



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Nursing/Department of Health Professions
VAC Chapter Number:	18 VAC 90-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Nursing
Action Title:	Workforce data collection
Date:	11/15/00

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

A new section of the Code of Virginia (§ 54.1-3012.1) stipulates that the Board shall collect, store and make available nursing workforce information on the various categories of nurses "*with such funds as are appropriated for that purpose.*" Therefore, the Board is mandated to promulgate amended regulations to specify the procedures and the information for the purpose of collecting data on the nursing workforce.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

18 VAC 90-20-10 et seq. Regulations Governing the Practice of Nursing was promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 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 or licensure 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 or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure 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 (§ 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 and Chapter 25 of this title.*

7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*

8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*

9. *To take appropriate disciplinary action for violations of applicable law and regulations.*

10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*

11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*

12. *To issue inactive licenses and 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 such licenses or certificates.*

House Bill 1249 and Senate Bill 488 of the 2000 General Assembly amended § 54.1-3005 in the Nursing Practice Act, which specifies the powers and duties of the board to permit the collection of data and added § 54.1-3012.1 with a mandate for the collection and dissemination of workforce information with such funds as are appropriated for that purpose.

§ 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;*
- 6. To provide consultation regarding nursing practice for institutions and agencies as requested and investigate illegal nursing practices;*
- 7. To keep a record of all its proceedings;*
- 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;*
- 9. To approve programs that entitle professional nurses to be registered as clinical nurse specialists and to prescribe minimum standards for such programs;*
- 10. To maintain a registry of clinical nurse specialists and to promulgate regulations governing clinical nurse specialists;*
- 11. Expired.*
- 12. To certify and maintain a registry of all certified massage therapists and to promulgate regulations governing the criteria for certification as a massage therapist and the standards of professional conduct for certified massage therapists;*
- 13. To promulgate regulations for the delegation of certain nursing tasks and procedures not involving assessment, evaluation or nursing judgment to an appropriately trained unlicensed person by and under the supervision of a registered nurse, who retains responsibility and accountability for such delegation;*
- 14. To develop and revise as may be necessary, in coordination with the Boards of Medicine and Education, guidelines for the training of employees of a school board in the administration of insulin and glucagon for the purpose of assisting with routine insulin injections and providing emergency treatment for life-threatening hypoglycemia. The first set of such guidelines shall be finalized by September 1, 1999, and shall be made available to local school boards for a fee not to exceed the costs of publication; and*
- 15. To collect, store and make available nursing workforce information regarding the various categories of nurses certified, licensed or registered pursuant to § 54.1-3012.1.***

§ 54.1-3012.1. Nursing workforce information.

A. With such funds as are appropriated for this purpose, the Board shall collect, store, and make available nursing workforce information regarding the various categories of nurses certified, licensed or registered under the provisions of this chapter. The information to be collected on nurses shall include, but not be limited to: (i) demographic data; (ii) level of education; (iii) employment status; (iv) employment setting such as in a hospital, physician's office, or nursing home; (v) geographic location of employment; (vi) type of nursing position or

area of specialty; and (vii) number of hours worked per week. Such information shall be collected and updated biennially, and shall be made available to interested parties only in aggregate form. Information which could identify individual nurses shall not be released in any form or manner.

B. The Board shall promulgate regulations to implement the provisions of this section. Such regulations shall include: (i) the specific number and types of nursing workforce data elements to be collected; (ii) the process by which the information is collected, stored, and made available to interested parties; (iii) provisions to ensure the confidentiality of the data to be collected and to protect the identity of all individuals submitting information; and (iv) other provisions as determined by the Board.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The law specifies in § 54.1-3012.1 that the Board of Nursing is mandated to collect, store and make available nursing workforce information on nurses and to promulgate regulations to implement the provisions of that section of the Code. The goal of the proposed regulation is to implement provisions of the law, which requires the collection of demographic and employment information that will provide some basis for strategies to address the problem of nursing shortages in the Commonwealth and to anticipate the need for the education and training of nurses to meet future demands. Providing a sufficient nursing workforce for a variety of health care settings is essential to the health, safety and welfare of the public. Regulations to provide for data collection and the resulting statistical information can assist in that effort.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The Board is required to collect and update information biennially and to make the data available to interested parties only in aggregate form. Information which could identify individual nurses cannot be released in any form or manner. The data elements to be collected are specified in the Code as follows: *i) demographic data; (ii) level of education; (iii) employment status; (iv) employment setting such as in a hospital, physician's office, or nursing home; (v) geographic location of employment; (vi) type of nursing position or area of specialty; and (vii) number of hours worked per week.*

