



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:	Periodic Review
Date:	3/21/03

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of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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

Amendments to existing regulations are proposed pursuant to recommendations from a periodic review to clarify and update certain provisions affecting nursing education program, the practice of nursing, and medication administration programs. Current regulations for nurse aides and nurse aide education programs found within 18 VAC 90-20-10 et seq. are being repealed and being re-promulgated in a new set of regulations 18 VAC 90-25-10 et seq., Regulations Governing Certified Nurse Aides. Through its regulatory review, the Board determined that a separate set of regulations for nurse aides would be clearer and less cumbersome, especially for nurse aide education programs that have specific criteria for establishing and maintaining an approved program.

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. 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.*

Statutes governing the practice of nursing are found in Chapter 30 of Title 54.1 of the Code of Virginia: <http://leg1.state.va.us/000/1st/h3406636.HTM>

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.

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.

Through a review of its regulations, the Board has determined that clarifications were necessary or, in some cases, the rule needed to be made more specific to address an identified problem. To ensure consistency and compliance with standards set for Board approval of nursing education programs, the Board has added more specificity to the current rules. Changes in the application process for an educational program are intended to ensure that a program has the resources and facilities to be viable and adequately prepare students for examination and safe practice.

Changes in the reporting requirements will ensure that the Board is promptly informed when there is a significant event that may jeopardize the ability of the program to educate its students. With proposed regulations, continued approval of a program may be based on evidence of accreditation by a nursing education accrediting body. Elimination of duplicate submissions and site visits will conserve resources for educational programs that may better be used within the program or supporting institution. By specifying the educational credentials of program directors and faculty, the Board is addressing the need to clarify that nursing programs have regulatory standards consistent with those required for accreditation. Nursing students who are educated by faculty whose degrees are in nursing are likely to be more adequately prepared for an increasingly complex practice environment. Additions to the curriculum, including topics such as patient rights and the definition of patient abuse and abandonment, are designed to better prepare the licensed nurse and protect the health, safety and welfare of the patient.

In the last twenty years, the increases in acuity and sophistication of nursing care have demanded better prepared nurses with knowledge and critical thinking processes to function safely in health care environments and to communicate with other health care providers. This in turn demands better educational preparation for all faculty to teach these nurses, and the majority of that preparation must be in nursing. Thus the proposed amendments to faculty qualifications are needed to ensure that graduates of nursing education programs are prepared for safe and effective nursing practice.

Clarification of authorization to practice while awaiting licensure will protect the applicant from inadvertently practicing illegally, and a more specific requirement for evidence of continuing competency for a nurse who has been out of practice and is seeking reinstatement will offer greater protection to patients. Likewise, a specific number of hours in classroom instruction and practice for medication administration by unlicensed individuals is intended to protect the health and safety of the public who rely on the knowledge and ability of these persons for accurate administration of prescription drugs.

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 of Nursing is proposing 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.

The regulations that address criteria for approval of nurse aide education programs and certification of nurse aides are being repealed and set forth in another set of regulations adopted by the Board.

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.

Advantages or disadvantages to the public:

The public will directly benefit from a more specific requirement on nametags; people who interact with nurses in a practice setting will be able to identify the nurse providing care and his/her level of licensure. Indirectly, there is an advantage to the public from having nurses educated by more qualified instructors in several new topics that directly relate to patient care. The addition of grounds for disciplinary action will ensure that the Board has the ability to discipline a nurse who has violated the rights or property of a patient. Finally, the public will benefit from a specific number of hours required for medication administration training and from a prohibition against delegation of circulating duties in an operating room to an unlicensed individual.

Advantages or disadvantages to the agency:

There are no specific advantages or disadvantages to the agency or the Commonwealth. More specificity in the rules may alleviate questions and misunderstandings by educational programs and licensees, but there should be no additional cost for enforcement. The agency may experience a reduction in the number of hours required for program reviewers to conduct site visits, which could result in a moderate reduction in that line item in the budget of the Board.

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: As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

(ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

(iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$5,000) for mailings to the Public Participation Guidelines mailing lists, 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. There should be no on-going expenditures related to the proposed amendments.

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 affected by this regulation are registered nurses, licensed practical nurses, clinical nurse specialists, nurse applicants, and nursing education programs.

