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Fast-Track Regulation Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC90-20-10 et seq. (repeal) 18VAC90-19-10 et seq. 18VAC90-27-10 et seq.
Regulation title(s)	Regulations Governing the Practice Nursing (Chapter 20 becoming Chapter 19) Regulations Governing Nursing Education Programs (Chapter 27)
Action title	Division of Chapter 20; clarifying amendments
Date this document prepared	March 24, 2016

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 (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

Chapter 20 is repealed and re-promulgated into Chapter 19, Regulations Governing the Practice of Nursing and Chapter 27, Regulations Governing Nursing Education Programs. In Chapter 19, requirements for licensure of nurses are not changed, but there are several amendments to clarify the national examination required for licensure and the educational qualifications for persons whose nursing education was completed in another country. Amendments to the sections on

clinical nurse specialists do not change the current requirements but are consistent with legislation passed in the 2016 General Assembly.

In Chapter 27, amendments will delete several requirements for nursing education programs that have been problematic and will include the State Council of Higher Education for Virginia as the approving body for certain nursing education programs.

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.

SCHEV = State Council of Higher Education for Virginia

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 22, 2016, the Board of Nursing voted to repeal 18VAC90-20-10 et seq., Regulations Governing the Practice of Nursing and to promulgate 18VAC90-19-10 et seq., Regulations Governing the Practice of Nursing and 18VAC90-27-10 et seq., Regulations Governing Nursing Education Programs.

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 (6), which provides the Board of Nursing 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:

- 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.*

2. *To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
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.*
4. *To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
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. ...*

In addition, there is statutory authority for the board to approve nursing education programs:

§ 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; ...*
9. *To approve programs that entitle professional nurses to be registered as clinical nurse specialists and to prescribe minimum standards for such programs; ...*

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.

The amended regulation will clarify several provisions that have caused confusion for applicants or approved education programs. To the extent the elimination of unworkable requirements for nursing education programs will facilitate the approval of such programs, the proposal may enable programs to enroll nursing students and encourage hospitals to serve as clinical sites for training. Such training is essential for students who will be licensed nurses to protect the health and safety of patients/clients whom they will serve.

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?

The Board is using the fast-track process because the changes being made to regulations for nursing education programs are eliminating burdensome and problematic requirements. Therefore, the Board would like to promulgate those amendments as soon as possible. The amendments to the regulations for licensure and practice of nurses are clarifying only and do not change any current requirement for nurses or clinical nurse specialists. There should be no opposition to the amendments, so a fast-track action is appropriate.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.

Chapter 20 is repealed and re-promulgated into Chapter 19, Regulations Governing the Practice of Nursing and Chapter 27, Regulations Governing Nursing Education Programs. In Chapter 19, requirements for licensure of nurses are not changed, but there are several amendments to clarify the national examination required for licensure and the educational qualifications for persons whose nursing education was completed in another country. Amendments to the sections on clinical nurse specialists do not change the current requirements but are consistent with legislation passed in the 2016 General Assembly.

In Chapter 27, amendments will delete several requirements for nursing education programs that have been problematic and will include the State Council of Higher Education for Virginia as the approving body for certain nursing education programs.

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) There are no primary advantages or disadvantages to the public; clarification of the regulations will benefit applicants for licensure and elimination of some current requirements will benefit nursing education programs.
- 2) The primary advantage to the Board of Nursing is the clarification of qualifications for licensure which may eliminate a few of the inquiries from applicants. Likewise, the elimination of several problematic requirements for education programs will reduce the time spent in assisting programs with compliance.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under 54.1-2400 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.” Any restraint on competition that results from this regulation is in accord with the General Assembly’s policy as articulated in § 54.1-100 and is necessary for the preservation of the health, safety, and welfare of the public and will further the public’s need for assurances of initial professional ability.

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

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 is no regulatory flexibility. The Board is mandated by law to set standards for approval of educational programs and to establish qualifications for licensure of nurses.

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>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 or entities for necessary functions of regulation. All notifications will be done electronically. There are no on-going expenditures.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no costs of the new regulation 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>Applicants for nursing licensure will be affected by more explicit qualifications stated in the regulation. There is no effect on their ability to qualify for licensure. Nursing education programs will be affected by less burdensome requirements for Board approval.</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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are 82 RN education programs and 61 LPN education programs approved by the Board. There are 11 applications to establish programs; the elimination of requirements will primarily benefit those still in the approval process. Many of the programs are part of higher education or public school programs; a minority of them are small businesses. The Board receives approximately 10,000 applications for RN and LPN licensure each year. None are affected by the clarifications in regulation, but a few may be better informed about what is required.</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 including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</p>	<p>There are no costs.</p>

<p>b) 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>Beneficial impact the regulation is designed to produce.</p>	<p>More clarity in the regulation will be beneficial.</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.

