



townhall.virginia.gov

Final Regulation Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC90-20-10 et seq.
Regulation title(s)	Regulations Governing the Practice of Nursing
Action title	Provisional licensure to obtain clinical experience required for licensure
Date this document prepared	11/18/14

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the 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. Re-submitted emergency regulations became effective on

August 1, 2013 and will remain in effect until January 28, 2015 or until replaced by permanent regulations.

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.

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.

NCLEX = National Council Licensing Examination

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 18, 2014, the Board of Nursing adopted final amendments for provisional licensure in 18VAC90-20-10 et seq., Regulations Governing the Practice of Nursing.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

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:

...

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.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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 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.”

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 briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The provisions 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.

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 potential for an increased supply of registered nurses who are qualified by education and supervised clinical experience to provide care to patients. There is also an advantage to certain graduates of educational programs who are not qualified for licensure because they lack the requisite clinical experience; the proposed regulation offers a pathway to licensure. There are no disadvantages.
- 2) There are no advantages or disadvantages to the Commonwealth or 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 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.

Family impact

Please assess the impact of this 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 potential impact on the institution of the family and family stability.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
215 C	Subsection C sets out requirements for hours of direct client care with a provisional license.	Added in subsection C: requirements for hours of [<u>supervised clinical experience in</u>] direct client care with a provisional license	Board counsel noted that the requirements in subsection C refer to supervised clinical experience but the heading of that subsection refers to “direct client care.” The Board clarified that the requirement is for “supervised clinical experience” in “direct client care.”
215C	#4 in section C states that: Up to 100 hours of credit may be applied towards the 500-hour requirement for applicants who have	Deleted “Up to” - so 100 hours of credit may be applied towards the 500-hour requirement for applicants who have successfully completed a nursing education program that	Board counsel noted that there were no criteria for application of less than 100 hours. The Board has clarified its intent to allow 100

	successfully completed a nursing education program that meets certain requirements.	meets certain requirements.	hours of credit toward the 500-hour requirement for a program that meets the requirements stated in #4.
--	---	-----------------------------	---

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response
Mary Lee Pollard, Excelsior College	Supports the provisional licensure regulations as beneficial to its graduates	Board has adopted the requirements as proposed.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

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"> 1. A completed application for licensure by examination and fee; 2. Documentation that the applicant has successfully completed a nursing education program; and 3. Documentation of passage of NCLEX in accordance with 18VAC90-20-

	<p>190 of this Chapter.</p> <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>
<p>215 C</p>	<p><i>Proposed change:</i> Requirements for hours of supervised clinical experience in direct client care with a provisional license.</p> <ol style="list-style-type: none"> 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. 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. 3. For applicants with a current, active license as an LPN, 150 hours credit shall be counted towards the 500-hour requirement. <u>**4. 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"> <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> <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> 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. <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>** Re-proposed change: 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 emergency regulations under review. The Committee reviewed information provided by Excelsior College including:</p> <ul style="list-style-type: none"> • Revised admission criteria for Excelsior College • Documentation for military personnel eligible for admission to Excelsior College ASN/AASN programs • Length of enrollment statistics for Excelsior College students in Virginia • Excelsior College proposal to amend proposed 18VAC90-20-215 C (4) • 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) • Board of Nursing guidance document 90-24 “The Use of Simulation in Nursing Education” <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"> 1. The supervisor to be on-site and physically present in the unit where the provisional licensee is providing clinical care of clients; 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. 3. Licensed registered nurses providing supervision for provisional licensee shall: <ol style="list-style-type: none"> a. Notify the board of the intent to provide supervision for a provisional licensee on a form provided by the board; 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;

	<p>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;</p> <p>d. Be required to monitor clinical performance and intervene if necessary for the safety and protection of the clients;</p> <p>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.</p> <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>
215 E	<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>
215 F	<p><i>Proposed change:</i> All provisional licenses shall expire six months from the date of</p>

	<p>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>
--	---