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## Re-Submitted Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) 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>	Provisional licensure to obtain clinical experience required for licensure
<b>Date this document prepared</b>	3/20/13

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.*

- 1) *Please explain why this is an emergency situation as described above.*
- 2) *Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

Chapter 712 (Senate Bill 1245) of the 2011 Acts of the Assembly authorized the Board of Nursing to revise its regulations to provide for provisional licensure for applicants as registered nurses to obtain clinical experience. The legislation further required that the Board promulgate regulations to implement the provisions of the act to be effective within 280 days of its enactment. The Board submitted the emergency regulation for executive branch review on September 29, 2011. The statutory deadline for regulations to be in effect was December 31, 2011, but the Secretary of Health and Human Resources requested that the Board re-examine the proposed emergency regulations to address concerns expressed by Excelsior College, a competency-based nursing program.

The key provisions of the regulations are: 1) requirements for qualification and submission of documents for approval as a provisional licensee; 2) requirements for 500 hours of direct client

care in the role of a registered nurse including various areas of nursing; 3) provisions for acceptance of previous clinical experience towards meeting the 500-hour requirement; 4) requirements for supervision of a provisional licensee, including the qualifications and responsibilities of the supervising nurse; and 5) provision for expiration and renewal of a provisional license.

*At the request of the Secretary’s office, the Board reconsidered the regulation pertaining to credit for clinical experience for graduates of Excelsior College or any similar nursing education program. In the re-proposed emergency regulations, the Board agreed to grant an applicant up to 100 hours of credit towards the 500-hour clinical practice requirement if he has successfully completed a nursing education program that:*

- a. Requires students to pass competency-based assessments of nursing knowledge as well as a summative performance assessment of clinical competency that has been evaluated by the American Council on Education or any other board-approved organization; and*
- b. Has a passage rate for first-time test takers on the NCLEX that is not less than 80%, calculated on the cumulative results of the past four quarters of all graduates in each calendar year regardless of where the graduate is seeking licensure.*

**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., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary. Please include a citation to the emergency language.*

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 Dentistry 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:*

- ...
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure 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. ...*

The specific authorization to promulgate regulations for provisional licensure for RN applicants is found in:

§ 54.1-3017.1. Registered nurse provisional license.

*The Board may issue a provisional license to an applicant for licensure as a registered nurse who has met the educational and examination requirements for licensure, in order to allow the applicant to obtain clinical experience, as specified by the Board in regulation. A person practicing under a provisional license shall only practice under the supervision of a licensed registered nurse, in accordance with regulations established by the Board.*

(2011, c. [712](#).)

**Purpose**

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The intent of the regulatory action in the adoption of emergency regulations is compliance with the statutory mandate of Chapter 712 of the 2011 Acts of the Assembly to “*promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.*” The Act provides for issuance of a provisional license to an applicant for registered nurse licensure in order to obtain the clinical experience specified in regulation. The provisional licensee is to practice under supervision, “*in accordance with regulations established by the Board.*”

The goals are: 1) to establish regulations that will provide a reasonable alternative for qualifying for licensure by granting a provisional license to an RN applicant who has otherwise met the educational and examination requirements but is lacking clinical experience in the role of an RN. Regulations will allow an applicant credit for supervised clinical hours in a current educational program and for holding an active, current license as a licensed practical nurse. The applicant will be given a year in which to complete 500 hours (or less with prior credits), which may be accomplished on a part-time basis; and 2) to require appropriate oversight of a provisional licensee practice across all aspects of nursing practice in order to assure that the RN is minimally competent to practice upon granting of full licensure.

**Need**

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

Legislation for provisional licensure was introduced at the request of Excelsior College, a non-traditional nursing education program that is competency-based and does not provide didactic coursework or any hours of precepted clinical experience. Therefore, its graduates do not meet the Board of Nursing requirement for licensure of 500 hours of supervised clinical experience (effective in 2008). While most other out-of-state, non-traditional nursing education programs do meet Board requirements for hours of clinical experience, there are a few whose applicants have less than the requisite number of hours. In 2009, the Board adopted regulations for endorsement of applicants from other states with a requisite number of clinical experience hours,

but there has been no resolution for new graduates of programs such as Excelsior that do not meet Virginia’s regulation for the number of clinical hours required for licensure by examination.

Legislation authorizes the Board to adopt regulations to provide a pathway to licensure by the issuance of a provisional license to allow a graduate who has met the educational and examination requirements but is lacking clinical experience to obtain such experience by practicing under the supervision of a registered nurse for a period of time. The regulations for provisional licensure will assure that the RN applicant gains experience across the life span in all areas of nursing practice and that his practice will be overseen by an RN with at least two years of clinical practice experience. The supervisor is responsible for the assignment of duties consistent with the knowledge and skills of the provisional licensee and must be prepared to intervene if necessary for the health and safety of clients receiving care from a provisional licensee.

