



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	Requirements for evidence of continued competency
Date this document prepared	12/28/10

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 Board of Nursing has adopted requirements for continuing competency activities or courses in order to renew an active license as a registered nurse or a practical nurse each biennium. The options available include a refresher course, post-licensure academic course, current specialty certification, research and teaching, active practice for 640 hours and 15 hours of courses or 30 hours of approved courses. The entities and organizations that can recognize or approve a continuing education provider are listed in regulation.

Regulations provide an exemption for nurses who have an active license as a nurse practitioner and for the second license if someone is licensed as an RN and LPN. Finally, there is a requirement for documentation of completion to be maintained for two years following renewal, and the documentation required for each type of activity or requirement is specified.

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.

CE – continuing education
 NCSBN – National Council of State Boards of Nursing
 RN - registered nurse
 LPN – licensed practical nurse

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.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (1), which provides authority to establish qualifications for licensure as necessary to ensure competence and (6), which provides the Board of Nursing the general 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. ...

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. ...

Additionally, § 54.1-103 authorizes the Board to require additional training of regulated persons for renewal of licensure:

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

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.

Along with national organizations and commissions, the Board of Nursing has been studying the issue of competency assessment for continuation of licensure. After a review of national recommendations, reports and regulatory models, the board has concluded that there should be evidence of continued competency for renewal of a nursing license. Registered and practical nurses are the only health professionals in Virginia who do not currently have any requirement to maintain competency beyond that required for initial licensure. While there may be value to an individual nurse in obtaining continuing education (CE), the board does not intend to rely solely on the CE model for demonstration of competency. The goal is to engage the nurse in a continuum of learning and renewal of knowledge and skills through a variety of practical and didactic experiences.

The National Council of State Boards of Nursing (NCSBN) defines continued competence as “the ongoing ability of a nurse to integrate knowledge, skills, judgment and personal attributes to practice safely and ethically in a designated role and setting in accordance with the scope of nursing practice.” The mission of a licensing board is to protect public health, welfare and safety by assuring that persons are minimally competent to practice at initial licensure and that they remain competent and safe throughout their careers. At the present time, there is no regulatory requirement that nurses demonstrate any measure of competency following initial licensure.

A 2009 report on continued competence from NCSBN states that maintaining competency to practice is a responsibility shared by the individual nurse, his or her employer, and the regulatory entity that must answer to the public. Therefore, the board has determined that there should be some regulatory framework for demonstrating continued competency for the health and safety of the patients in the care of nurses 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.)

The Board of Nursing proposes that regulations offer options for measurement of continued competence including: 1) evidence of specialty certification from a board-approved entity; 2) nursing related coursework for academic credit or a refresher course; 3) evidence-based nursing related research and publication or teaching; 4) a combination of 15 hours of continuing education and 640 practice hours in a two-year period while holding an unencumbered license; or 5) thirty hours of continuing education hours in workshops, seminars or courses relevant to the practice of nursing.

A listing of providers recognized by the Board, requirements for persons who hold dual licensure, and provisions for extensions or exemptions are set out in regulation. Finally, specific

documentation of compliance is delineated for each of the types of continued competency activities or options selected.

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 primary advantage of the amended provisions would be a more highly qualified, competent corps of nurses who have obtained additional training, knowledge and competency to practice. There are no disadvantages to private citizens or businesses. Institutional employers of nurses currently require continued learning activities or courses. For those nurses who are not currently engaged in continued learning, there will be some additional costs. The availability of on-line courses at little or no cost will mean that a nurse can fulfill the requirements without taking time from work or incurring the expense of attendance at a meeting or workshop.
 - 2) The primary advantage to the Board is consistency with continuing education or continuing competency requirements of all other professions in Virginia and with most other states in the U.S. There are no disadvantages to the agency.
 - 3) There are no other matters of interest.