Estimate of number of entities to be affected:

Registered nurses	84,675
Licensed practical nurses	26,679
Clinical nurse specialists	451
Nursing education programs:	
RN programs	38
LPN programs	58

Projected costs to the affected entities:

There should be no costs for compliance with amended regulations for registered nurses or licensed practical nurses who maintain a current license. For nurses who allow their license to lapse, there may be some additional costs for obtaining continuing education. The American Nurses Association offers courses online – currently 7.4 hours are available at no cost. Other courses are available at a cost of approximately \$7/hour to non-members, so the maximum cost for compliance with reinstatement requirements could be \$105. Most nurses obtain continuing education through in-service training in their employment setting, so there would be no cost to the individual for such classes.

Nursing education

Currently, 36 out of 38 registered nursing programs in Virginia hold national accreditation; the two programs that are not yet accredited have been recently established and are undergoing the approval process with the Board as well as the accrediting process. Therefore, there should be no impact on nursing education programs in the Commonwealth. As nursing education programs seek to hire full-time faculty members in the future, it will be clear that the regulatory standard of a master's degree as a minimal qualification is consistent with the accrediting standard. While that may eliminate some candidates, the programs report that salaries are related to positions rather than to qualifications, so staff salaries are not likely to be affected. Baccalaureate degree programs are already fully staffed with qualified faculty, but the associate degree programs (often located at community colleges) and diploma programs (offered in a hospital setting) that are accredited but have some of their faculty "grandfathered" may have to attract faculty members with graduate degrees to retain their accreditation. All program directors and faculty members employed prior to the effective date of the regulations will be able to retain their post, so any potential impact may be apparent when new faculty must be hired. In adopting proposed amendments, the supply of potential faculty with a master's degree in nursing (or baccalaureate degree in nursing in practical nursing programs) was carefully considered. In 1980, there were only 3 programs granting a master's degree in nursing. Currently, there are nine programs in the Commonwealth. Between 1995 and 1999, there were 1776 master's degrees in nursing granted by Virginia institutions, averaging 355 per year. Therefore the pool of potential faculty is increasing and is more than sufficient to meet demand. Among all RN programs, there are 538 full-time faculty positions. Therefore, nursing education in Virginia annually produces over 66% of the entire faculty pool needed to staff all programs.

An initial version of the proposal was sent to schools of nursing in the Commonwealth. As a result of their feedback, a change was made in the proposal that allows for part-time clinical faculty in associate degree and diploma programs to hold the baccalaureate degree instead of the master's. This addressed the vast majority of expressed concerns. The proposed amendment would require only full-time faculty in those programs to hold graduate degrees in nursing or 18 graduate credit hours in nursing; part-time clinical faculty would have to meet the current requirement of a baccalaureate degree, preferably with a major in nursing. To further mitigate the possible impact, the Board permits exceptions to the increased credential requirement for programs that have difficulty attracting qualified faculty.

In response to concerns about increasing the qualifications for full-time faculty in practical nursing programs, the Board elected not to change the current regulation, so those programs should not experience any impact.

Therefore, the proposed change in regulations is estimated to be cost neutral. In most institutions, salaries of faculty (or nurses or all levels in hospitals) are set within a fairly narrow range and tend to consider position and experience as a greater force in determining level than education. In the next few years, it is likely that faculty salaries in nursing programs will increase. In fact, the Virginia Workforce Council on Nursing Education (Joint Commission on Health Care) has recommended that increase. The State Council of Higher Education for Virginia studied nursing faculty salaries. They found that "there are no significant disparities in salary and workload between Virginia Nursing faculty and those in clinic practices. As a

result, SCHEV makes no formal recommendation on this issue, but does advocate for continued competitive nursing faculty salaries in the Commonwealth (Virginia Nursing Faculty Salaries: Report to the Joint Commission on Health Care, November 2002). The same study notes the accreditation requirements for a master's degree and reports that 94% of the nursing faculty in Virginia hold either a master's degree or a doctoral degree (p4). Although there were no comparisons made between those with master's degrees in nursing versus in another field, comparisons were made for the doctoral degree. The average salary for those with doctoral degrees in nursing was \$7,000 lower than for those with doctorates in any field other than nursing.