The agency has acted to adopt amendments that are less burdensome for nursing education programs. Other amendments to licensure of nurses and registration of clinical nurse specialists are clarifying in nature; there are no changes to current requirements for licensure.

Public participation notice

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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

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 family.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

Chapter 20 is being repealed and re-promulgated as two new chapters, 18VAC90-19-10 et seq., Regulations Governing the Practice of Nursing and 18VAC90-27-10 et seq., Regulations Governing Nursing Education Programs. There are a few clarifying or less burdensome amendments.

Chapter 19

Proposed new section number	Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10	10	Establishes definitions for words and terms used in regulation	Addition of reference to Code section 54.1-3000 because many of the definitions are found in that section; those definitions relating to the Nurse Licensure Compact are in 54.1-3030.
20	20	Sets out the delegation of authority for the executive director of the Board	No change
30	30	Sets out fees required for applicants and licensees	No change (fees relating to nursing education programs are deleted and placed in Chapter 27)
40	40	Sets out the requirement to issue a duplicate license upon payment of a fee	No change
50	50	Provides for requirements relating to identification of nurse to the public and relating to accuracy of information	No change
60	60	Sets the provision of collection of data for workforce information	No change
70	70	States the requirement for supervision or direction of licensed practical nurses	No change <i>Section 54.1-3000 defines the practical nursing and specifies that it "is performed under the direction or supervision of a licensed medical practitioner, a professional nurse, registered nurse or registered professional nurse or other licensed health professional authorized by regulations of the Board.</i>
80	181	Establishes the requirements for issuance of a multistate licensure privilege	No change
90	182	Sets out the limitations of a multistate licensure privilege	No change
100	183	Provides for access to information in the coordinated	No change

		licensure information system	
110	190	Provides the requirements for licensure by examination	Current language in subsection A refers to <u>examinations</u> for RN's and LPN's. In fact, the only examination acceptable for licensure in Virginia (and in other states) is the NCLEX. To avoid any misunderstanding, the generic term has been replaced with the name of the national examination. Currently, subsection B already refers specifically to the NCLEX.
120	200	Provides the requirements for licensure by endorsement	<p>Subsection A 2 is added to ensure that applicants whose basic nursing education was in another country understand that they are required to meet the requirements of the section 130. This is the current requirement, as so stated in section 130, but applicants are occasionally confused.</p> <p>Subsection A states that a person can be licensed by endorsement in Virginia, "provided the applicant satisfies the same requirements...as those seeking initial licensure in Virginia." For initial licensure, passage of the NCLEX is required. Yet, the current #2 in subsection A of section 200 states that an applicant for licensure by endorsement who has passed an examination <i>other than NCLEX</i> can be issued a single state license. The two regulations are in direct conflict and have caused confusion on a few occasions. Therefore, the provision in current #2 is not included in Chapter 19, section 120.</p>
130	210	Provides requirements for licensure for applicants from other countries	<p>No change</p> <p><i>Section 130 requires an applicant from another country to submit a credential evaluation by the Commission on Graduates of Foreign Nursing Schools. While CGFNS is considered the most thorough and reliable source for comparability and qualification, the regulation further allows the Board to accept credentials from other recognized agencies (subsection E). To date, no other agencies have submitted requests for Board approval.</i></p>
140	215	Sets out requirements for a provisional license for applicants for licensure as registered nurses	No change
150	220	Sets out requirements for renewal of licensure	No change
160	221	Sets out requirements for	No change