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 is no locality 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 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 comments may do so via the Regulatory Townhall website , www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Richmond, VA 23233 or 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 day 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) 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>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.</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.</p> <p>On-going expenditures related to this action would be dependent on the method and timing of any</p>
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	audits. Initially, it is the Board’s intent to audit continuing competency compliance as part of a disciplinary matter involving a standard of care complaint or report. As such, there would be no additional costs for the audit, which would become part of the investigative file, nor would there be additional costs for hearings associated with failure to comply with continuing competency provisions.
Projected cost of the new regulations or changes to existing regulations on localities.	None
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	The entities affected would be registered and practical nurses holding an active license or multistate licensure privilege issued by the Virginia Board.
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.	Registered nurses – 91,316 Licensed practical nurses – 29,828 The vast majority of nurses do not practice as a small business but as an employee of a practice, health care facility or educational institution.
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.	For most nurses currently employed in health care facilities, continuing education or in-service training is already a condition of continued employment. There would be no additional costs for those licensees. If a person had not been engaged in active practice for at least 640 hours (as an employee or volunteer) in a biennium, there would be a requirement for 30 hours of continuing education. Some of those hours may be available at no cost, and all hours can be obtained on-line. For example, the National Council of State Boards of Nursing has a variety of on-line courses available at a cost of approximately \$5-\$6 per hour. The Virginia Nurses Association lists 40 approved providers that make continuing education available to members and non-members.
Beneficial impact the regulation is designed to produce.	The amended regulation is designed to provide Virginians with a more highly qualified, competent corps of nurses who have obtained additional training, knowledge and competency to practice.

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.

National bodies and entities, such as the AARP, the Citizens Advocacy Center, and Pew Health Professions Commission have advocated for a process that will address the need for ongoing competency for post-entry health care professionals. In 2007, the Virginia Chapter of AARP conducted a survey which showed that 90% of private citizens thought health care professionals (including nurses) were already undergoing post-entry competency assessment.

In its midyear 2010 report, the NCSBN noted that the case for continuing competency was strengthened by the voice of consumer demand, the patient safety movement, the knowledge explosion (an average of 1,000 articles per day is added to Medline), and issues that cross professions. It also noted that any requirements must be: 1) administratively feasible; 2) publicly credible; 3) professionally acceptable; 4) legally defensible; and 5) economically feasible.

The Virginia Board of Nursing has worked through a committee to discuss the need for regulatory actions and options for measuring competency. Rebecca Shaulis, a Virginia Commonwealth University School of Nursing graduate student, researched publications and compared continued competency requirements for 45 boards of nursing in the US and Canada. According to her report, 30 states and the District of Columbia have required some evidence of course work and/or practice for renewal of an active nursing license. States such as North Carolina and Virginia have specified evidence of continued competency for reactivation of an inactive license or reinstatement of a lapsed license.

At its meeting in November, the Continued Competency Committee established the following timeline for their work:

- January 2010 – full report to the Board of Nursing.
- March 2010 – consideration of a Notice of Intended Regulatory Action.
- Late spring/fall 2010 – joint Board of Nursing/Virginia Nurses Association continued competence conference.

Based on available research, including the 2009 Continued Competence Regulatory Model for Nursing developed by NCSBN, the results of a conference with members of the nursing profession, and comments received on the NOIRA, the board developed regulations to achieve the intent of a regulatory framework for competency throughout a career in nursing.

Although other regulations for other Board of Nursing professions (licensed nurse practitioners and certified massage therapists) include an audit of 1% of licensees, the board may consider an alternative assessment method for registered nurses and licensed practical nurses because of the volume and workload of an audit for such a large number of licensees. For example, the board may request evidence of continued competence during the investigative process if a complaint has been filed against a practitioner. Regulations would require nurses to maintain evidence of their participation in and completion of continued competency activities.

In the development of regulations for continued competency, the board will utilize the NCSBN Guiding Principles and Regulatory Model for Continued Competence, review regulations established in other states and continue to involve nursing professional organizations and employers of nurses.

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 that will accomplish the objectives of continuing competency throughout the span of one’s professional license.

Public comment

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

Commenter	Comment	Agency response
Donna Davis	How will the board hold the nursing compact accountable if other states do not require CE to renew	The Compact requires nurses with a multistate licensure privilege to meet the requirements for renewal of the home state that issues the privilege. North Carolina, another Compact state, already has continuing competency requirements similar to those proposed in Virginia. Maryland, a Compact state, requires 1,000 hours of active practice or completion of a refresher course to renew an active license.
D. R.	Raises several questions about the methodology for determining competency and rate of enforcement for lack of competence.	Many of the studies relating to continuing competency for nurses indicate that the methods should be varied to accommodate the breadth of nursing practices and practice setting. By auditing continuing competency compliance in connection with an investigation of allegations of misconduct, the Board may be able to discern whether there is a relationship.
Arlene Wiens	Competency should be diverse & broadly defined to reflect diversity in nursing practice. Questions whether citizens are safer in states that require continuing competency.	The Board agrees with the comment on diverse and broadly defined competency. Research into the effectiveness of continuing competency is ongoing among health professional organizations and interested parties.