**Substance**

*Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.*

New section number	Proposed change and rationale
215 A	<p><i>Proposed change:</i> Pursuant to § 54.1-3017.1, the board may issue a provisional license to an applicant for the purpose of meeting the requirement for 500 hours of direct (hands-on) client care for an approved registered nurse education program.</p> <p><i>Rationale:</i>  <i>The Code specifies that a provisional license is authorized for an applicant “in order to allow the applicant to obtain clinical experience, as specified by the Board in regulation.” In regulation, it is specified that an applicant for licensure as a registered nurse must complete an RN nursing education program that includes at least 500 hours of supervised clinical experience. Therefore, subsection A states the intent for issuance of a provisional license.</i></p>
215 B	<p><i>Proposed change:</i> Such applicants for provisional licensure shall submit:</p> <ol style="list-style-type: none"> <li>1. A completed application for licensure by examination and fee;</li> <li>2. Documentation that the applicant has successfully completed a nursing education program; and</li> <li>3. Documentation of passage of NCLEX in accordance with 18VAC90-20-190 of this Chapter.</li> </ol> <p><i>Rationale:</i>  <i>The Code specifies that a provisional license is authorized for an applicant “who has met the educational and examination requirements for licensure,” which include successful completion of a nursing education program and passage of the National Council Licensing Examination. The fee referenced is the application fee; there is no additional fee for issuance of a provisional license.</i></p>
215 C	<p><i>Proposed change:</i> Requirements for hours of direct client care with a provisional</p>