		continued competency for renewal of an active license	<i>The listing includes 13 types of providers, including all state and national nurses associations, all health care provider associations, all state boards of nursing and all government agencies. The list is inclusive of all providers that could be identified, and there have been no requests for additions to the listing.</i>
170	222	Sets out requirements for documenting compliance with continued competency	No change
180	225	Sets out requirements for an inactive license	No change
190	230	Establishes requirements for reinstatement of licensure	No change
200	271	Establishes requirements for a restricted volunteer license	No change
N/A	275	States requirements for a board-approved clinical nurse specialist education program	Currently, the Board does not approve CNS education programs. The Code states that approval is one of the powers and duties of the Board (54.1-3005). Therefore, the current section 275 was intended to meet that duty for approval by deeming as approved those programs that are accredited and designed to prepare an RN for advance practice in a clinical specialty in nursing. Legislation passed in the 2016 General Assembly eliminated that provision in 54.1-3005 as it was inconsistent with the way CNS education programs are approved. The Board has determined qualification for CNS registration as evidence of current specialty certification from a national certifying organization; such organizations determine which programs are approved for certification.
210	280	Sets the requirements for initial registration of clinical nurse specialists and renewal	An amendment to subsection A is necessary to reference the new Code section that specifies the requirement for specialty certification as a clinical nurse specialist.
220	290	Sets the requirements for practice of a clinical nurse specialist	No change
230	300	Sets out the provisions by which a nurse may be disciplined	No change
240	420	Establishes definitions for terms used in the sections on delegation of nursing tasks	No change
250	430	Establishes the criteria for delegation	No change
260	440	Sets the requirements for	No change

		assessment prior to delegation	
270	450	Sets the requirements for supervision of delegated tasks	No change
280	460	Delineates the nursing tasks that shall not be delegated	No change

Chapter 27

Proposed new section number	Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10	10	Establishes definitions for words and terms used in regulation	Amendments will: 1) delete the term "FERPA" because it will no longer appear in the regulation; 2) add "SCHEV" as it is used several times in regulation.
20	30	Sets out the fees for application, survey visits, and site visits for nursing education programs	No change
30	40	Sets out all the requirements for an application for initial approval as a nursing education program	<p>An amendment will add SCHEV as an approving body because it is not entirely accurate to identify the Department of Education as the approving body for higher education programs which fall under SCHEV.</p> <p>Another amendment will eliminate the requirement that faculty office space meet FERPA requirements because there are no specific office space requirements in FERPA.</p> <p><i>Prior to approval of a nursing education program, the Board needs to know whether there are sufficient clinical facilities to provide the clinical experiences and enough employers to support the number of graduates. An adequate number of clinical facilities is essential to meet requirements for graduation. A saturation of nursing programs in one geographic area presents problems for admission of qualified students who can ultimately pass the licensing examination and programs for any graduates who have invested considerable time and money but may not have employment opportunities in their geographic area.</i></p>
40	70	Sets out the requirements for organization and administration	<p>The same amendment for adding SCHEV is made in this section.</p> <p><i>The only approval entities for education</i></p>

			<i>programs in Virginia are DOE and SCHEV. Nationally, the U. S. Department of Education is the body that recognizes accrediting agencies. The only assurance of the validity of the governing institutions for a nursing education program is approval by the State or accreditation by the U. S. Department of Education.</i>
50	80	Provides for requirements relating to the philosophy and objectives of the program	No change
60	90	Sets the requirements for faculty at a nursing education program	No change
70	100	States the requirement for admission of students	No change
80	110	Establishes the requirements for resources, facilities, publications and services	An amendment will eliminate the requirement that the cooperating agency which provides clinical experiences for an education program include in its written agreement the number of students allowed on each nursing unit. The requirement is an unreasonable expectation and may discourage large hospitals with dozens of nursing units from signing agreements with programs. <i>The quality of the clinical experience could not be assured if students were allowed to practice in a hospital or clinic that was not appropriately licensed or accredited.</i>
90	120	Sets out the requirements for the didactic curriculum	No change
100	121	Sets out the requirements for direct client care	No change
110	122	Provides the requirements for the clinical practice of students	No change
120	130	Provides the requirements for granting of initial program approval	No change
130	131	Provides requirements for denying or withdrawing initial program approval	No change
140	132	Sets out the causes for denial or withdrawal of nursing education program approval	No change
150	133	Sets out requirements for granting full program approval	No change
160	134	Sets out requirements for denying full program approval	No change
170	135	Sets out requirements for making requests for	No change

		exceptions of requirements for faculty	
180	136	Sets out requirements for records and provision of information	An amendment will eliminate the requirement that a transcript include the number of clinical hours for each clinical course. The requirement has proven to be very problematic. The Board only needs to know the total number of clinical hours a student has had in the program.
190	137	Establishes requirements for the evaluation of resources and written agreements for cooperating agencies	No change
200	140	Establishes requirements for any program changes	No change
210	151	States requirements for the passage rate on the national examination	No change
220	160	Sets the requirements for maintaining an approved program	No change
230	161	Sets out the requirements for continuing and withdrawing full approval	No change
240	170	Establishes requirements for closing of an approved nursing education program and for the custody of records	No change