There may be some areas of the state where supply of potential faculty with master's degrees in nursing may be less. The Board's proposed regulations provide for that possibility by the grandparenting clause and with the approval by exception.

Medication administration

The specific number of 24 hours in classroom instruction for medication administration by unlicensed persons should not be burdensome to most settings in Virginia. The training program designed by the Department of Social Services, consisting of 32 hours of instruction and practice, is the model used by the vast majority of settings where these individuals are being trained. There are 3 other training programs currently approved that do not meet the 24-hour standard; they would have to increase the hours of training to comply with amended 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 90-20-10. Definitions.

- The Board has updated the definitions of “associate degree nursing program” and “baccalaureate degree nursing program” to specify that the authorization to confer degrees comes from the State Council of Higher Education.
- The definition of “national certifying organization” is amended to add “and is accredited by a national body recognized by the National Council of State Boards of Nursing (NCSBN).” Such recognition is essential for creditability for the examination of the certifying body and assurance of meeting certain accreditation standards. A definition of NCSBN is added to permit use of the acronym in regulation.
- The definition of “practical nursing program” is clarified to provide that the program should be authorized by the State Board of Education or the appropriate governmental credentialing agency.
- In the definition of “program director,” the Board has added language to require that person to hold a current, unrestricted RN license in Virginia.

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

The requirement for nurses to wear identification needs to be amended to clarify that the “name” includes the person’s first and last name. In addition, the title should indicate the license, certification, or registration under which the person is practicing. For example, 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 has added language that will provide more direction to applicants seeking approval of nursing education programs. It has 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 have been 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 has renamed section 50 as “Provisional approval)

Current regulations require submission of a “tentative” written curriculum plan; the Board has deleted 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.

18 VAC 90-20-60. Phase III. (The Board has renamed 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 is amended to clarify that the committee also makes recommendations for the continuance of *provisional* approval when appropriate and necessary.

18 VAC 90-20-65. Continued approval.

A new section is added to permit the board to accept evidence of accreditation by a nursing education accrediting body recognized by the U. S. Department of Education for the purpose of continued accreditation.

18 VAC 90-20-90. Faculty.

- To emphasize the educational preparation in nursing, 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 is required and either that degree or a bachelor's degree must be in nursing. The Board proposes to require a graduate degree in nursing or at least 18 graduate hours in nursing for all faculty.
- For the associate degree or diploma programs, the Board proposes 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 proposes to require all to have a graduate degree in nursing or at least 18 graduate hours in nursing. In response to concerns programs expressed about having to hire part-time clinical faculty with graduate degrees, the Board amended its original draft to include only full-time faculty. Part-time clinical members of the faculty will continue to be required to hold a baccalaureate degree.
- For the practical nursing programs, the Board will require the program director to hold a baccalaureate degree in nursing. In response to comment from LPN programs about potential difficulty in hiring qualified faculty if all faculty were required to have a baccalaureate degree, the Board elected to make no changes in the current requirement, which is for a majority of the faculty to hold a baccalaureate degree, preferably in nursing.
- In the subsection on exceptions to the faculty qualifications, the Board has included "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. Again, in response to comment on the draft language, the Board has added an exception for faculty who are hired to teach related courses. Provided they hold a degree that qualifies them to teach a particular subject, it is not required that they be licensed nurses or hold a nursing degree. Those exceptions do not require board approval. In addition, a program may request board approval for exceptions in hiring program directors or faculty who do not meet the educational requirements.

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 has added that the clinical experience must be faculty-supervised and that the faculty remains ultimately accountable for the program.

18 VAC 90-20-120. Curriculum.

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 certain significant changes, such as a change in the accreditation status of the program, in a more timely manner. Proposed amendments specify a 10-day time frame for notification to the Board if there is a change in the director, the governing body, or in the accreditation status. The Board also needs to be notified within 10 days of the receipt of a report with findings and recommendations 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 accept 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. Evidence of continued accreditation may be acceptable for continued approval, and a site visit may not be necessary. However, amendments provide for an on-site survey within one year of a change in accreditation status by an accrediting body

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 has simplified 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.

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

- 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 clarify that practice may not begin until the candidate has been issued an authorization letter from the Board and continue from that date until publication of examination results. To clarify the date for "completion of the nursing education program," the Board has added "as documented on the applicant's transcript."
- 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.)

