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Final Regulation
Agency Background Document

Agency name	Boards of Nursing and Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC90-30-10 et seq.
Regulation title(s)	Regulations Governing the Licensure of Nurse Practitioners
Action title	Practice in patient care teams
Date this document prepared	2/19/15

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The proposed regulation revises requirements for practice of nurse practitioners consistent with a model of collaboration and consultation with a patient care team physician working under a mutually agreed-upon practice agreement within a patient care team. The goal of the amended regulation is to revise terminology and criteria for practice, consistent with changes to the Code in Chapter 213 of the Acts of the Assembly.

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.

CNM = certified nurse midwife
CRNA = certified registered nurse anesthetist
NP = nurse practitioner

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 January 27, 2015, the Board of Nursing adopted final amendments and on February 19, 2015, the Board of Medicine adopted final amendments to 18VACC90-30-10 et seq., Regulations Governing the Licensure of Nurse Practitioners.

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 Boards of Nursing and Medicine 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:

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 mandate to promulgate regulations for the practice of nurse practitioners is found in § 54.1-2957 of the Code of Virginia:

§ 54.1-2957. Licensure and practice of nurse practitioners; practice agreements.

A. The Board of Medicine and the Board of Nursing shall jointly prescribe the regulations governing the licensure of nurse practitioners. It shall be unlawful for a person to practice as a nurse practitioner in the Commonwealth unless he holds such a joint license.

B. A nurse practitioner shall only practice as part of a patient care team. Each member of a patient care team shall have specific responsibilities related to the care of the patient or patients and shall provide health care services within the scope of his usual professional activities. Nurse

practitioners practicing as part of a patient care team shall maintain appropriate collaboration and consultation, as evidenced in a written or electronic practice agreement, with at least one patient care team physician. Nurse practitioners who are certified registered nurse anesthetists shall practice under the supervision of a licensed doctor of medicine, osteopathy, podiatry, or dentistry. Collaboration and consultation among nurse practitioners and patient care team physicians may be provided through telemedicine as described in § 38.2-3418.16. Practice of patient care teams in all settings shall include the periodic review of patient charts or electronic health records and may include visits to the site where health care is delivered in the manner and at the frequency determined by the patient care team.

Physicians on patient care teams may require that a nurse practitioner be covered by a professional liability insurance policy with limits equal to the current limitation on damages set forth in § 8.01-581.15.

Service on a patient care team by a patient care team member shall not, by the existence of such service alone, establish or create liability for the actions or inactions of other team members.

C. The Board of Medicine and the Board of Nursing shall jointly promulgate regulations specifying collaboration and consultation among physicians and nurse practitioners working as part of patient care teams that shall include the development of, and periodic review and revision of, a written or electronic practice agreement; guidelines for availability and ongoing communications that define consultation among the collaborating parties and the patient; and periodic joint evaluation of the services delivered. Practice agreements shall include a provision for appropriate physician input in complex clinical cases and patient emergencies and for referrals. Evidence of a practice agreement shall be maintained by a nurse practitioner and provided to the Boards upon request. For nurse practitioners providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the nurse practitioner's clinical privileges or the electronic or written delineation of duties and responsibilities in collaboration and consultation with a patient care team physician.

D. The Boards may issue a license by endorsement to an applicant to practice as a nurse practitioner if the applicant has been licensed as a nurse practitioner under the laws of another state and, in the opinion of the Boards, the applicant meets the qualifications for licensure required of nurse practitioners in the Commonwealth.

E. Pending the outcome of the next National Specialty Examination, the Boards may jointly grant temporary licensure to nurse practitioners.

F. As used in this section:

"Collaboration" means the communication and decision-making process among members of a patient care team related to the treatment and care of a patient and includes (i) communication of data and information about the treatment and care of a patient, including exchange of clinical observations and assessments; and (ii) development of an appropriate plan of care, including decisions regarding the health care provided, accessing and assessment of appropriate additional resources or expertise, and arrangement of appropriate referrals, testing, or studies.

"Consultation" means the communicating of data and information, exchanging of clinical observations and assessments, accessing and assessing of additional resources and expertise, problem-solving, and arranging for referrals, testing, or studies.

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.

A team care approach emphasizing collaboration and consultation will allow for more creative and fuller utilization of nurse practitioners while ensuring appropriate setting-specific physician input. The law and regulations also embrace technological and communications advances such as telemedicine not envisaged under the earlier statutes. Nurse practitioner mobility and geographic outreach into underserved areas can be facilitated by the revised practice paradigm. Collaboration and consultation on patient care within a patient care team protects public health and safety by utilizing the strengths and expertise of nurse practitioners and physicians.

Substance

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

The following changes are proposed:

- The definitions of "collaboration" and "consultation" are added and are identical to the definitions specified in subsection F of § 54.1-2957. The term "licensed physician" is deleted and replaced by the term "patient care team physician," which is the term now used in the Code and similarly defined in § 54.1-2900. Likewise, the requirement for a protocol has been replaced in the law with a practice agreement, as specified in subsection C of § 54.1-2957.
- The requirement for supervision of the practice of a nurse practitioner is replaced with a requirement for collaboration and consultation with a patient care team physician as part of a patient care team. The CRNA is omitted from this section because the revisions to the Code retained the supervisory requirement for that category of nurse practitioners.
- The requirements for a practice agreement (which was described as the "protocol" for practice of an NP) are established consistent with elements of a practice agreement are found in Subsection C of § 54.1-2957.

