



Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VC90-20-10 et seq.
Regulation title	Regulations Governing the Practice of Nursing
Action title	Competency requirements for reactivation or reinstatement of licensure
Date this document prepared	11/24/13

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*.

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.

In response to a petition for rulemaking, the Board intends to amend sections 225 and 230 on inactive licensure and reinstatement of licensure to ensure that the requirements for evidence of continuing competency are consistent with those for renewal of an active license as a nurse.

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 health regulatory boards found in § 54.1-2400:

§ 54.1-2400. General powers and duties of health regulatory boards.

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions...*
- 3. To register, certify, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board...*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 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.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate, license or multistate licensure privilege which such board has authority to issue for causes enumerated in applicable law and regulations...*
- 12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.*

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.

In 2010, the Board issued a Notice of Intended Regulatory Action to initiate rulemaking to address continuing competency for nurses who renew their active licenses biennially. When final regulations were promulgated, the Board realized that the requirements for continuing education hours for persons who had allowed their nursing license to lapse or had taken inactive status were less than those for nurses who were renewing an active license. Since the sections on inactive licensure and reinstatement had not been identified in the NOIRA or in the proposed regulations, the Board decided to address them in a later action. The final regulations for continuing competency for renewal of licensure became effective August 1, 2013.

On August 9, 2013, a petition for rulemaking was received requesting that the Board consider amending the sections on reactivation and reinstatement because requirements in those sections should not be weaker than those for renewal of an active license. If a license has been inactive or lapsed for more than two years, the nurse can reactivate or reinstate by evidence of completion of 15 hours of continuing education in nursing approved by a regionally accredited educational institution or professional nursing organization or by passage of National Council Licensing

Examination during the period in which the license. Conversely, a nurse with an active license but less than 640 hours of active practice must have 30 hours of continuing education for a biennial renewal. The Board concurred with the petitioner and voted to initiate rulemaking because current regulations may not adequately ensure the current competency of an applicant seeking reactivation or reinstatement if he or she has not been actively practicing outside of Virginia. To protect the health and safety of the patients, the Board must require some evidence that the nurse is competent to resume active practice.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Regulatory language has not been developed, but it is likely that the Board will seek some consistency between reinstatement or reactivation and renewal. Most health regulatory boards require the same number of continuing education hours for each year in which the license has been inactive or lapsed, not to exceed four years – which would result in a requirement of 15 hours for each year the license has been inactive or lapsed, not to exceed 60 hours. Current regulations allow the Board to waive all or part of the continuing education hours if the licensee has been actively practicing in another state. It is likely the Board will retain that provision.

The petitioner and the Legislative Coalition of Nurses, in commenting on the petition, questioned the advisability of accepting passage of the National Council Licensing Examination (NCLEX) as a means of demonstrating competency. It is unlikely that a former licensee would elect that option, since the exam is designed for recent graduates with recent clinical experience. However, the Board will also consider whether that option should be retained.

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, please 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 viable alternatives to the proposed regulatory action that would achieve the intent of making continued competency requirements for reactivation or reinstatement of persons who do not hold an active license to practice consistent with competency requirements for nurses who do hold an active license. Current regulations allow the Board to request additional evidence that the nurse is prepared to resume practice in a competent manner, but there would have to be some clear rationale for exceeding the basic requirement for 15 hours of continuing education.

Public participation

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this 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 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Elaine Yeatts, Agency Regulatory Coordinator, at elaine.yeatts@dhp.virginia.gov or 9960 Mayland Drive, Henrico, VA 23233. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

An advisory panel will not be used for the development of regulations.

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 family.