Virginia Regulatory Town Hall

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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) 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	Training for administration of gastrostomy tube in DBHDS facilities
Date this document prepared	5/21/13

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

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.*

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.

HB1759 of the 2013 General Assembly authorizes a person who has successfully completed a training program approved by the Board of Nursing to administer medications via percutaneous gastrostomy tube to person receiving services from a program licensed by the Department of Behavioral Health and Developmental Services (DBHDS). An enactment clause requires the Board of Nursing to have regulations for a training program in effect within 280 days of enactment of the bill.

The key provision of the regulation is the inclusion in Section 390 (content of a medication administration training program) a requirement to complete the curriculum approved by the Department of Behavioral health and Developmental Services for unlicensed persons to administer medication via a gastrostomy tube.

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. [Please cite the authority you are using to promulgate an emergency regulation.]???

Chapter 24 of Title 54.1 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

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.

Chapter 114 of the 2013 Acts of the Assembly amended § 54.1-3408 of the Drug Control Act to require adoption of this regulation:

In addition, this section shall not prevent a person who has successfully completed a training program for the administration of drugs via percutaneous gastrostomy tube approved by the Board of Nursing and been evaluated by a registered nurse as having demonstrated competency in administration of drugs via percutaneous gastrostomy tube from administering drugs to a person receiving services from a program licensed by the Department of Behavioral Health and Developmental Services to such person via percutaneous gastrostomy tube. The continued competency of a person to administer drugs via percutaneous gastrostomy tube shall be evaluated semiannually by a registered nurse.

Emergency regulations are authorized in accordance with Section 2.2-4011 of the Code of Virginia which 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.

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 114 of the 2013 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 administration of drugs by an unlicensed person to a person receiving services from a program licensed by the Department of Behavioral Health and Developmental Services (DBHDS) via a gastrostomy tube, provided the unlicensed person has successfully completed a training program "*approved by the Board of Nursing."*

The goal of the amendment to Section 390 is approval by the Board of Nursing a training module in gastrostomy tubes approved by DBHDS. The training by DBHDS is an addition to the basic content of the curriculum for medication administration training program as authorized in § 54.1-3408 of the Code of Virginia.

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.

Administration of drugs via a percutaneous gastrostomy tube requires an understanding of the purpose, technique and possible complications involved. To allow an unlicensed person to perform such administration in a program licensed by the Department of Behavioral Health and Developmental Services (DBHDS), the Drug Control Act (§ 54.1-3408) was amended by the 2013 General Assembly. To protect the health and safety of persons receiving such administration, the Code requires successful completion of a training program approved by the Board of Nursing and an evaluation of the unlicensed person by a registered nurse to demonstrate competency in administration of drugs via percutaneous gastrostomy tube. The training program or module for administration of drugs via a gastrostomy tube is designed for current medication aides in DBHDS facilities who have already completed the medication management curriculum set out in Section 390 of Board of Nursing regulations. Competency of the unlicensed person must be demonstrated in a written test and a skills demonstration by a registered nurse.

Substance

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

Current section number	Current requirement	Proposed change, intent, and likely impact of proposed requirements
390	Sets out the content of the curriculum for training in medication administration	Subsection B is added to Section 390 to require: *Pursuant to § 54.1-3408 (L), the board requires successful completion of the*

	by unlicensed persons as authorized in § 54.1-3408 of the Drug Control Act.	*curriculum approved by the Department of Behavioral Health and Developmental Services for unlicensed persons to administer medication via a gastrostomy tube.* The curriculum and training module approved by DBHDS includes general information about gastrostomy tubes, techniques, infection control, medication administration, physician orders, and the role of the nurse, intervention for complications, and forms for competency evaluations. The training program will be used by registered nurses to train medication aides in DBHDS facilities and may be modified by that Department as experience dictates. It will allow persons with gastrostomy tubes to reside in community facilities in which the full-time services of a registered nurse are not available.

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.

There are no alternatives to the proposed regulatory action that would comply with the mandate of Chapter 114 of the 2013 Acts of the Assembly.

To develop a training program as specified in the Act, the Department of Behavioral Health and Developmental Services (DBHDS) was asked to utilize the expertise of its registered nurses who are familiar with gastrostomy tubes and with client needs in its facilities to develop a training program. The Board of Nursing has amended its requirements for a medication administration curriculum to approve the curriculum developed by DBHDS for the administration of mediations via a gastrostomy tube in DBHDS facilities. The use and management of the curriculum will be the responsibility of DBHDS nurses, who will conduct the training, administer the written test and evaluate the skills and competency of the medication aides. If experience with the training indicates that there is a need for modifications to the training module, DBHDS will be able to make changes as necessary to protect the health and safety of persons within its facilities.

Public participation

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.

Please also indicate, pursuant to your Public Participation Guidelines, whether a panel has been used in the development of the emergency regulation and whether it will also be used in the development of the proposed regulation.

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 or by fax to (804) 527-4434 or by posting on the Regulatory Townhall at 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.

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.

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