



**Virginia  
Regulatory  
Town Hall**

**Periodic Review and  
Notice of Intended Regulatory Action  
Agency Background Document**

<b>Agency Name:</b>	Board of Nursing
<b>VAC Chapter Number:</b>	18 VAC 90-20-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Nursing
<b>Action Title:</b>	Periodic review
<b>Date:</b>	

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

**Summary**

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

Regulations of the Board of Nursing Regulations establish requirements for the licensure of registered nurses and licensed practical nurses, the certification of nurse aides, and the registration of clinical nurse specialists by examination or by endorsement. Provisions also establish standards for nursing and nurse aide education programs and a process for the approval or denial of approval for such programs. Regulations set forth requirements for renewal or reinstatement of a license and set fees to support the regulatory and disciplinary activities of the board. Grounds for unprofessional conduct of a licensee or certificate are established. Finally, regulations establish the requirements for a medication administration program, a protocol for adult immunization programs, and criteria for delegation of nursing tasks to unlicensed persons.

Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

The statutory authority for this regulation is found in § 54.1-2400 and Chapter 30 of Title 54.1 of the Code of Virginia.

Section 54.1-2400 establishes the general powers and duties of health regulatory boards including the responsibility to establish qualifications for licensure, to set fees and schedules for renewal, to establish requirements for an inactive license and to promulgate regulations, in accordance with the Administrative Process Act, which are reasonable and necessary to effectively 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 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*

## Town Hall Agency Background Document

*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.*

Chapter 30 of Title 54.1 sets forth statutory provisions for the licensure and practice of registered nurses, licensed practical nurses, certified nurse aides, and clinical nurse specialists, as well as provisions for the approval of nursing and nurse aide educational programs. The Code sections related to nursing may be accessed at the website listed below:

[http://www.dhp.state.va.us/nursing/nursing\\_laws\\_regs.htm#law](http://www.dhp.state.va.us/nursing/nursing_laws_regs.htm#law)

### Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.*

## Town Hall Agency Background Document

An announcement of the board's review of its regulations governing the practice of nursing was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the Public Participation Guidelines mailing list for the board. Public comment was received from May 7, 2001 until July 6, 2001. During that period, no specific comment on regulations was received from members of the public. However, the Regulatory Review Committee consulted with others who have particular expertise in certain aspects of practice and reviewed comments regarding regulations received in previous months. During its meetings, the Committee invited and received full participation by parties interested in the regulations of the Board.

### Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

- 1) Achieve positive ratings on the Customer Service Satisfaction Survey for application process and renewal of licensure.

The Board reviewed the responses of recent licensees and certificate holders on the Customer Service Satisfaction Surveys and determined that the application and renewal process was effective in that instructions for making application are clear and easy to understand and complete. Of those that responded, 97.3 % of the registered nurses, 98.7% of the licensed practical nurses and 98% of the certified nurse aides agreed or strongly agreed that the instructions were easy to understand. Asked if the application was processed promptly, 93.9 % of the registered nurses, 95.6% of the licensed practical nurses and 90.4% of the certified nurse aides agreed or strongly agreed. Asked if the forms were easy to complete, 97.9 % of the registered nurses, 97.8% of the licensed practical nurses and 97.8% of the certified nurse aides agreed or strongly agreed. Therefore, no changes in regulations are being considered in the application and renewal process.

- 2) Ensure that educational requirements are sufficient to promote passage of the national licensure examination.

To evaluate whether educational requirements are sufficient, the Board has considered passage of the National Council Licensing Examination (NCLEX) to be one measure by which to judge. From 1995 to 2000, the passing average for persons taking the RN examination ranged from 90.05% (1995) to 83.61% (1999). During the same period, the passing average for persons taking the PN examination ranged from 91.06% (1996) to 83.40% (2000). Passing percentages have been declining slightly, so as a part of this review, the Board is considering several regulatory changes to strengthen requirements for faculty and require more specific information from an institution or school applying for initial approval.

## Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

### **Nursing and Nurse Aide Education Programs**

One of statutory responsibilities of the Board of Nursing is the approval of nursing and nurse aide education programs. During its review of regulations, the Board considered the strengths and weaknesses of the requirements set forth in current regulations, discussed the issues that have arisen related to approval or disapproval of education programs, and sought advice from educators and staff involved in program review and approval. As a result, amendments are recommended to provide more specificity about Board requirements and expectations and to clarify sections on the approval process. In addition, the Board is proposing a less burdensome avenue for maintenance of approval for programs that are nationally accredited.

Most nursing education programs choose to become accredited by a professional credentialing body and thus periodically undergo a self-evaluation, review and visit. There is concern that similar requirements for continued approval by the Board of Nursing are redundant of the accreditation process and therefore unnecessarily burdensome, time-consuming and costly for the programs. There is also concern that the Board not completely relinquish its statutory responsibility to review those programs and conduct periodic visits. If the self-evaluation and accreditation visit by the accrediting body report no deficiencies of concern, the Board may be able to accept those reports as evidence of meeting most requirements of the Board, but it will continue to make on-site visits. All of the registered nurse educational programs – diploma, associate degree, and baccalaureate degree – are nationally accredited by one of the two accrediting bodies. Many of the practical nurse programs also have accreditation, but for those who do not, they will continue to follow the requirements for board approval. For those nursing education programs that are accredited, alleviating much of the paper work associated with accreditation and with program approval by the Board should be a welcome reduction in the regulatory burden.

As part of the review, the Board received advice from its counsel that the regulations on program approval – both the requirements and the process- needed to be more definitive and objective. While the Board prevails in a recent lawsuit initiated by a program that had approval denied, it was apparent that more specific requirements would be advisable. So for example, rather than requiring the program seeking approval to submit information on the availability of clinical facilities, the Board would require letters of support from one or more of those facilities indicating a willingness to serve as a site for clinical education. Rather than a tentative written curriculum plan submitted for provisional approval, the Board would delete the word “tentative” since the program will begin admitting students during this phase and needs to be more precise about the curriculum. Rather than stating a *preference* that nursing faculty should hold a graduate degree with a major in nursing, the Board would specify that as a requirement. Rather than requiring a nurse aide education program to demonstrate financial support and resources

## **Town Hall Agency Background Document**

sufficient to meet requirements, the Board would require a copy of the current annual budget or a signed statement from the administration specifying the support available for the program.

The Board has also identified areas of regulation where the requirements are inadequate to provide nurses and nurse aides with the education necessary to practice with safety and skill. While topics such as patient rights, definition of patient abandonment and patient abuse would be added to the nursing curriculum, subjects such as physics and nursing history and trends may be eliminated. The initial core curriculum in a nurse aide program has consisted of 16 hours, but the Board has determined that 8 additional hours are essential to prepare the student for direct client concern; those hours will include learning to deal with obstructed airways in an adult. Out of concern about the quality of teaching, the Board is proposing to make its regulations for nursing programs more explicit about degrees held by the program director and faculty to ensure a background and knowledge of nursing. In a nurse aide education program, the Board believes it is necessary to require the program coordinator be a registered nurse and the resource personnel to work under the direct supervision of the primary instructor. All instructional personnel in a nurse aide program should be approved by the Board in advance of providing instruction.

The Board also intends to be more specific about which program changes must be reported immediately (within 10 days) and which may be reported on the annual report. While it was recommended by a commenter that the ratio of faculty to student in a clinical setting for a nursing education program should be reduced from 10 to 1 to 8 to 1, the Board did not elect to make than change.

### **Licensure and Practice**

Recommended amendments in this section will primarily clarify provisions that have been confusing to nurses and facilities and generated questions to the Board. The Board also intends to specify what is required for an applicant for reinstatement to indicate that she is prepared to resume practice in a competent manner. With such a generalized regulation, it is difficult for the nurse to know the Board's expectations and difficult for the Board to uphold an objective standard.