<p>license.</p> <ol style="list-style-type: none"> <li>1. To qualify for licensure as a registered nurse, direct, hands-on hours of clinical experience shall include adult medical/surgical nursing, geriatric nursing, maternal/infant (obstetrics, gynecology, neonatal) nursing, mental health/psychiatric nursing, nursing fundamentals, and pediatric nursing. Supervised clinical hours may be obtained in employment in the role of a registered nurse or without compensation for the purpose of meeting these requirements.</li> <li>2. Hours of direct, hands-on clinical experiences obtained as part of the applicant's nursing education program and noted on the official transcript shall be counted towards the minimum of 500 hours and in the areas of clinical practice.</li> <li>3. For applicants with a current, active license as an LPN, 150 hours credit shall be counted towards the 500-hour requirement.</li> <li><u>**4. Up to 100 hours of credit may be applied towards the 500-hour requirement for applicants who have successfully completed a nursing education program that:</u> <ol style="list-style-type: none"> <li><u>a. Requires students to pass competency-based assessments of nursing knowledge as well as a summative performance assessment of clinical competency that has been evaluated by the American Council on Education or any other board-approved organization; and</u></li> <li><u>b. Has a passage rate for first-time test takers on the NCLEX that is not less than 80%, calculated on the cumulative results of the past four quarters of all graduates in each calendar year regardless of where the graduate is seeking licensure.</u></li> </ol> </li> <li>5. An applicant for licensure shall submit verification from a supervisor of number of hours of direct client care and the areas of clinical experiences in the role of a registered nurse.</li> </ol> <p><i>Rationale:</i></p> <p><i>Section 120 of current regulations provides that: "Didactic content and supervised clinical experience in nursing encompassing the attainment and maintenance of physical and mental health and the prevention of illness for individuals and groups throughout the life cycle and in a variety of clinical settings." Therefore, the hours of supervised clinical experience obtained with a provisional license must encompass practice "throughout the life cycle and in a variety of clinical settings," as spelled out in subsection C of this proposal.</i></p> <p><i>To qualify for licensure as a registered nurse, an applicant must provide documentation of 500 hours of supervised clinical practice. Therefore, at a maximum, a provisional licensee has to complete 500 hours of supervised practice. For an applicant already licensed as an LPN, the total number of hours is reduced by 150, and any supervised experience gained within the nursing education program may be counted toward completion of the 500 hours. Guidance Document #90-28 specifies that LPN's transitioning into a pre-licensure RN program may be granted up to 150 hours from their LPN program. Therefore, the credit of 150 hours for provisional licensees who hold an LPN license is consistent with current policy.</i></p> <p><b>** Re-proposed change:</b>  On February 19, 2013, an ad hoc committee on Provisional Licensure considered a request from the Secretary of Health and Human Resources to reconsider the</p>
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	<p>emergency regulations under review. The Committee reviewed information provided by Excelsior College including:</p> <ul style="list-style-type: none"> <li>• Revised admission criteria for Excelsior College</li> <li>• Documentation for military personnel eligible for admission to Excelsior College ASN/AASN programs</li> <li>• Length of enrollment statistics for Excelsior College students in Virginia</li> <li>• Excelsior College proposal to amend proposed 18VAC90-20-215 C (4)</li> <li>• American Council on Education (ACE) Credit Review Final Report indicating 8 semester hours of credit for successful candidates of the Excelsior Clinical Performance Nursing Examination (CPNE)</li> <li>• Board of Nursing guidance document 90-24 “The Use of Simulation in Nursing Education”</li> </ul> <p>Based in the assessment of Excelsior’s Clinical Performance Nursing Examination by ACE and the Board’s own Guidance Document, which provides that up to 20% of clinical experience may be gained through simulation, the Board agreed to the insertion of #4 in subsection C. Therefore, a graduate of Excelsior College or any nursing education program that meets the criteria of #4 will be able to have 100 hours applied towards the 500 hours of clinical experience required for licensure. If the graduate is also a licensed LPN (and the majority of Excelsior students are), he will be credited with an additional 150 hours (#3 in subsection C) for a total of 250 hours.</p>
<p>215 D</p>	<p><i>Proposed change:</i> Requirements for supervision of a provisional licensee.</p> <ol style="list-style-type: none"> <li>1. The supervisor to be on-site and physically present in the unit where the provisional licensee is providing clinical care of clients;</li> <li>2. In the supervision of provisional licensees in the clinical setting, the ratio shall not exceed two provisional licensees to one supervisor at any given time.</li> <li>3. Licensed registered nurses providing supervision for provisional licensee shall:             <ol style="list-style-type: none"> <li>a. Notify the board of the intent to provide supervision for a provisional licensee on a form provided by the board;</li> <li>b. Hold an active, unrestricted license or multistate licensure privilege and have at least two years of active clinical practice as an registered nurse prior to acting as a supervisor;</li> <li>c. Be responsible and accountable for the assignment of clients and tasks based on their assessment and evaluation of the supervisee’s clinical knowledge and skills;</li> <li>d. Be required to monitor clinical performance and intervene if necessary for the safety and protection of the clients;</li> <li>e. Document on a form provided by the board the frequency and nature of the supervision of provisional licensees to verify completion of hours of clinical experiences.</li> </ol> </li> </ol> <p><i>Rationale:</i></p> <p><i>The Code specifies that a provisional licensee “shall only practice under the supervision of a licensed registered nurse, in accordance with regulations established by the Board.” The intent of subsection D is to establish the requirements for supervision to ensure appropriate oversight of a provisional licensee practice and to clarify the responsibilities of the supervisor for his practice.</i></p> <p><i>Section 95 of current regulations specifies that the ratio shall not exceed two students to one preceptor at any given in utilizing preceptors to supervise students, so the Board used the same ratio of supervisor to provisional licensees who are providing direct client care.</i></p>



	<p><i>In order for a supervisor to have experience necessary to appropriately assess knowledge and skills of the provisional licensee, monitor clinical performance and intervene when necessary, the Board determined that a preceptor or supervisor should have at least 2 years of active clinical experience as an RN.</i></p> <p><i>Section 96 of current regulations specifies that “faculty members or preceptors providing supervision in the clinical care of patients shall be responsible and accountable for the assignment of patients and tasks based on their assessment and evaluation of the student’s clinical knowledge and skills. Supervisors shall also monitor clinical performance and intervene if necessary for the safety and protection of the patients.” Similar language was adopted for the supervision of practice by persons with a provisional license.</i></p> <p><i>When clinical experience is obtained within an educational program, the verification of hours and experiences is documented to the school and reflected on a transcript. Since this clinical experience is not part of an educational program, the verification must be made directly to the Board to document qualification for licensure.</i></p>
<p>215 E</p>	<p><i>Proposed change:</i> The provisional status of the licensee shall be disclosed to the client prior to treatment and shall be indicated on identification worn by the provisional licensee.</p> <p><i>Rationale:</i></p> <p><i>Section 35 of current regulations requires that “Any person regulated by this chapter who provides direct patient care shall, while on duty, wear identification that is clearly visible and indicates the person’s first and last name and the appropriate title for the license, certification, or registration issued to such person by the board under which he is practicing in that setting.” The identification requirement for provisional licensee is consistent.</i></p>
<p>215 F</p>	<p><i>Proposed change:</i> All provisional licenses shall expire six months from the date of issuance and may be renewed for an additional six months. Renewal of a provisional license beyond the limit of 12 months shall be for good cause shown and shall be approved by the board. A request for extension of a provisional license beyond 12 months shall be made at least 30 days prior to its expiration.</p> <p><i>Rationale:</i></p> <p><i>A provisional licensee has to complete a maximum of 500 hours of supervised practice; most applicants will have clinical hours credited from their nursing education program or a credit of 150 hours for current licensure as an LPN. It should be reasonable to complete the required hours within 6 months, but an applicant will automatically be authorized for another 6 months on a provisional license. Therefore, if an LPN is employed at a hospital or health care facility, he may continue employment and additionally obtain supervised practice in the role of an RN at the same facility on a part-time basis. An extension beyond 12 months for practice with a provisional license would only be granted for good cause shown.</i></p>