The Code has specifically set out minimal requirements for data elements, a schedule for collection and provisions for confidentiality, but the Board is required to promulgate regulations that address at least the data elements to be collected, the process for collection and distribution, and provisions for confidentiality.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

Most of the issues related to workforce data collection have already been addressed by passage of the legislation in HB1249 and SB488. That legislation, as introduced, would have required the Board of Nursing to collect, store and distribute information from special dedicated funds of the Board, which are derived from fees charged to nurses. Since the data is intended for workforce planning and not for public protection, the Office of the Attorney General ruled during a previous session of the General Assembly that the Board could not use its funds for that purpose. Therefore, the enabling legislation was amended to specify that data collection would occur with "*such funds as are appropriated for this purpose.*" Accompanying the legislation was a budget amendment appropriating \$40,000 for each of the two years of the biennium for data collection by the Board.

With the limitation of the funding and the specific prohibition against distribution of information which identifies individual nurses, some of the intended uses for and issues related to data collection became moot. For example, some nursing education programs had wanted to use the information to send mailings to nurses, customized according to data provided on a survey by the Board. That would require identification of nurses by name and address with the responses given on the data survey form, which is prohibited by law. Also, collection of data on all 140,000 nurses licensed or certified under the Board will not be possible with the funds available. With only \$40,000 available each year to collect, store and develop reports, the Board will be required to solicit information from a sampling of its licensees. A sampling of the workforce may be useful but may not provide the extensive informational base that hospitals and educational institutions had intended to be accumulated.

Once the parameters of the legislation and the limitations of funding were discussed and understood by an advisory group on nursing workforce data, issues surrounding the promulgation of regulations were resolved in favor of rules that are reflective of and conforming to the law. By making available data on the nursing workforce, institutions charged with planning for nursing education and employment will be able to more accurately plan their curriculum and recruitment to address manpower needs for the future.

Advantages and Disadvantages

Disadvantages of the data collection include: 1) insufficient funding to collect information on all certified and licensed nurses may result in less useful data; and 2) the data collection does not directly address the nursing shortage (especially the shortage of certified nurse aides in long term care facilities) since it does not address the reasons why persons who hold the appropriate license or certification may choose to work in other occupations or settings. The data collection has a limited purpose, but it may be useful to academicians, hospital and long-term care administrators and those responsible for nursing education and employment. If the reported data provides some information that results in the development of strategies to address the nursing shortage and to make nursing an attractive profession for future workers, then the result would be advantageous to the public whose health, welfare and safety may be jeopardized by shortages. There are no particular advantages or disadvantages to the state agency that regulates nurses, since the data collection will be performed under a contract with a vendor with such funding as is appropriated for that purpose in the General Fund. No additional employees in the Department of Health Professions will be necessary to implement provisions of law and regulation for workforce data collection.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

(i) Fund source: In legislation establishing the biennial budget, \$40,000 was appropriated from the General Fund in each of the next two years for the implementation of workforce data collection by the Board of Nursing. With the funds that are available from the budget, the Board will engage a vendor to conduct a sampling survey and provide the workforce data to interested parties.

(ii) Budget activity by program or subprogram: Beyond the appropriation for workforce data included in the biennial budget by the 2000 General Assembly, there is no additional activity required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some costs (less than \$2500) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. The on-going expenditures related to workforce data collection are dependent on the continuation of a General Fund appropriation in the budget of the Commonwealth.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

The entities that are likely to be affected by these regulations would be persons licensed or certified in some category of nursing. Since the available funding is insufficient to survey the entire nursing workforce, a random computerized selection process will be utilized to determine which licensees will receive the request for information. That number will be specified in a contract with a vendor employed by the Department through a request for proposals (RFP).