### **Disciplinary Provisions**

Provisions setting grounds for disciplinary actions against nurses and nurse aides should be expanded to include conduct unprofessional conduct that has been noted in testimony before the Board but for which the regulations are not definitive. Those grounds would include: 1) entering into an inappropriate relationship with a patient that violates professional boundaries; 2) giving or accepting money or property for any reason other than fee for service; 3) obtaining money or property from a patient by fraud, misrepresentation or duress; 4) violating the privacy of clients or confidentiality of patient records unless required to do so by law; and 5) falsifying of student or educational records. Similar grounds are established by this Board in the regulations governing the certification of massage therapists.

## Town Hall Agency Background Document

### Medication Administration Training Program

Since its inception, there has not been a specific number of hours required for completion of an approved medication administration training program. The Board believes that 24 hours is the minimum necessary to ensure the acquisition of necessary knowledge and training.

### Protocol for Adult Immunization

Clarification of some of the current requirements is recommended, as well as the addition to regulation of several requirements that are on the form (such as CPR training) but not named in regulation.

### Delegation of Nursing Tasks and Procedures

In response to frequent questions to the Board for interpretation, the Board has issued an opinion (guidance document) that a nurse shall not delegate circulating duties in a surgery suite to an unlicensed person. In order for that to be enforceable, it must be placed in regulation.

## Recommendation

*Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.*

The Board of Nursing is recommending that 18 VAC 90-20-10 et seq. be amended to clarify regulations that have been confusing to applicants, regulants or educational programs. Amendments to nursing and nurse aide education program address concerns about the quality of instruction, the reporting of changes in the program, and other issues related to meeting the educational needs of students. To ease the burden of nursing education programs that undergo extensive review for accreditation by a national nursing credentialing body, it is proposed to allow acceptance of that accreditation for the purpose of continued approval by the Board.

Additional requirements are proposed to provide specificity about evidence of continued competency necessary for reinstatement of a license, to provide certain grounds for disciplinary action for the protection of patients or clients, to specify the number of hours of training necessary in a medication administration training program, to update the protocol for adult immunizations, and to state in regulation a policy of the Board on the delegation of tasks in an operating room.

During the development of regulations, the Board will also consider any other issues raised during public comment on the Notice of Intended Regulatory Action.

## Substance

*Please detail any changes that would be implemented.*

## Town Hall Agency Background Document

### 18 VAC 90-20-10. Definitions.

- The Board intends to update the definitions of “associate degree nursing program” and “baccalaureate degree nursing program” to specify that the authorization to confer degrees must come only from the State Council of Higher Education.
- The definition of “national certifying organization” will be amended to add “and is accredited by a national body recognized by the National Council of State Boards of Nursing.” Such recognition is essential for creditability for the examination of the certifying body and assurance of meeting certain accreditation standards.
- The definition of “practical nursing program” should be clarified to provide that the program should be authorized by the State Board of Education or the appropriate governmental agency.
- In the definition of “program director,” the Board intends to add language to require that person to hold a current RN license in Virginia.

### 18 VAC 90-20-35. Identification; accuracy of records.

The requirement for nurses to wear identification indicating their license, certification, or registration needs to be amended to clarify that students in a nursing program, who already hold the title of LPN or CNA, should identify themselves as student nurses while they are engaged in the role of a student in the practice setting.

### 18 VAC 90-20-40. Phase I (Board intends to amend title to “Application” to more aptly describe the content of this section.)

In this section, the Board intends to add language that will provide more direction to applicants seeking approval of nursing education programs. It needs to be clarified that the information provided must document adequate resources and the ability to provide a program that can meet the requirements set by the Board in these regulations. In addition, the requirements of the Board need to be made more specific so the applicants seeking approval will have a clearer standard by which to be measured. For example, current regulations require applicants to provide information about availability of clinical facilities for the program. Rather than providing a listing of hospitals or facilities in the locality, the Board expects to receive letters of support from some of those facilities indicating a willingness to serve as a clinical site for nursing education. In addition to the evidence of current financial resources, the Board expects to receive documentation of the budget projections for at least three years to ensure that the program, if approved, can sustain itself so students can graduate.