Nina Beaman & Joette Lehberger	Important for nurses to continue competency in workplace skills. Other states have enacted continuing competency with success; for safety of citizens of Virginia, all nurses must be able to demonstrate current and continuing competency. Commends the Board on its actions.	The Board agrees with the comment.
Catherine Rittenhouse	Requests that teaching (clinical and didactic hours) be counted as practice hours and as CE. Also requested that hours used to maintain nurse practitioner certification fulfill requirements.	The Board has included credit for teaching hours, and the definition of “active practice” includes all activities for which a license to practice nursing is required. Hours obtained to fulfill requirements for a nurse practitioner license will satisfy the requirement for RN renewal.
Susan Wirt	Nurses have a duty to continue our education and continually improve performance; applauds the proposal.	The Board agrees with the comment.
P. Mahan, LPN	Applauds the board; was licensed in state where CE was required. Cautions that the board exercise restraint in fiscal demands on licensees	The Board concurs with the comment and has exercises restraint by offering numerous options for compliance.
Cynthia Fagan, President of Va. Council of Nurse Practitioners	Supports inclusion of continued competency for renewal of a nursing license as an extra step towards ensuring patient safety. Asks to exempt nurse practitioners from additional CE as already for LNP licensure and prescriptive authority.	The Board has adopted such an exemption.

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 of the proposed regulatory action 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.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
10	n/a	Sets out definitions for words and terms used in regulations	<p>Defines “active practice” as activities performed, whether or not for compensation, for which an active license to practice nursing is required.</p> <p><i>A nurse engaged in active practice receives some credit towards meeting the requirements for continuing competency needed for renewal of an active license. The definition is intentionally broad to encompass many types of functions and activities with the practice of nursing – whether or not those activities are performed for compensation.</i></p>
220	n/a	Sets out requirements for biennial renewal of licensure.	<p>Subsection B is amended to delete the requirement for the Board to send a renewal notices to the last known address of record “no less than 30 days prior to the last day of the licensee’s birth month.”</p> <p><i>The requirement to send a renewal notice to an address of record is moved to subsection C. Renewal notices are typically sent between 45 and 60 days in advance of the deadline.</i></p> <p>Subsection B is amended to specify that after a certain date, a nurse would be required to meet the requirements for continued competency set forth in 18VAC90-20-221 in order to renew an active license.</p> <p><i>The date would be set at the time of publication to reflect at least two years of advance notice. Licensees would have a full two-year renewal cycle in which to meet the proposed requirements.</i></p> <p>Subsection C is added to require that a notice for renewal of license be sent by the board to the last known address of the licensee.</p>
n/a	221	n/a	Subsection A sets out the <u>nine</u> types of learning activities, courses, or practice hours that can be

