



Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC90-20-10 et seq.
Regulation title	Regulations Governing the Practice of Nursing
Action title	Elimination of barrier for applicants from other countries
Date this document prepared	11/24/10

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

Section 210 of Chapter 20 is amended to eliminate the requirement that a registered nurse or practical nurse applicant from a foreign country be “duly licensed under the laws of that country” in order to qualify for licensure in Virginia.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On November 16, 2010, the Board of Nursing amended section 210 of 18VAC90-20-10 et seq., Regulations Governing the Practice of Nursing by a fast-track action.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Nursing the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the regulatory action is to eliminate the requirement to be duly licensed in another country in order to qualify for licensure in Virginia, as it now places many applicants in a “catch-22” position. Once they have applied for the visa-screen and declared their intent to immigrate to the U. S., they are ineligible for licensure in the home country. The dilemma has been exacerbated by changes in immigration laws in recent years.

Applicants from foreign countries must have a Commission on Graduate of Foreign Nursing Schools (CGFNS) credentials review and the test of English proficiency. Those coupled with a requirement for passage of National Council Licensing Examination (NCLEX), the national licensing examination that all nurses (RN or PN) must take, should assure that foreign-trained nurses have the basic nursing knowledge, clinical ability, and communication skills to practice with safety. Since NCLEX is more generally available in foreign countries than in the past, many nurses are able to come to the United States fully qualified for licensure. NCLEX is currently administered in Australia, Canada, England, Germany, Hong Kong, India, Japan, Mexico, Philippines, Puerto Rico and Taiwan. Many applicants from those countries have already completed all requirements for licensure in Virginia and some are U. S. citizens. Because they are unable to obtain a license in the foreign country, they are unable to be licensed in Virginia.

Rationale for using fast track process

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

The current regulatory requirement is burdensome and unnecessary for public safety. It creates a barrier to licensure that prevents qualified nurses from other countries from coming to Virginia. Therefore, the Board would like to eliminate the barrier as soon as possible and is supportive of a fast-track action. The Board does not expect the proposal to be controversial.

Substance

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

Section 210 of Chapter 20 is amended to eliminate the requirement that a registered nurse or practical nurse applicant from a foreign country be “duly licensed under the laws of that country” in order to qualify for licensure in Virginia.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

- 1) The primary advantage to the public is the availability of nurses who have completed all educational and examination requirements for licensure but who are currently unable to be licensed in Virginia. There are no disadvantages.
- 2) There are no advantages or disadvantages to the agency.
- 3) There are no other pertinent matters of interest.

Requirements more restrictive than federal

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

There are no federal requirements.

Localities particularly affected

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

There are no localities particularly affected by the proposed regulation.

Regulatory flexibility analysis

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

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

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including	a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from
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<p>(a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>non-general funds, specifically the renewal fees it charges to practitioners; b) The agency will incur some one-time costs (less than \$500) for mailings to the Public Participation Guidelines mailing lists and conducting a public hearing. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going costs to the agency.</p>
<p>Projected cost of the regulation on localities</p>	<p>There are no costs to localities</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The individuals affected would be certain applicants for licensure from foreign countries.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>It is unknown how many applicants for licensure could qualify under this provision.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There would be no additional cost.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>There is potential for an increase in the supply of nurses able to fill vacancies in the health care workforce in Virginia.</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.

Since the proposal is the less burdensome and intrusive alternative that meets the essential purpose of public safety, there are no other alternatives that could accomplish the intent.

Family impact

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

There is no impact on the family.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Current requirement	Proposed change and rationale
210	Sets out requirements for licensure for applicants from other countries	<p>Eliminate the requirement that a registered nurse or practical nurse applicant from a foreign country be “duly licensed under the laws of that country” in order to qualify for licensure in Virginia.</p> <p><i>This proposal removes a barrier that has prevented some qualified nurses from to Virginia to practice. They may be U. S. citizens who went to a native country for a nursing education (at a lesser cost) or they may have immigrated or completed a visa screen with intent to immigrate – all of which may make them ineligible for licensure in the other country. Therefore, they are in a “Catch-22” and unable to be licensed in either Virginia or the country of their education. Being licensed in another country does not provide evidence of competency necessary for safe practice; that evidence is found in the credentials review for educational comparability, the test of English proficiency and the passage of the National Council Licensing Examination.</i></p>