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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)	18VAC90-19-10 et seq.
Regulation title(s)	Regulations Governing the Practice of Nursing
Action title	Waiver of CGFNS for licensure by endorsement
Date this document prepared	7/27/17

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

Section 120 of Regulations Governing the Practice of Nursing is being amended to allow the Board to waive requirements for a credentials review by the Commission on Graduates of Foreign Nursing Schools (CGFNS) and examination of English proficiency for a person whose nursing education was received in another country, if the applicant has been licensed in another state and she can provide evidence that those requirements were met for licensure in the other state.

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 July 18, 2017, the Board of Nursing adopted an amendment to 18VAC90-19-10 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.

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 (§2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system...

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.

Applicants who received their nursing education in another country are required to have a credentials review by CGFNS and an examination of English proficiency. For applicants by endorsement, who have been licensed in another U. S. jurisdiction, those requirements may have already been met as qualification for licensure in the other jurisdiction. Therefore, it may be unnecessarily burdensome and create delays in licensure to repeat the credentials review and test of English proficiency. There would have to be verification from the jurisdiction that the qualification has been met.

Since assurance of completion of all educational and clinical requirements has already been verified by CGFNS, there is no risk of less competent nurses being granted a license. Public

health and safety continues to be protected with assurance that a licensee has minimal competency to 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?

The proposed amendment is less burdensome for all parties and will facilitate licensure by endorsement for certain applicants, and 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. A more detailed discussion is provided in the "Detail of changes" section below.

In examining its process for approval of applications by endorsement, staff has become aware that the requirement for a CGFNS credentials review and test of English proficiency may be duplicative of credentialing already performed by another state. The amendment will allow the Board to waive requirements for a CGFNS credentials review and examination of English proficiency for a person whose nursing education was received in another country, if the applicant has been licensed in another state and she can provide evidence that those requirements were met for licensure in the other state.

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 an expedited process for licensure by endorsement of RNs and LPNs who are foreign-trained and have been licensed and credentialed in another state. There are no disadvantages.
- 2) There is an advantage to the Board because an attestation from the other state may eliminate the need for additional documents, which will result in less paperwork and more satisfied applicants. There are no disadvantages to the Commonwealth.
- 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.” There is

no restraint on competition as a result of promulgating this regulation. The language is less burdensome and has no effect on competition.

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 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.

<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</p>	<p>There are no cost for implementation and enforcement, since the proposed regulation clarifies the Board’s current policy.</p>
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expenditures	
Projected cost of the new regulations or changes to existing regulations on localities.	There are no costs to localities
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	Applicants for RN and LPN license by endorsement who are foreign-trained
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.	There is no estimate of the number who may be affected. The Board licenses approximately 1,800 RN applicants each quarter and 400 LPN applicants. There are no estimates of the number of small businesses that may be affected, but the ability to expedite the licensing process will be beneficial to all employers of nurses.
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 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.	The projected cost of applying for licensure by endorsement would be less for foreign-trained applicants. The basic cost for a CGFNS credentials review is \$350; the cost for a TOEFL examination varied by location. For examination, a test of spoken and written English taken in the Philippines would cost \$200. Those costs could be avoided if the Board is able to verify completion of those requirements for licensure in another state.
Beneficial impact the regulation is designed to produce.	More efficacy for all parties involved in the application and licensure process.

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 expediting the application process. To achieve the intended efficiency, the rule must be amended.

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.

For changes to existing regulation(s), please use the following chart:

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
120	Sets out the requirements for licensure by endorsement	<p>Subsection A is amended to allow the requirement for a CGFNS credentials review and test of English proficiency to be waived if the applicant can provide evidence from another United States jurisdiction of:</p> <ul style="list-style-type: none"> a. A CGFNS credentials evaluation for educational comparability; and b. Passage of an English language proficiency examination approved by the CGFNS, unless the applicant met the CGFNS criteria for an exemption from the requirement. <p><i>The amendment will facilitate licensure by endorsement for some applicants, will result in a reduction in paperwork and staff time, and save applicants the cost, time, and effort of securing a second credentials review and TOEFL examination.</i></p>