Estimate of number of entities to be affected:

There are currently over 140,000 persons licensed or certified by the Board of Nursing, but the actual number to be surveyed has not been determined.

Projected costs to the affected entities:

There are no costs for the affected entities to comply with these regulations.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

18 VAC 90-20-36. Data collection of nursing workforce information.

Subsection A requires the Board to collect the data biennially from a representative sample of licensed and certified nurses and to make the information available to the public only in an aggregate form. An amendment to the emergency regulation currently in effect is proposed to change “licensed nurses” to registered nurses (RN’s), licensed practical nurses (LPN’s) and certified nurse aides (CNA’s), as the statutory mandate for data collection includes all categories of nurses regulated by the board.

Subsection B specifies the data to be collected as prescribed by § 54.1-3012.1 of the Code of Virginia to include elements such as age, sex, ethnicity, level of education, employment status and setting, area of specialty and number of hours worked per week.

Alternatives

Please describe the specific 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.

While there was no alternative to the legal mandate for promulgation of regulations, the scope of nursing workforce data collection is limited by the amount appropriated for that purpose and the restriction of distribution of information that identifies an individual nurse. The Board elected to propose regulations that are consistent with the provisions of law but do not expand the limited scope of the collection requirement. It did consider alternatives to the wording of data collection surveys, which are required by other states and nursing organizations. For example, North Carolina has established a Center for Nursing as a research and a policy analysis agency for the purpose of addressing issues of supply and demand for nursing, including recruitment, retention, and utilization of nursing resources. Funded by state tax dollars and outside grants with a staff of five, the center is able to conduct much more extensive research than is feasible with the \$40,000 appropriated in each of the next fiscal years in Virginia. Therefore, the model survey instruments and regulations in North Carolina are not applicable to the anticipated data collection in the Commonwealth. In Maryland, the application for renewal of a nursing license requires the completion of a survey providing statistical information about demographics, employment and levels of education. Since data collection in Virginia is not tied to renewal of licensure, that model was also rejected.

Surveys of registered nurses and licensed practical nurses by New Jersey and Alaska were helpful in providing examples of the data elements that should be included. Also, a survey instrument by the National Council of State Boards of Nursing was useful in providing essential data elements to be collected.

The content of the survey form to be used in Virginia was not set forth in regulation, but the general data elements to be collected were specified. An ad hoc advisory committee, composed of representatives of nursing organizations, educational institutions and other health related groups met to discuss the legislation, its limitations, and the type of data that was essential for inclusion in any gathering and transmittal of information on the nursing workforce. The recommendations of that group were considered by the Board in the adoption of proposed regulations and in the composition of the survey instrument.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

An announcement of the Board's intention to replace the Emergency Regulation was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the Board. Public comment was accepted until November 8, 2000. During the 30-day comment period, no comments were received from members of the public on the Notice of Intended Regulatory Action.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

No public comment was received, either on the Emergency Regulation or the NOIRA to promulgate a replacement regulation. It was noted by staff that the emergency regulation stated that the Board would collect workforce information from “licensed” nurses. However, the statute requires the Board to collection data from person licensed, certified or registered. While that was the Board’s intent, the use of the word “licensed” in the regulation was inconsistent with the statute. Under the language of the Emergency Regulation, certified nurse aides would not be included in the survey and data collection. Therefore, a change in subsection A of 18 VAC 90-20-36 of the Emergency Regulation was recommended and adopted by the Board to include all levels of nurses. Data elements and the process for collection and dissemination of information are clearly specified in § 54.1-3012.1, so proposed regulations are intended to conform to those provisions.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Public participation guidelines require the Board to review its regulations each biennium or as required by Executive Order. Therefore, the Board intends to review regulations governing the practice of nursing during the 2001-02 fiscal year.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

In its analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability, economic self-sufficiency, or the marital commitment. The proposed amendments will not increase or decrease disposable family income.