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Final Regulation
Agency Background Document

Agency name	Boards of Nursing and Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC90-40
Regulation title(s)	Regulations for Prescriptive Authority for Nurse Practitioners
Action title	Elimination of prescriptive authority license
Date this document prepared	11/19/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations.*

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory change will eliminate the requirement for a license to be issued and for renewal of prescriptive authority for a nurse practitioner. It will reduce the fee for an application for prescriptive authority from $75 to $35. Requirements for continuing competency and disclosure to patients remain in effect, as mandated by the Code of Virginia.

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.

N/A

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 October 17, 2019, the Board of Medicine and on November 19, 2019, the Board of Nursing adopted final amendments to 18VAC90-40-10 et seq., Regulations for Prescriptive Authority for Nurse Practitioners.

Mandate and Impetus

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.

This regulatory action was initiated and recommended by the Committee of the Joint Boards of Medicine and Nursing. It is consistent with Governor Northam's Executive Order 14 (2018), which states that: "All regulatory activity should be undertaken with the least possible intrusion into the lives of the citizens of the Commonwealth and be necessary to protect the public health, safety, and welfare."

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity'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, which provides the Boards of Nursing and Medicine 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:
...
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. 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. ...

The statutory provisions for prescriptive authority are found in:

§ 54.1-2957.01. Prescription of certain controlled substances and devices by licensed nurse practitioners.

A. In accordance with the provisions of this section and pursuant to the requirements of Chapter 33 (§ 54.1-3300 et seq.), a licensed nurse practitioner, other than a certified registered nurse anesthetist, shall have the authority to prescribe Schedule II through Schedule VI controlled substances and devices as set forth in Chapter 34 (§ 54.1-3400 et seq.). Nurse practitioners shall have such prescriptive authority upon the provision to the Board of Medicine and the Board of Nursing of such evidence as they may jointly require that the nurse practitioner has entered into and is, at the time of writing a prescription, a party to a written or electronic practice agreement with a patient care team physician that clearly states the prescriptive practices of the nurse practitioner. Such written or electronic practice agreements shall include the controlled substances the nurse practitioner is or is not authorized to prescribe and may restrict such prescriptive authority as described in the practice agreement. Evidence of a practice agreement shall be maintained by a nurse practitioner pursuant to § 54.1-2957. Practice agreements authorizing a nurse practitioner to prescribe controlled substances or devices pursuant to this section shall either be signed by the patient care team physician who is practicing as part of a patient care team with the nurse practitioner or shall clearly state the name of the patient care team physician who has entered into the practice agreement with the nurse practitioner.

B. It shall be unlawful for a nurse practitioner to prescribe controlled substances or devices pursuant to this section unless such prescription is authorized by the written or electronic practice agreement.

C. The Board of Nursing and the Board of Medicine shall promulgate such regulations governing the prescriptive authority of nurse practitioners as are deemed reasonable and necessary to ensure an appropriate standard of care for patients.

Regulations promulgated pursuant to this section shall include, at a minimum, such requirements as may be necessary to ensure continued nurse practitioner competency, which may include continuing education, testing, or any other requirement, and shall address the need to promote ethical practice, an appropriate standard of care, patient safety, the use of new pharmaceuticals, and appropriate communication with patients.

D. This section shall not limit the functions and procedures of certified registered nurse anesthetists or of any nurse practitioners which are otherwise authorized by law or regulation.

E. The following restrictions shall apply to any nurse practitioner authorized to prescribe drugs and devices pursuant to this section:

1. The nurse practitioner shall disclose to the patient at the initial encounter that he is a licensed nurse practitioner. Any member of a patient care team shall disclose, upon request of a patient or his legal representative, the name of the patient care team physician and information regarding how to contact the patient care team physician.

2. Physicians shall not serve as a patient care team physician on a patient care team at any one time to more than six nurse practitioners.

