



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Nursing, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC90-20-10 et seq.
<b>Regulation title</b>	Regulations Governing the Practice of Nursing
<b>Action title</b>	Evidence of competency for reactivation or reinstatement
<b>Date this document prepared</b>	March 20, 2014

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

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

### 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 March 20, 2014, the Board of Nursing adopted an amendment to 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.*

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**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:*

*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...*

*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...*

*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.*

## 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.*

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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. Currently, 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.

### 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?*

Comments received on the petition for rulemaking and the Notice of Intended Regulatory Action were supportive of the amendments the Board has proposed. Therefore, the Board is confident that the rulemaking is noncontroversial and should be promulgated as a fast-track action.

### 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.*

For consistency with the current requirements for renewal of an active license, the Board will require a nurse seeking reactivation or reinstatement to provide evidence of completion at least one of the learning activities or courses specified in 18VAC90-20-221 during the two years immediately preceding application for reactivation.

### 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 of the amendment is better assurance that nurses returning to active practice have minimal competency to provide services to patients in Virginia. There are no disadvantages.
- 2) There are no advantages or disadvantages to the Commonwealth.

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 is no requirement more restrictive than 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**

*Pursuant to §2.2-4007.1B of the Code of Virginia, 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 methods consistent with health and safety of the public.

**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. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.*

<p><b>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal.</b> Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>Nurses who want to return to active practice after r allowing their licenses to lapse or become inactive. Some are returning to nursing practice after a number of years of inactivity.</p>
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<p><b>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected.</b> Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</p>	<p>There is no estimate of the number of applicants for reinstatement or reactivation who may be affected. Nurses typically are employees of hospitals or health systems; they are not small businesses.</p>
<p><b>Benefits expected as a result of this regulatory proposal.</b></p>	<p>Consistent requirements for evidence of continuing competency for nurses seeking to reactivate or reinstate a license may clarify the Board’s expectation for applicants.</p>
<p><b>Projected cost to the state to implement and enforce this regulatory proposal.</b></p>	<p>None</p>
<p><b>Projected cost to localities to implement and enforce this regulatory proposal.</b></p>	<p>None</p>
<p><b>All projected costs of this regulatory proposal for affected individuals, businesses, or other entities.</b> Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.</p>	<p>If a nurse has not kept his knowledge and skills current during the time of inactivity, he will have to obtain at least 30 hours of continuing education to reactivate or reinstate a license. The current requirement is 15 hours, so there will some cost in obtaining the additional 15 hours of continuing education. If the nurse has actively practiced in another state and is returning to Virginia to reinstate his license, he may not be required to acquire the additional 15 hours. There are a myriad of resources and providers available for meeting continuing competency requirements of section 221 at a very reasonable cost. For example, the National Council of State Boards of Nursing offers courses on-line, such as a course on Medication Errors; Detention and Prevention at a cost of \$30 for 6.9 contact hours.</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 viable alternatives to the proposed regulatory action that would achieve the intent of making continued competency requirements for 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 rationale for exceeding the basic requirement for 15 hours of continuing education on a case-by-case basis. The rule should state the Board’s expectation and intent for evidence of continuing competency in order to reactivate or reinstate at license.

**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 family.

**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.*

<b>Current section number</b>	<b>Current requirement</b>	<b>Proposed change, intent, and likely impact of proposed requirements</b>
225 and 230	<p>Section 225 sets out the requirements for an inactive license and reactivation of such license. Section 230 sets out the requirements for reinstatement of a lapsed licensed.</p> <p>In both sections, the applicant seeking to reactivate or reinstate a license is required to provide evidence of completion of 15 hours of continuing education in nursing approved by a regionally accredited educational institution or professional nursing organization or of passage of the National Council Licensing Examination during the period in which the license has been inactive or lapsed.</p>	<p>The proposed change is to require the applicant to provide evidence of completion of at least one of the learning activities or courses specified in 18VAC90-20-221 during the two years immediately preceding application for reactivation.</p> <p><i>Current, the Board has the authority to “request additional evidence that the nurse is prepared to resume practice in a competent manner.” While that provision does authorize the Board to require more than 15 hours of continuing education, additional evidence should be the exception rather than the rule. The minimum requirement for renewal of an active license is 15 contact hours of workshops, seminars, conferences, or courses relevant to the practice of nursing and 640 hours of active practice or 30 hours of continuing education if the nurse does not have 640 hours of practice during the biennium.</i></p>

		<p><i>To adequately ensure minimal competency of a nurse seeking to reactivate or reinstate a license, the Board should not require fewer hours of continuing education than those required for renewal of an active license. If a nurse has been actively practicing in another state, the regulation allows the Board to waive all or part of the continuing education requirement for reactivation or reinstatement.</i></p> <p><i>To ensure that the applicant has engaged in continuing competency activities recently, the Board prescribed that they must be completed within the two years immediately preceding application. If a nurse had obtained hours of continuing education many years ago, there would be no assurance that his knowledge and skills were minimal current and competent.</i></p> <p><i>The Board also concurred with the petitioner and the Legislative Coalition of Nurses, in commenting on the petition, and deleted the option of passage of the National Council Licensing Examination (NCLEX) as a means of demonstrating competency. It is highly unlikely that a former licensee would elect that option, since the exam is designed for recent graduates with recent clinical experience.</i></p>
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