### 18 VAC 90-20-50. Phase II. (The Board intends to rename section 50 as “Provisional approval)

Current regulations require submission of a “tentative” written curriculum plan; the Board intends to delete that word, because once provisional approval has been granted, programs will begin to admit students. Therefore, a definite curriculum plan needs to be devised and approved to ensure that students will receive an adequate education.



## Town Hall Agency Background Document

### **18 VAC 90-20-60. Phase III.** (The Board intends to rename this section “Program approval”)

The education special conference committee reviews self-evaluation and survey reports and makes recommendations for the granting or denial of approval. This section needs to be amended to clarify that the committee also makes recommendations for the continuance of *provisional* approval when appropriate and necessary.

### **18 VAC 90-20-90. Faculty.**

- Due to concerns about the quality of nursing education, the Board intends to strengthen the degree requirements for faculty members. For the baccalaureate degree programs, the director is currently required to have a doctoral degree, but the Board would add that at least one graduate degree must be in nursing. In addition, current regulations state that a graduate degree in nursing is preferable for all faculty members; the Board’s intent is to require a graduate degree in nursing or at least 18 graduate hours in nursing for all faculty.
- For the associate or diploma programs, the Board intends to require that the program director’s graduate degree be in nursing. In addition, current regulations state that a graduate degree in nursing is preferable for the majority of faculty members; the Board’s intent is to require all to have a graduate degree in nursing or at least 18 graduate hours in nursing.
- For the practical nursing programs, the Board intends to require the program director to hold a baccalaureate degree in nursing and for the faculty to hold a baccalaureate degree, preferably in nursing.
- In the subsection on exceptions to the faculty qualifications, the Board intends to include “grandfathering language” that would assure that faculty hired prior to the effective date of the amended regulations would not be required to meet the new educational requirements.
- In response to public comment, the Board will consider the need for changing the ratio of students to faculty in direct patient care. Concerns about patient safety have been expressed and a suggestion given that the ratio should be 8:1 rather than the current 10:1. The Board will seek additional comment on this issue.

### **18 VAC 90-20-95. Preceptorships.**

Substantive content of a preceptorship must include the performance of skills for which the student has had clinical and didactic preparation; the Board intends to add that the clinical experience must be faculty-supervised and that the faculty remain ultimately accountable for the program.

### **18 VAC 90-20-120. Curriculum.**

## **Town Hall Agency Background Document**

Curriculum content requirements need to be updated and more inclusive of information that will prepare nurses for actual practice. In a practical nursing or registered nursing program, the Board is recommending the deletion of nursing history and trends and the inclusion of topics such as patient rights and the definition of patient abuse and patient abandonment. In a registered nursing program, the Board is recommending deletion of a physics requirement and inclusion of the subject of delegation of tasks to unlicensed persons.

### **18 VAC 90-20-140. Program changes.**

Curriculum changes and changes in faculty are to be reported with the program's annual report to the Board, but the Board needs to be informed about changes in the program director and the accreditation status of the program in a more timely manner. Proposed amendments would specify a 10-day time frame for notification to the Board if there is a change in the director or in the accreditation status. The Board also needs to be notified within 10 days of the receipt of a report from an accrediting body.

### **18 VAC 90-20-160. Maintaining an approved nursing education program.**

- For the purpose of continued approval of a nursing education program, the Board intends to receive comment on the acceptance of accreditation by the National League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education or any other nursing education accrediting body recognized by the U. S. Department of Education and approved by the Board. If evidence of continued accreditation is acceptable for continued approval, the Board would amend the requirement for a Board visit every eight years to provide for the option of a visit within one year of an initial or continued accreditation by an accrediting body
- The Board also proposes to amend the provisions for withdrawal of approval if the institution fails to correct identified deficiencies. Other amendments may be necessary to clarify the process by which approval of a nursing education program may be withdrawn if a program fails to comply with orders and correct deficiencies. The intent is to facilitate that process of responding to deficiencies and proceeding to withdrawal of approval if necessary in a manner consistent with requirements of the Administrative Process Act.

### **18 VAC 90-20-170. Closing of an approved nursing education program; voluntary closings; closing as a result of denial or withdrawal of approval; custody of records.** (The Board intends to simplify the title of this section to read "Closing of a nursing education program; custody of records.")