F. This section shall not prohibit a licensed nurse practitioner from administering controlled substances in compliance with the definition of "administer" in § 54.1-3401 or from receiving and dispensing manufacturers' professional samples of controlled substances in compliance with the provisions of this section.

G. Notwithstanding any provision of law or regulation to the contrary, a nurse practitioner licensed by the Boards of Nursing and Medicine in the category of certified nurse midwife and holding a license for prescriptive authority may prescribe (i) Schedules II through V controlled substances in accordance with any prescriptive authority included in a practice agreement with a licensed physician pursuant to subsection H of § 54.1-2957 and (ii) Schedule VI controlled substances without the requirement for inclusion of such prescriptive authority in a practice agreement.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose is elimination of unnecessary regulation and cost for nurse practitioners. The Code of Virginia specifies certain requirements for prescriptive authority but does not require maintenance of a separate license, which is a creation of regulation. Therefore, the Boards will retain the requirements to be issued prescriptive authority and for continuing education, but they will eliminate the requirement to renew the license. "*Regulations promulgated pursuant to this section shall include, at a minimum, such requirements as may be necessary to ensure continued nurse practitioner competency, which may include continuing education, testing, or any other requirement, and shall address the need to promote ethical practice, an appropriate standard of care, patient safety, the use of new pharmaceuticals, and appropriate communication with patients" (subsection* C of § 54.1-2957.01).

Requirements for continuing competency and disclosure to patients remain in effect, as mandated by the Code of Virginia, and as necessary to protect the health and safety of patients.

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.

This regulatory change will eliminate the requirement for issuance of a separate license and for renewal of prescriptive authority for a nurse practitioner. It will reduce the fee for an application for prescriptive from $75 to $35. Requirements for continuing competency and disclosure to patients remain in effect, as mandated by the Code of Virginia.

Issues

Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

1) There are no advantages or disadvantages to the public; the amendments will benefit nurse practitioners and make their practice less costly.
2) There are no advantages or disadvantages to the agency or the Commonwealth. The loss of revenue can be absorbed in the budget of the Board of Nursing without necessitating any increase in fees.
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 "*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.*" There is no restraint on competition as a result of promulgating this regulation, which is less costly and less restrictive for licensees.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There is no applicable federal requirement.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

There was a 60-day public comment period from 7/22/19 to 9/20/19 and a public hearing conducted on 8/27/19. No comment was received.

Detail of Changes Made Since the Previous Stage

*Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

There were no changes since the proposed stage.

Detail of All Changes Proposed in this Regulatory Action

*Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

Current section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
20	Sets out the authority and administration of regulations	Subsection B is amended to delete authority for biennial renewal of prescriptive authority as renewal is being eliminated.
50	Sets out provisions for the renewal of prescriptive authority	This section is being repealed.
55	Sets out requirements for continuing competency	A reference to renewal of prescriptive authority is deleted in subsection A. The Code of Virginia requires the Boards: *Regulations promulgated pursuant to this section shall include, at a minimum, such requirements as may be necessary to ensure continued nurse practitioner competency, which may include continuing education, testing, or any other requirement, and shall address the need to promote ethical practice, an appropriate standard of care, patient safety, the use of new pharmaceuticals, and appropriate communication with patients.* Accordingly, the requirement for continuing education is not eliminated.
60	Sets out the requirements for reinstatement	This section is being repealed. *If the boards take a disciplinary action to restrict the license of a nurse practitioner by taking away his/her authority to prescribe drugs, that would be included in an order. Reinstatement of such authority would depend on the terms of the order.*
70	Sets out the fees relating to prescriptive authority	All fees are deleted except for the fee for initial issuance of prescriptive authority, which is reduced from $75 to $35, and the charge for a returned check, which is minimally set in Code at $35.

110	Sets out requirements for disclosure to patients	In subsection A, the word “issued’ is substituted for the word “written” since many prescriptions are now issued electronically rather than written on a prescription pad.