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency*

*has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.*

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Since the Board had a statutory mandate to promulgate regulations to implement provisions of Chapter 712 of the 2011 Acts of the Assembly, there was no alternative to regulatory action. In the process of developing regulations, the Board was presented orally and in writing the recommendations from Excelsior College, the nursing education program that requested introduction of SB1245 in the General Assembly.

Following the July 20, 2011 meeting of the Licensure Committee of the Board, at which Excelsior College representatives were present and addressed the Committee, Excelsior sent a letter requesting to appear before the Board at its September meeting. The College also requested modification to the recommendations of the Committee. Both the letter and the recommendations were included in the Board's agenda package, and Excelsior was given the opportunity to provide extensive comment prior to the Board's consideration of the regulations.

One of Excelsior's recommendations was already included in the proposal - granting 150 hours of credit for an LPN. However, the other recommendation – to allow RN applicants who graduated from an out-of-state competency based associate degree nursing education program and have at least 2 years of LPN experience to be licensed as an RN with no supervised clinical experience in the role of an RN – was not a recommendation of the Licensure Committee. The Board considered the alternative suggested but concluded that: 1) the Code requires the Board to license applicants who graduated from an *approved* program; 2) a graduate of an approved nursing education program is required to have at least 500 hours of supervised clinical experience in the role of an RN; and 3) the intent of the legislation passed by the 2011 General Assembly was to provide for a provisional license “*in order to allow the applicant to obtain clinical experience, as specified by the Board in regulation.*” The Board recognizes that the role of an LPN is different in scope from that of an RN and believes that skill acquisition in the RN role is essential for public health and safety. Therefore, the Board did not accept the recommendation to license RN applicants without at least 500 hours of supervised RN clinical experience.

Following adoption of emergency regulations in 2011, Excelsior College continued to request completion of its competency-based program and summative performance assessment be acknowledged by credit towards clinical experience hours required for licensure as a registered nurse. At its January 2013 meeting, the Board heard comment from Excelsior and agreed to the formation of a Provisional Licensure Committee to consider additional information and the request for reconsideration of the regulation by the Office of the Secretary of Health and Human Resources. At its March 2013 meeting, the Board adopted modified language and re-proposed the emergency regulation based on the recommendation of the Committee and information from Excelsior College. Representatives of Excelsior were present at the meeting and informed staff that they were satisfied with the revision to emergency regulations.



*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.*

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The agency/board is seeking comments on the intended regulatory action to replace the emergency regulations with permanent regulations, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency/board is also 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 send them to Elaine Yeatts at the 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 or by posting on the Regulatory Townhall at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). 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 on the Notice of Intended Regulatory Action.

At the conclusion of the NOIRA comment, the Board will adopt proposed regulations to replace the emergency regulation. A public meeting will be held and notice of the meeting will be found in the Calendar of Events section of the Virginia Register of Regulations after Executive Branch review and approval to open the regulation for 60 days of public comment. Both oral and written comments may be submitted at that time.

### Participatory approach

*Please indicate the extent to which an ad hoc advisory group or regulatory advisory panel will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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In the development of emergency regulations for provisional licensure, the regulatory panel utilized was the Licensure Committee of the Board of Nursing. Interested parties, such as the Virginia Nurses Association (VNA), the Legislative Coalition of Virginia Nurses and nursing education programs were noticed for each of the public meetings conducted to develop regulatory language. The VNA and Excelsior College, the New York nursing education program that initiated the legislation for provisional licensure, were present at meetings of the Committee and the Board in July and September. Excelsior provided comment and recommended draft language considered by the Board in the adoption of regulation.

Additional changes were made to the emergency regulations at the March 19, 2013 meeting of the Board at the request of and in consultation with Excelsior College.

### Family impact

*Assess the potential 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.*

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There is no potential impact on the institution of the family and family stability.