Subsections B and C is amended to require evidence of continued competency to practice consisting of 15 hours of continuing education in nursing or passage of the NCLEX examination during the period in which the license has been lapsed. The board is authorized to waive all or part of the continuing education requirement if the nurse holds a current, unrestricted license in another state and has continued in active practice.

Subsection D is amended 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.

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) is clarified to specify that fraud or deceit in procuring or attempting to obtain a license.

Subsection A (e) is amended to include in the falsifying of student or educational records including falsely representing facts on a job application or employment documents.

From the disciplinary matters involving nurses, the Board has seen 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.

Sections 310 through 360 in Part VI are being repealed in 18 VAC 90-20 in order to set forth the regulations pertaining to certified nurse aides and nurse aide education programs in a separate and distinct regulation, entitled, 18 VAC 90-25-10, Regulations Governing the Certified Nurse Aides.

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:

- In 7 f, the term should be changed to “standard precautions” rather than “universal precautions.”
- 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.

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.

Nursing 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.

Since all RN educational programs in Virginia currently hold or will hold national accreditation, the requirements for the faculty to hold graduate degrees should not have a major impact. Accreditation standards of the National League for Nursing Accrediting Commission, Southern Association of Colleges and Schools regional higher education accrediting requirements, and the NCSBN Model Rules and Regulations are more stringent than what the Board is proposing. In addition, the Board made the provision for grandfathering existing faculty and for allowing the BSN for part-time clinical faculty in ADN and diploma programs. For those programs that cite unusual situations of faculty with non-nursing masters who were pursuing graduate credits or had other mitigating circumstances, there is a provision in the regulations to request an exemption. Since most programs are currently accredited and a graduate degree in nursing is a requirement of the accrediting bodies, there should not be a significant impact on hiring of full-time faculty. For those few programs that have received an exception from the accrediting body for good cause, the same exception is available through the Board.

To date, 36 out of 38 registered nursing programs in the Commonwealth are accredited by the National League for Nursing Accrediting Commission. The evolution in criteria for accreditation has occurred as a result of recommendations of national panels and polls of every accredited program in the United States to determine the appropriateness and burden of the change. The current accreditation criteria for faculty of both baccalaureate and associate degree programs include the following:

- a. Nursing faculty are credentialed at a minimum of a master's in nursing degree.
- b. Rationale for acceptance of other than the minimum required graduate credential. (Accreditation Manual and Interpretive Guidelines by Program Type for Post Secondary and Higher Degree Programs in Nursing. National League for Nursing Accrediting Commission, Inc, p125, 138).

Further guidance for this proposed change comes from the model regulations provided by the National Council of State Board of Nursing (NCSBN). Representatives of all states and US territories adopted Model Rules that are more stringent than those proposed herein. Namely: Nursing faculty who teach in programs leading to licensure as a registered nurse shall:

- (a) be currently licensed or privileged to practice as a registered nursing in this state;
- (b) have a minimum of a master's degree in nursing with a major in nursing; and
- (c) have <> years of clinical experience (NCSBN.org, 8/17/02).

Current regulations state that faculty in associate and diploma programs should “preferably” have a major in nursing. The change to a more definitive criterion will eliminate confusion and unnecessary ambiguity and will clarify the intent of the Board. Persons who want to teach who hold non-nursing masters degrees can meet the requirement with 18 graduate credits, which is less than one year of full-time study, or 3 semesters of part-time study. Educators contend that the benefit of hiring a master's prepared clinician is that they know the subject matter and can convey current practice to the students, assisting them to be successful on the NCLEX exam. Observations by members of the Board's Education Special Conference Committee have been that the quality of instruction differs in the curriculum with the lesser-prepared faculty.

Most other states have much higher standards for qualifications of nursing faculty – in the baccalaureate programs, 34 states currently require a graduate degree in nursing, which is a higher standard than is proposed by the Board. Other states require a master's in any field, a master's with a minimum of 12 to 18 graduate hours in nursing, a master's or entry level doctorate, or a master's for instructors. In the associate degree programs, 26 states require a graduate degree in nursing, while most others require some graduate hours in nursing with progress toward a degree. In the diploma degree programs, 31 states do not offer such programs while 12 also require a graduate degree in nursing. Of the remaining states, the requirements range from a master's or entry level doctorate to a MSN or progress toward the degree. The Board believes that the quality of nursing in Virginia is directly related to educational requirements consistent with accreditation standards and national regulatory standards for teaching.