Amendments are proposed to clarify that the closure of a program should occur within a time frame established by the Board in its order following the formal hearing and that the Board shall be notified where the records will be maintained and available to the students.

### **18 VAC 90-20-190. Licensure by examination.**

## Town Hall Agency Background Document

- Subsection G needs to be clarified. The statute allows candidates for licensure up to 90 days to practice while awaiting their examination results, and there is often confusion about when the 90-day period begins. Amendments would clarify that practice may not begin until the candidate has been issued an authorization letter from the Board and continue from that date until receipt of examination results.
- Since nurses are required to identify their category of licensure to the public, subsection G (2) needs to be amended to ensure that applicants use the correct title on a nametag as well as when signing records.

### **18 VAC 90-20-200. Licensure by endorsement.**

Amendments would:

- 1) Clarify that if an applicant for licensure by endorsement has not received his license within 30 days, he may apply for an extension of time to practice beyond the 30 days permitted by law, provided he can provide proof that he has requested verification of licensure in another jurisdiction;
- 2) Provide that if an application not completed within one year of initial filing, the applicant must refile the application and pay a new fee; and
- 3) Delete the provision that requires the Board to notify the applicant if the completed verification form from the other state has not been received within 30 days. Verification of licensure is the responsibility of the applicant.

### **18 VAC 90-20-220. Renewal of license.**

Subsection E on when the license is considered lapsed needs to be clarified to delete “last day of the month” and insert “expiration date.”

**18 VAC 90-20-230. Reinstatement of lapsed license.** (The title of this section would be amended to delete the word “lapsed,” since it also contains reinstatement provisions for a license that is suspended or revoked.)

Subsection C would be amended to delete the words “or revoked” and refer only to reinstatement of a suspended license. A new subsection would be added to specify that a person who has had his license revoked could not apply for reinstatement for at least two years from the date the order was entered.

Subsection D needs to be amended to clarify that it refers to all types of reinstatement and to be more specific about the “evidence” a nurse is to provide indicating preparedness to resume practice. The evidence of continuing competency may be: 1) hours of continuing education in nursing; 2) passage of the National Council Licensure Examination (NCLEX); or 3) evidence of active practice in another jurisdiction without disciplinary action during the period the applicant has not held a license in Virginia.

## Town Hall Agency Background Document

**18 VAC 90-20-270. Supervision.** (The title needs to be amended to clarify that this section refers to supervision of a licensed practical nurse.)

An amendment is recommended to clarify that the supervision of a LPN by another licensed practitioner is broader than the context of the administration of drugs in § 54.1-3408.

**18 VAC 90-20-280. Clinical nurse specialist registration.**

A minor amendment would change the phrase “as follows” in subdivision B (3) to “upon.”

**18 VAC 90-20-300. Disciplinary provisions.**

Subsection A (1) should be clarified to mean fraud or deceit in procuring or attempting to obtain a license.

Subsection A (e) should be amended to include in the falsifying of student or educational records.

From the disciplinary matters involving nurses, the Board sees the need to add several provisions to the section on unprofessional conduct including: 1) entering into an inappropriate relationship with a patient that violates professional boundaries; 2) giving or accepting money or property for any reason other than fee for service; 3) obtaining money or property from a patient by fraud, misrepresentation or duress; 4) violating the privacy of clients or confidentiality of patient records unless required to do so by law.

**PART VI. Certified Nurse Aides** (For consistency in terminology, the word “client” will replace words such as “patient” or “resident”)

This part needs to be divided into two parts –Part VI, entitled “Nurse Aide Education Programs” and Part VII, entitled “Certified Nurse Aides.”

**18 VAC 90-20-310. Definitions.** (would remain in Part VI)

In the definition of a “nursing facility,” the Board recommends adding a requirement for the nursing home to be licensed or certified by the Virginia Board of Health.

