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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(s)	18VAC90-26-10 et seq.
Regulation title(s)	Regulations for Nurse Aide Education Programs
Action title	Periodic review
Date this document prepared	10/4/18

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 VAC 7-10), 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

As a result of periodic review of Chapter 26, the Board will consider adoption of amendments to clarify and update regulations for approval of nurse aide education programs. Substantive changes being considered include:

- 1) A change the timeframe for a program application to the Board from 90 days to 180 days to allow adequate time for review of criteria and a site visit before the expected opening date;
- 2) A requirement that all clinical sites must be within 30 miles of the educational program or have Board approval (current policy of the Board);
- 3) A requirement for the certificate of completion to include specific information on the name of the program, the approval number from the Board, and the signature of the primary instructor or program coordinator;

- 4) A requirement for the primary instructor that states that while on-site to instruct students, that person cannot assume other duties within the school (such as serving as the school nurse and teaching the CNA course simultaneously);
- 5) A six-hour refresher course every three years for instructors to remain qualified to teach the nurse aide curriculum;
- 6) A change in the length of program to add 20 hours, from 120 to 140, with 20 hours specifically designated for skills acquisition; and
- 7) Two new sections 80 and 90 to move the provision of 18VAC90-25-130 and 18VAC90-25-140 (advanced nurse aide education programs) to Chapter 26 so all regulations for nurse aide education are included in one chapter.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document. .

CNA = certified nurse aide

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The mandate for this action is a periodic review that was posted on Townhall and published in the Register of Regulations. The comment period on the periodic review began on April 16, 2018 and ended on May 8, 2018; there were no comments on this chapter.

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 (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. ...*

The specific statutory authority for approval of nurse aide education programs is found in:

§ 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: ...

8. *To certify and maintain a registry of all certified nurse aides and to promulgate regulations consistent with federal law and regulation. The Board shall require all schools to demonstrate their compliance with § [54.1-3006.2](#) upon application for approval or reapproval, during an on-site visit, or in response to a complaint or a report of noncompliance. The Board may impose a fee pursuant to § [54.1-2401](#) for any violation thereof. Such regulations may include standards for the authority of licensed practical nurses to teach nurse aides;*

§ 54.1-3006.2. Nurse aide education program.

All approved nurse aide education programs shall provide each student applying to or enrolled in such program with a copy of applicable Virginia law regarding criminal history records checks for employment in certain health care facilities, and a list of crimes which pose a barrier to such employment.

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

Certified nurse aides often provide care to the most vulnerable of our citizens in long-term care, home health, and other health care settings. The workgroup convened in 2016 to review and standardize curriculum found that persons who train nurse aides need to be better trained themselves, that additional topics need to be taught in the educational programs, and that students need a sufficient number of hours of clinical training to be prepared to pass the examination and practice safely. Amendments are recommended to improve the training of nurse aides so they can be competent in their skills and knowledge to protect the health and safety of patients in their care.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Recommendations for amendments from Nurse Aide Curriculum Committee and the Board are as follows:

Section 10 – Add a definition of “approval” to clarify what it means as used in this chapter.

Amend the definition of “program provider” to clarify that the program must have board approval.

Add definitions for “site visit” and “survey visit,” two terms used in the Chapter that are not clearly understood.

Section 20 – Change the timeframe for application to the Board from 90 days to 180 days to allow adequate time for review of criteria and a site visit before the expected opening date.

Clarify that a site visit is required prior to Board approval of the program.

Add a prohibition against advertisement of the program until it has received Board approval (similar to nursing education regulations).

Eliminate the word “initial” in A (3) before the word “approval” to clarify that once all documentation indicates compliance with requirements, the program may receive “approval.”

In subsection B, specify that all programs must use the Board-approved curriculum, which includes content already set forth in regulation.

Add a requirement that all clinical sites must be within 30 miles of the educational program or have Board approval (current policy of the Board).

Add to the certificate of completion specific information on the name of the program, the approval number from the Board, and the signature of the primary instructor or program coordinator.

Section 30 – Add a provision to subsection A on the responsibilities of the program coordinator, similar to those specified for nursing education programs.

Add a requirement for the primary instructor that states that while on-site to instruct students, that person cannot assume other duties within the school (such as serving as the school nurse and teaching the CNA course simultaneously).

Include in subsection D (1) two additional topics for a “train-the-trainee” course: 1) review and understanding of the requirement for nurse aide education programs; and 2) review and understanding of the nurse aide curriculum content and objectives developed by the Board.

Include in subsection D (2) that the experience in teaching adults or high school students must be in teaching the Virginia-approved nurse aide education curriculum.

Add in subsection D, a provision that the train-the-trainer course with at least a 12 hour course offered over a two day period to allow sufficient time to convey and absorb the required content.

Add a subsection E specifying a six-hour refresher course every three years for instructors to remain qualified to teach the nurse aide curriculum.

Clarify that the ratio of students to instructor applies to all clinical areas, including skills laboratory.

Section 40 – Add “skills lab” to the curriculum content.

Add a #12 to the curriculum content information on substance abuse and opioid misuse.

Subsection B (8) requires training in the legal and regulatory aspects of practice as a CNA, so the Board will add a reference to the regulations in Chapter 25 that delineate the causes for unprofessional conduct.

Section 50 – Add to the certificate of completion specific information on the name of the program, the approval number from the Board, and the signature of the primary instructor or program coordinator.

Amend subsection B on student identification to allow the employment setting to determine the name on a name tag (same as Nursing regulations).

Amend subsection C on the length of program to add 20 hours, from 120 to 140, with 20 hours specifically designated for skills acquisition.

Amend subsection D (5) to specify that instructional technology and equipment for simulation of client care must be “current.”

Section 60 - Add to subsection A on Program Review, a requirement that any additional information needed to evaluate a program’s compliance with Board regulations must be submitted within a time frame specified by the Board.

Add new sections 80 and 90 – Move the provision of 18VAC90-25-130 and 18VAC90-25-140 (advanced nurse aide education programs) to Chapter 26 so all regulations for nurse aide education are included in one chapter

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

In 2016, Delegate Orrock sent a letter to the Director of the Department of Health Professions requesting the convening of a stakeholder workgroup to “discuss existing practices and curricula while seeking ways to standardize and improve the training provided to the front-line (CNSs) clinicians.” The Delegate asked that specific state agencies and professional associations be included in such a workgroup. The group was provided data regarding the approved nurse aide programs in Virginia, their pass rates on the nurse aide exam, and the number of didactic and clinical hours per type of program. Subsequently, a subgroup met several times to work on the nurse aide curriculum. Recommendations from this review were incorporated into the periodic review and adopted by the Board. There are no alternatives that would achieve the purpose of the regulatory change.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review; it is the result of a periodic review previously announced.

Public Participation

The Board of Nursing is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency/board 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 written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Elaine Yeatts, 9960 Mayland Drive, Henrico, VA 23233 or elaine.yeatts@dhp.virginia.gov or by FAX to (804) 527-4434. In order to be considered, comments must be received by 11:59 pm 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 (<https://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.