



Virginia
Regulatory
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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. 18VAC90-21-10 et seq. (new chapter)
Regulation title	Regulations Governing the Practice of Nursing Regulations for Medication Administration Training and Immunization Protocols (new chapter)
Action title	Regulatory reform
Date this document prepared	5/21/13

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*.

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

Regulations are amended to facilitate electronic submission of documents and forms, accept a certificate of naturalization as evidence of a name change, eliminate burdensome timelines and documentation for certain applicants, and clarify regulations. This action will also repeal sections 370 through 410 to move requirements for medication administration training and immunization protocols into a separate chapter, promulgated as Chapter 21.

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.

The Board of Nursing adopted the amendments to 18VAC90-20-10 et seq., Regulations Governing the Practice of Nursing on May 21, 2013.

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.

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. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title...

In addition, Chapter 30 of Title 54.1 specifies the authority of the Board of Nursing in:

§ 54.1-3005. Specific powers and duties of Board.

In addition to the general powers and duties conferred in this title, the Board shall have the following specific powers and duties:

- 1. To prescribe minimum standards and approve curricula for educational programs preparing persons for licensure or certification under this chapter;*
- 2. To approve programs that meet the requirements of this chapter and of the Board;*
- 3. To provide consultation service for educational programs as requested;*
- 4. To provide for periodic surveys of educational programs;*
- 5. To deny or withdraw approval from educational programs for failure to meet prescribed standards;*
- 6. To provide consultation regarding nursing practice for institutions and agencies as requested and investigate illegal nursing practices;*
- 7. To keep a record of all its proceedings;*

8. *To certify and maintain a registry of all certified nurse aides and to promulgate regulations consistent with federal law and regulation. The Board shall require all schools to demonstrate their compliance with § 54.1-3006.2 upon application for approval or reapproval, during an on-site visit, or in response to a complaint or a report of noncompliance. The Board may impose a fee pursuant to § 54.1-2401 for any violation thereof. Such regulations may include standards for the authority of licensed practical nurses to teach nurse aides;*
9. *To approve programs that entitle professional nurses to be registered as clinical nurse specialists and to prescribe minimum standards for such programs;*
10. *To maintain a registry of clinical nurse specialists and to promulgate regulations governing clinical nurse specialists;*
11. *To certify and maintain a registry of all certified massage therapists and to promulgate regulations governing the criteria for certification as a massage therapist and the standards of professional conduct for certified massage therapists;*
12. *To promulgate regulations for the delegation of certain nursing tasks and procedures not involving assessment, evaluation or nursing judgment to an appropriately trained unlicensed person by and under the supervision of a registered nurse, who retains responsibility and accountability for such delegation;*
13. *To develop and revise as may be necessary, in coordination with the Boards of Medicine and Education, guidelines for the training of employees of a school board in the administration of insulin and glucagon for the purpose of assisting with routine insulin injections and providing emergency treatment for life-threatening hypoglycemia. The first set of such guidelines shall be finalized by September 1, 1999, and shall be made available to local school boards for a fee not to exceed the costs of publication;*
14. *To enter into the Nurse Licensure Compact as set forth in this chapter and to promulgate regulations for its implementation;*
15. *To collect, store and make available nursing workforce information regarding the various categories of nurses certified, licensed or registered pursuant to § 54.1-3012.1;*
16. *To expedite application processing, to the extent possible, for an applicant for licensure or certification by the Board upon submission of evidence that the applicant, who is licensed or certified in another state, is relocating to the Commonwealth pursuant to a spouse's official military orders;*
17. *To register medication aides and promulgate regulations governing the criteria for such registration and standards of conduct for medication aides;*
18. *To approve training programs for medication aides to include requirements for instructional personnel, curriculum, continuing education, and a competency evaluation;*

19. To set guidelines for the collection of data by all approved nursing education programs and to compile this data in an annual report. The data shall include but not be limited to enrollment, graduation rate, attrition rate, and number of qualified applicants who are denied admission;

20. To develop, in consultation with the Board of Pharmacy, guidelines for the training of employees of child day programs as defined in § 63.2-100 and regulated by the State Board of Social Services in the administration of prescription drugs as defined in the Drug Control Act (§ 54.1-3400 et seq.). Such training programs shall be taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist;

21. In order to protect the privacy and security of health professionals licensed, registered or certified under this chapter, to promulgate regulations permitting use on identification badges of first name and first letter only of last name and appropriate title when practicing in hospital emergency departments, in psychiatric and mental health units and programs, or in health care facility units offering treatment for patients in custody of state or local law-enforcement agencies;

22. To revise, as may be necessary, guidelines for seizure management, in coordination with the Board of Medicine, including the list of rescue medications for students with epilepsy and other seizure disorders in the public schools. The revised guidelines shall be finalized and made available to the Board of Education by August 1, 2010. The guidelines shall then be posted on the Department of Education's website; and

23. To promulgate, together with the Board of Medicine, regulations governing the licensure of nurse practitioners pursuant to § 54.1-2957.

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 amendments is to update language and simplify the process of applying for licensure. Elimination of unnecessary or outdated provisions and inclusion of language consistent with current practices will facilitate submission of documentation for licensure or registration as a volunteer nurse for a non-profit organization. The goal is to enable qualified applicants to obtain licensure which provides the public with some assurance of competency and accountability in the delivery of nursing services.