		<p>used to fulfill the Board’s requirement for evidence of continuing competency, including:</p> <ol style="list-style-type: none"> 1. Current specialty certification by a national certifying organization, as defined in 18VAC90-20-10; or 2. Completion of a minimum of three credit hours of post-licensure academic education relevant to nursing practice, offered by a regionally-accredited college or university; or 3. A board-approved refresher course in nursing; or 4. Completion of nursing-related, evidence-based practice project or research study; or 5. Completion of publication as the author or co-author during a renewal cycle; or 6. Teaching a nursing-related course resulting in no less than three semester hours of college credit or specialty certification; or 7. Teaching nursing related continuing education courses for up to thirty (30) contact hours; or 8. Fifteen (15) contact hours of workshops, seminars, conferences or courses relevant to the practice of nursing and 640 hours of active practice as a nurse; or 9. Thirty (30) contact hours of workshops, seminars, conferences or courses relevant to the practice of nursing. <p><i>The diversity of activities and combination of learning opportunities and practice hours is intended to reflect the broad range of practices and types of nursing among licensees in Virginia. Those selected to fulfill the Board’s continuing competency expectation were deemed to have value in assisting the nurse in honing skills, increasing core knowledge and expanding awareness of new research and learning.</i></p> <p>Subsection B lists the organizations and entities that must recognize or approve the workshops, seminars, conferences, or courses that meet the requirements of A8 and A9:</p> <ol style="list-style-type: none"> 1. American Nurses Credentialing Center (ANCC)/ American Nurses Association (ANA); 2. National Council of State Boards of Nursing (NCSBN); 3. Area Health Education Centers (AHEC) in any state in which the AHEC is a member of
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			<p>the National AHEC Organization;</p> <ol style="list-style-type: none"> 4. Any state nurses association; 5. National League for Nursing (NLN); 6. National Association for Practical Nurse Education and Service (NAPNES); 7. National Federation of Licensed Practical Nurses (NFLPN); 8. A licensed health care facility, agency or hospital; 9. The American Heart Association or the American Red Cross for courses in advanced resuscitation; or 10. Virginia Board of Nursing or any state board of nursing. <p><i>Given the broad range of entities and organizations that are authorized to approve or recognize CE providers, a licensee should have numerous options available at little or no cost.</i></p> <p>Subsection C provides: 1) that persons dually licensed as a registered nurse and a licensed practical nurse only have to meet one of the continued competency requirements as set forth in subsection A.; and 2) that registered nurses who also hold an active license as a nurse practitioner only have to meet those requirements for licensure renewal and renewal of prescriptive authority. Subsection D provides an exemption for the first renewal after initial licensure.</p> <p>Subsection E provides for an extension for good cause provided there is a written request at least 60 days prior to renewal date.</p> <p>Subsection F provides for an exemption for certain circumstances beyond the control of the licensee.</p> <p>Subsection G specifies that continued competency hours and activities ordered in a disciplinary proceeding cannot be counted toward requirement for renewal.</p> <p>Language in subsections C through G is consistent with continuing competency regulations of other boards at the Department.</p>
n/a	222	n/a	<p>Section 222 provides rules for documenting compliance.</p> <p>Subsection A specifies that all licensees are required to maintain original documentation of completion for a period of two years following renewal and to provide such documentation within</p>

		<p>30 days of a request from the board for proof of compliance. <i>The Board has not specified an audit but has set rules for maintenance of documentation and provision of such documents in a timely manner if so requested.</i></p> <p>Subsection B sets out the specific documentation of compliance required for each type of learning activity or course to include:</p> <ol style="list-style-type: none"> 1. Evidence of national certification including a copy of a certificate which includes name of licensee, name of certifying body, date of certification, date of certification expiration. Certification must be initially attained during the licensure period, or have been in effect during the entire licensure period, or have been re-certified during the licensure period; 2. Evidence of post-licensure academic education to include a copy of transcript with the name of the licensee, name of educational institution, date of attendance, name of course with grade and number of credit hours received; 3. Evidence of completion of a board-approved refresher course to include written correspondence from the provider with the name of the licensee, name of the provider, and verification of successful completion of the course; 4. Evidence of completion of a nursing research or project to include an abstract or summary, the name of the licensee, role of the licensee as principal or co-principal investigator, date of completion, statement of the problem, research or project objectives, methods used and summary of findings; 5. Evidence of authoring or co-authoring a published nursing-related article, paper, book or book chapter which to include a copy of the publication to include the name of the licensee and publication date; 6. Evidence of teaching a course for college credit to include documentation of the course offering, indicating instructor, course title, course syllabus
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		<p>and the number of credit hours. Teaching a particular course may only be used once to satisfy the continued competency requirement unless the course offering and syllabus has changed;</p> <p>7. Evidence of teaching a course for continuing education credit to include a written attestation from the director of the program or authorizing entity including the date(s) of the course(s) and the number of contact hours awarded. If the total number of contact hours totals less than 30, the licensee shall obtain additional hours in continuing learning activities or courses;</p> <p>8. Evidence of contact hours of continuing learning activities or courses to include the name of the licensee; title of educational activity, name of the provider, number of contact hours and date of activity;</p> <p>9. Evidence of 640 hours of active practice in nursing to include documentation satisfactory to the board of the name of the licensee, number of hours worked in calendar or fiscal year, name and address of employer and signature of supervisor. If self-employed, hours worked may be validated through other methods such as tax records or other business records. If active practice is of a volunteer or gratuitous nature, hours worked may be validated by the recipient agency.</p> <p><i>The methodology for documentation is consistent with requirements for other states that have similar requirements.</i></p>
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