under which nursing education programs are approved as they bring added clarity to those rules.

The Board also proposes three new requirements in the proposed regulations.

First, the Board proposes to require entities that are seeking approval of new nursing education programs to submit the results of a community assessment or market analysis along with other, already required, paperwork. Board staff reports that this requirement is being added because some education programs have been approved in the past when those programs did not have access to enough clinical sites to meet the needs of their student populations. Board staff reports that the Board seeks to eliminate this problem by requiring entities to verify that there are sufficient clinical resources in any community where they might open an educational facility. Both proprietors of nursing education programs and their future students will benefit from this requirement if it better ensures that nursing programs actually have the resources to provide the education that is promised. Since market analyses have not been required before, Board staff is unsure of what expenses will be incurred statewide in generating them. Some entities may already be conducting market analyses as part of their private decision to open an education program. For these entities, extra costs would be minimal and would likely be limited to costs for copying and mailing documents that already exist. Entities that do not already plan on conducting a market analysis may incur, according to Board estimates, costs of between \$1,000 and \$5,000. There is insufficient information to ascertain whether benefits will outweigh costs for this proposed change.

The Board also proposes to newly require all potential nursing students to undergo a criminal background check as a condition of admittance to an approved nursing education program. Board staff reports that there have been issues with current nursing students who have been accepted into nursing schools but who could not complete their required clinical hours because they had been convicted of barrier crimes that precluded them being allowed to work at the nursing homes or hospitals with whom their education program had contracted. The Board also requires applicants for nursing licensure to self report any criminal convictions so, in theory, students could get completely through their education program and then be denied licensure because they have a criminal history. In order to forestall these problems, the Board now

proposes to require a criminal background check. Either potential students or educational facilities will have to pay the approximately \$35 per person that the state police charges for this check. Board staff reports that 12,080 nursing students were admitted to various education programs across the state during the 2009-2010 academic year. If this requirement had been in place then, and all entering students would later have had to undergo a second criminal background check when starting their clinical work, affected entities statewide would have incurred extra costs of \$422,800. Information gathered from talking to various nursing schools and clinical sites would indicate, if this proposed change is promulgated, some but not all incoming nursing students would have to undergo a criminal background check upon admittance to a nursing program in addition to the one they currently undergo when they start their clinical experience. Given this, the costs of compliance for this change will likely be somewhat less than \$422,800 per year. Whether benefits will outweigh costs statewide will depend on whether tuition and time costs incurred by students with criminal records outweigh the costs of all students submitting to a criminal background check. The Board could likely lower costs, but accomplish the same goal, by requiring schools to inform potential students (who are likely aware of their own criminal backgrounds) of which past or future criminal convictions are likely to keep them from successfully completing a nursing education program or gaining licensure. Schools could also err on the side of caution by also informing potential students of how they might get their own criminal background check run if they are unsure of their criminal history.

Finally, the Board proposes to require that at least 80% of student nurses' clinical experiences occur within Virginia. Current regulations are silent on where students complete their required clinical hours. The Board has, however had a number of complaints from students who have had to travel some distance and to bordering states in order to work at clinical sites that have contracts with Virginia-based nursing schools. Board staff reports that this has been a particular problem with nursing education programs in Northern Virginia. To minimize the adverse impact that this issue can have on nursing students, the Board proposes to require that 80% of clinical experience for any student be completed within Virginia. Board staff reports that this requirement would not affect schools' current clinical contracts but that any newly contracted clinical sites would have to meet the new requirements. To the extent that currently contracted clinical sites are outside of Virginia and also represent the most efficient and cost-saving choice for obtaining educational services for their students, some educational institutions

are likely to see costs increase because of this proposed regulatory change. There is insufficient information to measure these costs against the savings that will accrue to students who will not have to travel as far to complete clinical hours.

Businesses and Entities Affected

The Department of Health Professions (DHP) reports that there are currently 83 full nursing education programs and 77 LPN nursing education programs approved by the Board and that the Board receives approximately 15 new applications for new nursing programs each year. Board staff reports that some of these programs are likely small businesses but does not know how many would so qualify.

Localities Particularly Affected

No localities will be particularly affected by these proposed regulatory changes.

Projected Impact on Employment

This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property

This regulatory action will likely have little effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects

Affected small businesses will likely incur costs for conducting criminal background checks and may also incur costs associated with conducting market analyses and/or contracting with in-state clinical sites.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The Board could likely lower costs for these proposed regulations by requiring schools to inform potential students (who are likely aware of their own criminal background) of which past or future criminal convictions are likely to keep them from successfully completing a nursing education program or gaining licensure instead of requiring that all potential student undergo a criminal background check. Schools could also err on the side of caution by also informing

potential students of how they might get their own criminal background check run if they are unsure of their criminal history.

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.