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 most significant benefit is to the patients/clients in Virginia who may benefit from an expansion of care by nurse practitioners since they are not required to practice in the same location as the patient care team physician and are able to deliver care in a collaborative approach in which each member of the team practices to the extent of his training. There are no disadvantages to the public.
2) There are no specific advantages to the agency or the Commonwealth except possibly better utilization of nurse practitioners throughout underserved parts of the state. There are no disadvantages.
3) There are no other pertinent issues.

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 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.*

There were no changes made to the text of the proposed regulation.

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.

A public hearing was conducted on October 8, 2014; there was a 60-day comment period from September 22, 2014 to November 21, 2014. There were no comments received.

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

There were no changes from the emergency regulation in effect from 5/8/13 to 11/6/14.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
10		Establishes definitions for words and terms used in the regulations	The definitions of "collaboration" and "consultation" are identical to the definitions specified in subsection F of § 54.1-2957. The terms "controlling institution" and "preceptor" are deleted because they are not currently used in the chapter. The term "licensed physician" is deleted and replaced by the term "patient care team physician," which is the term now used in the Code and similarly defined in § 54.1-2900. Likewise, the requirement for a protocol has been replaced in the law with a practice agreement, as specified in subsection C of § 54.1-2957. *The likely impact of the proposed changes in definitions is minimal since terms are also used and defined in the Code.*
90		Sets out the list of professional credentialing bodies acceptable for licensure by	The list of credentialing bodies has been amended because three of the names have been changed since this section was last amended. *The impact is additional clarity in the regulation to eliminate any possible confusion about the names of the*

		examination for nurse practitioners	*credentialing bodies.*
100		Sets out the requirements for renewal of licensure	The word "mailed" is changed to "sent" to allow the board to send initial notices for renewal electronically. *While Nursing has not adopted that process as yet, other boards at the Department of Health Professions have done so, and this change in regulation will make it clear that email notification is authorized for nurse practitioner renewal.*
105		Sets out the requirements for continuing competency	An obsolete date in subsection B is deleted.
120		Sets out the criteria for practice of all nurse practitioners, except certified registered nurse anesthetists (CRNA)	Subsection A is revised for consistency with A 3 in § 54.1-2901. *The requirement for supervision of the practice of a nurse practitioner is replaced with a requirement for collaboration and consultation with a patient care team physician as part of a patient care team. The CRNA is omitted from this section because the revisions to the Code retained the supervisory requirement for that category of nurse practitioners.* Subsection B is amended to clarify that all NP practice is based on specialty education preparation as "an advanced practice registered nurse." *While the term "nurse practitioner" continues to be used in law and regulation, such person is defined in the Code as an "advanced practice registered nurse," and it is the term used in the consensus model advocated by nursing groups.* The specific standards for practice of a certified nurse midwife (CNM) are currently found in subsection D of section 121, which has been amended to reference CRNA's instead of CNM's.
121		Sets out the criteria for practice of certified registered nurse anesthetists (CRNA)	While other nurse practitioners practice in collaboration and consultation with a patient care team physician, the legislation retains the requirement of supervision for CRNA's. (See subsection B of § 54.1-2957). Therefore, a separate section on practice was established which includes the requirement to practice according to specialty education preparation, which are currently found in subsection D of section 120. *Prior to 2012 amendments to the Code, a nurse practitioner licensed as a certified nurse midwife (CNM) was allowed to practice in "collaboration and consultation" with a licensed physician. (*§ 54.1-2901 A 31). *Since all categories of nurse practitioner (except CRNA's) may now practice in collaboration and consultation, there was no need for a separate practice section for CNM's.*
n/a	122	n/a	Section 122 sets out the requirements for a practice agreement (which was described as the "protocol" for

			practice of an NP). Subsection A reiterates the requirement in Code for practice in accordance with a practice agreement, which may be developed and "signed" in writing or electronically. Subsection B sets out the basic content of a practice agreement to include periodic review of patient records, appropriate physician input in complex cases and emergencies, and the authority for the NP to sign certain documents. The practice agreement may also include provisions for visits to the site where the NP is delivering care in a manner and at a frequency determined by the team. *Required elements of a practice agreement are found in Subsection C of § 54.1-2957.* Subsection C of the regulation requires the practice agreement to be maintained by the nurse practitioner and provided upon request. Nurse practitioners providing care to patients within a hospital or health care system can include the practice agreement as part of documents delineating the nurse practitioner's clinical privileges or the electronic or written delineation of duties and responsibilities; however, the nurse practitioner is responsible for providing a copy to the boards upon request. *Requirements for maintenance, provision upon request, and inclusion of the practice agreement in hospital documents are found in Subsection C of § 54.1-2957.*