**18 VAC 90-20-320. Delegation of authority.** (would be moved to a new Part VII)

**18 VAC 90-20-330. Nurse aide education programs.** (would be included in Part VI and reordered for greater clarity into sections on “Establishing and maintaining a nurse aide education program,” Requirements for instructional personnel,” Curriculum content and length,” General requirements, and Interruption or closing of a program.” Amendments to the content of this section include:

## Town Hall Agency Background Document

- To maintain approval of a nurse aide education program, certain information is required. That includes evidence of financial support and sufficient resources. That requirement has not been sufficiently specific, so the Board recommends that the program provide evidence in the form of a current, annual budget or a signed statement of financial support from the administration.
- To ensure that programs understand that completion and submission of biennial on-site review reports and program evaluations are essential elements for maintaining approval, a new subdivision will be added.
- It is also required that the program provide each student with a copy of applicable Virginia law regarding criminal history records checks for employment. The Board recommends that the requirement be clarified to document that each student has been given a copy of the applicable law.
- The requirement to report all “substantive changes” within 10 days need to be made more clear and precise; the Board proposes to specify changes that need to be so reported to include but not be limited to the following: the program coordinator, the primary instructor, ownership of the program, or facility licensure status.
- Under instructional personnel, the Board recommends that it be explicitly stated that a program coordinator and primary instructor are required and that all instructional personnel must be approved by the Board prior to providing instruction. It also intends to add that the program coordinator must be a registered nurse. Further, it recommends that the primary instructor be identified as the person who does the “majority of” the teaching of the students and that she be responsible for the teaching and evaluation of students (currently the requirement is for the instructor to “participate in” the teaching and evaluation).
- Under “other instructional personnel,” the Board recommends that their responsibilities be clarified to include assisting the primary instructor in the classroom and clinical supervision of the students.
- All instructional personnel should have one year of experience in teaching adults or high school students.
- Subdivision C (5) should be amended to provide that the nurse aide education program may also use other persons who have particular expertise in a specific topic to teach under the direct, on-site supervision of the primary instructor.
- The Board recommends that Subdivision D (1) (a) be amended to increase the hours spent in the core curriculum from 16 to 24 hours and to delete the term “Heimlich Maneuver” and substitute “handling obstructed airways in adult clients.”

## Town Hall Agency Background Document

- In response to disciplinary cases involving nurse aides, the Board recommends that subdivision D (1) (d) be amended to add “including but not limited to aggressive behavior and language” to being trained in responding appropriately to client behavior.
- Subdivision D (1) (e) should be amended to add the understanding of the behavior and “management” of cognitively impaired residents.
- Subdivision D (1) (h) should be amended to add to an understanding of the legal aspects of practice, an understanding of unprofessional conduct and the consequences of abuse, neglect or misappropriation of property by a certified nurse aide.
- Subdivision E should be amended to specify that the education programs must maintain a record of the skills taught and date of performance by the students. At the completion of the program, each student must be provided with the skills record and certificate of completion.
- Subdivision F should be amended to clarify that a nurse aide student should specifically identify herself as a “nurse aide student.”
- Subdivision G should be amended to provide for 24 hours of instruction prior to direct contact with a nursing facility client (consistent with the section on core curriculum) and that there be a minimum of 40 hours in providing direct client care. Further the observational experience shall not be counted towards the 40 hours of skills training in a clinical setting.
- To allow the use of newer technology, subdivision H (classroom facility requirements) should be amended to delete “including audio-visual equipment” and to include “instructional technology and equipment” as necessary for simulating resident care.
- Subdivision I (program review) needs to be amended to specify a program evaluation report is required as well as the report of the on-site visit in order for the committee to recommend continued approval and that each nurse aide program is reviewed annually. Other amendments may be necessary to clarify that the committee may recommend that a program be placed on conditional approval or may refer the matter to the full board for a hearing. Other amendments may be necessary to clarify the process by which approval of a nurse aide education program may be withdrawn if a program fails to comply with orders and correct deficiencies. The intent is to facilitate that process of responding to deficiencies and proceeding to withdrawal of approval if necessary in a manner consistent with requirements of the Administrative Process Act.
- Subdivision J (curriculum changes) may be moved to another the section on maintaining an approved nurse aide education program.
- Subdivision K (interruption of program) needs to be amended to specify that if the program provider does not “hold classes” for two years, the program is considered closed.