Nursing education programs accredited by a professional credentialing body periodically undergo a self-evaluation, review and visit. 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. While the Board intends to lessen the burden, it does not intend to 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 will be able to accept those reports as evidence of meeting most requirements of the Board and an on-site visit may not be necessary. Registered nurse educational programs – diploma, associate degree, and baccalaureate degree – are nationally accredited by one of the two accrediting bodies. The two that have not completed the accreditation process are in some phase of approval and expect to become accredited in the coming months. Some of the practical nurse programs also have accreditation, but for those who do not, they will continue to follow the current requirements for board approval. For those nursing education programs that are accredited, alleviating much of

the duplicate 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 prevailed 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.

The Board has also identified areas of regulation where the requirements are inadequate to provide nurses 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 can be eliminated. 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.

The Board has also been 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 that change.

Licensure and Practice

In response to confusion by applicants and facilities, the requirements for licensure by examination and licensure by endorsement have been amended have been to clarify the period in which an applicant can work awaiting licensure.

Amendments in this section will also clarify provisions that have been confusing to nurses and generated questions to the Board. Current regulations allow a nurse to renew a license for one renewal cycle or two years, after which she must be reinstated. The regulations state that the Board may request evidence that a nurse is prepared to resume practice after she has allowed her license to expire. 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. Amendments specify what is required for an applicant for reinstatement to indicate that she is prepared to resume practice in a competent manner, namely 15 hours of continuing education in nursing or passage of the NCLEX exam. To determine the appropriate number of hours that should be required, the Board considered that the CE requirement for nurse practitioners is 40 hours each biennium and determined that 15 hours was a minimal amount. If a nurse has a current,

unrestricted license in another state and has been actively practicing, the Board may accept that as evidence of competency and waive all or part of the CE requirement.

Disciplinary Provisions

Provisions setting grounds for disciplinary actions against nurses 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, employment or educational records. Similar grounds are established by this Board in the regulations governing the certification of massage therapists and nurse aides.

Medication Administration Training Program

Since its inception, there have 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 and to cover the required program content.

Protocol for Adult Immunization

Clarification of some of the current requirements is recommended, as well as the addition to regulation of a requirement that is on the protocol form (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.

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 amend its regulations pursuant to recommendations of the periodic review 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 (which is approximately 1100 persons). Public comment was accepted until May 8, 2002.

During the 30-day comment period, the following comments were received from members of the public on the Notice of Intended Regulatory Action:

Southside Regional Medical Center School of Nursing endorsed the proposal to accept national accreditation for the purpose of continued approval of a nursing program as beneficial and cost effective to the Board and the institutions.

The Association of Perioperative Registered Nurses in Virginia endorsed the restriction on delegation of circulating duties in an operating room to unlicensed persons. The Association supported a regulation that only the perioperative registered nurse is able to delegate in the operating room, but the proposed regulation does not specify a particular specialty of RN.

A Director of Nursing Education Programs wrote to express opposition to a change in the ratio of student to instructor from 10 to 1 to 8 to 1. The Board also did not recommend the change that had been considered during regulatory review, because it would be burdensome and costly for nursing education programs.

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.

The Board, representing various categories of nurses and practice settings, has reviewed these regulations for consistency and clarity. Likewise, staff of the Board, who interact on a regular basis with the regulated entities reviewed the regulations and made recommendations for clarification. The Assistant Attorney General who provides counsel to the Board of Nursing has been involved during the development and adoption of proposed regulations to ensure clarity and compliance with law and regulation. Since the regulations were drafted and approved by the practitioners who will have to comply with the stated requirements, the Board is satisfied that the regulation is clearly written and will be easily understandable by the individuals affected.

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 Boards to review regulations each biennium or as required by Executive Order. Regulations governing the practice of nursing will be reviewed again during the 2005-06 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.

The proposed regulatory action does not have any impact on the institution of the family or the rights of parents, does not encourage or discourage economic self-sufficiency or affect the marital commitment. They do not increase or decrease disposable family income.