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?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The amendments are less restrictive and not controversial. They are consistent with the intent and purpose of regulatory reform.

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.) Please be sure to define any acronyms.

Regulations are amended to facilitate electronic submission of documents and forms, accept a certificate of naturalization as evidence of a name change, eliminate burdensome timelines and documentation for certain applicants, and clarify regulations. This action will also repeal sections 370 through 410 to move requirements for medication administration training and immunization protocols into a separate chapter, promulgated as Chapter 21.

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 facilitation of applications and renewals and elimination of confusing, outdated language. There are no disadvantages.
- 2) The advantage to the Commonwealth is clarity in the regulations which reduces queries to board staff.
- 3) There are no other pertinent matters.

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.

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. Elimination or reduction in the regulatory burden requires promulgation of amendments to regulations.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will not incur additional costs for email notification to persons on the Public Participation Guidelines mailing lists. There will be no on-going expenditures related to this action.</p>
<p>Projected cost of the new regulations or changes to existing regulations 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 new regulations or changes to existing regulations.</p>	<p>Affected individuals would be registered nurses, licensed practical nurses, clinical nurse specialists and person applying for licensure or registration</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>There are currently: 100,608 registered nurses 31,276 licensed practical nurses 426 clinical nurse specialists The number of persons who may be affected by less restrictive application requirements is unknown. While the entities affected constituting small businesses is unknown, it is likely very small.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There would be no costs associated with this action.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Greater efficiency and less burdensome documentation required in applying for licensure and renewal</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.

There are no alternatives that will accomplish the purpose of eliminating outdated language and reducing the regulatory burden.

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 institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
	The current requirement in new section 34 is found section 240	<i>Provisions for issuance of a duplicate license should be found within Part I, General Provisions. Its current placement in Part III can be confusing to licensees. There is no change from the current regulation other than a new section number.</i>
35	Sets out requirements for maintaining accurate records with the board	An amendment to subsection B will allow a licensee to provide a certificate of naturalization as proof of a name change in addition to current evidence of a marriage certificate or court order. The additional option will enable a nurse to officially change the name on her license without the trouble and expense of seeking a court order. An amendment to subsection C will allow a licensee to submit an address change <i>electronically</i> rather than requiring the information to be sent in writing.
	The current requirement in new section 37 is found section 270	<i>Provisions for supervision of licensed practical nurses should be found within Part I, General Provisions. Its current placement in Part III can be confusing to licensees. There is no change from the current regulation other than a new section number.</i>
190	Establishes requirements for licensure by examination	Subsection B is amended to clarify for applicants that the examination referenced is the <i>NCLEX</i> examination, which is required for licensure. The amendment is intended to eliminate any possible confusion. Currently, an applicant for licensure by examination is required to file a new application if the examination is not taken within six months or eligibility is not established within six months of the original filing date. Amendments to subsection C will change the timeline to 12 months to give applicants more time to qualify before having to file a new application with a new fee. An amendment to subsection G eliminates the requirement for filing an application for re-examination at least 60 days prior to the first day of the month in which the applicant expects to take the examination. Since the <i>NCLEX</i> examination is now computerized and offered continuously, the regulatory requirement is unnecessary and burdensome.
200	Establishes requirements for licensure by endorsement	An amendment to subsection A is intended to clarify that an applicant may be issued a single state license if he has passed a licensing examination other than <i>NCLEX</i> . If the applicant has been licensed in another U. S. jurisdiction, he would have had to pass a licensing examination, but the Board cannot grant a multi-state privilege to practice unless he has passed <i>NCLEX</i> .
220	Sets out requirements for renewal of licenses	An amendment to subsection B changes the word “mailed” to “sent” to clarify that renewal notices may be sent

		electronically rather than by hard copy.
240	Repealed	See change of placement to section 34.
270	Repealed	See change of placement to section 37.
271	Sets out requirements for voluntary practice of out-of-state licensees	To ease the burden of voluntary practice in Virginia by persons licensed in another state, ## 2 and 5 are amended as follows: #2 – currently, registration for voluntary practice requires submission of a <i>complete record</i> of professional licensure in <i>each state</i> in which the applicant has held a license and a copy of <i>every</i> current license. The amendment will allow the Board to use evidence of a current, unrestricted license in the U.S. Evidence of current licensure can be obtained through a national electronic system (NURSYS), so registration as a volunteer can be greatly simplified. #5 – currently, an applicant for registration must have a notarized statement from the nonprofit for which he plans to volunteer. The amendment will eliminate the need for notarization and accept an attestation from the organization.
280	Establishes requirements for registration as a clinical nurse specialist	Currently, the regulation states that evidence of current specialty certification is required for renewal of a clinical nurse specialist registration. In fact, the CNS is asked to attest to current certification, so the regulation is amended for consistency with current renewal procedures.
370 – 410 New chapter 21	Regulations for medication administration training and for immunization protocols	Sections 370 through 410 are being repealed and re-promulgated as a separate chapter. These sections pertain to programs for administration of medications by unlicensed persons or the establishment of an adult immunization program. Both were added to Chapter 20 as required by the Drug Control Act and do not specifically relate to the practice of nursing. For ease of compliance and use, these sections are being repealed in Chapter 20 and re-adopted as a new Chapter 21. All provisions of new Chapter 21 are identical to current regulations in section 370 through 410.