**18 VAC 90-20-350. Nurse aide registry.**

- The Board recommends modifying the provision that allows a nurse aide to be eligible for certification by examination if she is currently enrolled in a nursing education program and completed one course to require that the completed course be of a clinical nature and consist of at least 40 contact hours in direct adult client care.
- The requirement for an applicant for certification by endorsement needs to be amended to require verification from **each** state in which the applicant has been registered, certified or licensed. Currently, the requirement is only for the past two years, but the Board needs to be aware of any findings of patient neglect, abuse or misappropriation of client property by another state at any time.
- The requirements for renewal and reinstatement of a lapsed certificate may be placed in a new section, 18 VAC 90-20-355. The reinstatement provisions need to be clarified to state that if the certificate has lapsed for more than 90 days, the applicant must verify performance of nursing-related activities during the two years immediately preceding the application for reinstatement of certification. If the work requirement is not met, the applicant must retake and pass the examination.
- A requirement should be stated in regulation specifying the Board's current policy that an applicant is not eligible for reinstatement if there was a previous finding of abuse, neglect or misappropriation of property, whether the certificate has been revoked or lapsed.
- A requirement is needed to state that, based on a finding of neglect based on a single incident that was made January 1995 or thereafter, an individual is eligible to petition the Board for removal of that finding provided the petitioner can prove through employment and personal history that it does not reflect a pattern of abusive behavior or neglect. Such a petition may be granted only one time and only after one year has passed since the finding.

**18 VAC 90-20-360. Denial, revocation or suspension.** (This section should be retitled, "Disciplinary provisions")

- Subdivision 1 on fraud or deceit needs to be clarified that it refers to procuring or attempting to obtain a certificate.
- Subdivision 2 needs to be amended to specify that unprofessional conduct may include the performance of acts beyond those authorized in the Drug Control Act or in accordance with regulations of the Board on delegation of tasks to unlicensed persons.
- From the disciplinary matters involving nurse aides, the Board sees the need to add several provisions to the section on unprofessional conduct including: 1) entering into an inappropriate relationship with a client that violates professional boundaries; 2) giving or

## **Town Hall Agency Background Document**

accepting money or property for any reason other than fee for service; 3) obtaining money or property from a client by fraud, misrepresentation or duress; and 4) violating the privacy of clients or confidentiality of patient records unless required to do so by law.

- A new subdivision needs to be added to specify what is meant in the Code (§ 54.1-3007(7)) about a “restriction” in another state or the District of Columbia. That would include: 1) having a finding of abuse, neglect or misappropriation of patient property in another state; or 2) being placed on the abuse registry in another state.

### **PART VII. Medication Administration Training Program.**

#### **18 VAC 90-20-390. Content.**

There needs to be a standard for the length of time spent in classroom instruction and practice in a medication administration training program; the Board recommends a minimum of 24 hours of training.

### **PART VIII. Protocol for Adult Immunization.**

#### **18 VAC 90-20-410. Requirements for protocol for administration of adult immunization.**

Regulations that were promulgated in 1998 need to be updated to include information necessary to ensure adequate protocol to protect public safety at immunization clinics. Specifically, the Board recommends:

- Clarification in 7 b that information must be given about single or multiple dose vials rather than single or multiple dose administration.
- In 7 f, the term should be changed to “standard precautions” rather than “universal precautions.”
- Emergency guidelines should be more clearly specified to include: a) major and minor side effects; b) waiting time of 15 minutes following injections; and c) follow-up care with primary physician.
- Under 10, the qualifications of the immunization providers should include current CPR certification.

### **PART IX. Delegation of Nursing Tasks and Procedures.**

#### **18 VAC 90-20-460. Nursing tasks that shall not be delegated.**

This section needs to be amended to add as a task that shall not be delegated the circulating duties in a surgery suite or operating room to unlicensed persons.



## Town Hall Agency Background Document

*Please provide a preliminary 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 preliminary 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 and no effect on family income.