



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

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| Agency Name: | Boards of Nursing and Medicine/Department of Health Professions |
| VAC Chapter Number: | 18 VAC 90-30-10 et seq. |
| Regulation Title: | Regulations Governing the Licensure of Nurse Practitioners |
| Action Title: | Periodic Review |
| Date: | 6/7/02 |

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of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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

18 VAC 90-30-10 et seq. establish the qualifications for nurse practitioners to be licensed and set the requirements for practice in collaboration with a physician and under medical direction and supervision. The Boards of Nursing and Medicine are recommending the regulation be amended to ensure that certifying agencies providing professional certification necessary for licensure as a nurse practitioner are accredited by an accrediting agency recognized by the U. S. Department of Education or are deemed acceptable to the National Council of State Boards of Nursing. An amendment is also proposed to add a specialty category of nurse practitioner.

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 90-30-10 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.*

The statute governing the licensure of nurse practitioners is §§ 54.1-2957 of the Code of Virginia.

§ 54.1-2957. Licensure of nurse practitioners.

The Board of Medicine and the Board of Nursing shall jointly prescribe the regulations governing the licensure of nurse practitioners. It shall be unlawful for a person to practice as a nurse practitioner in this Commonwealth unless he holds such a joint license.

The Boards may issue a license by endorsement to an applicant to practice as a nurse practitioner if the applicant has been licensed as a nurse practitioner under the laws of another state and, in the opinion of the Boards, the applicant meets the qualifications for licensure required of nurse practitioners in this Commonwealth.

Pending the outcome of the next National Specialty Examination, the Boards may jointly grant temporary licensure to nurse practitioners.

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.

The purpose of the proposal is to ensure that credentialing bodies on which the Board relies to certify each type of specialty practice are basing such a credential on sound, objective standards with examinations that are defensible. Without such a requirement, there is no independent review of the specialty certifications to ensure that the advanced practice nurse licensed by the board are minimally competent to provide health care services to patients in the Commonwealth. Assurance of competency is a basic responsibility of the board for the health, safety and welfare of the public.

In addition, the board has added in regulation a category of licensed nurse practitioner that is currently being licensed based on an action by the Committee of the Joint Boards of Nursing and Medicine. That Committee has the authority to add a specialty if it determines that a new category meets the requirements of this chapter.

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.

Amendments to regulations will specify that agencies on which the Board relies to credential specialty practice are accredited or deemed acceptable by the National Council of State Boards of Nursing. An amendment is also proposed to add "psychiatric nurse practitioner" to the listing of categories of nurse practitioner.

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:

Amendments have no immediate advantages or disadvantages to the public as all the specialty bodies that credential nurse practitioners meet the amended requirements. They will offer the

board a more objective standard by which to judge the merits of a certifying body seeking board approval to credential nurse practitioners.

Advantages or disadvantages to the agency:

The additional criteria for recognition of national certifying bodies will offer the board a more objective standard on which to based any future requests for recognition. Although the board has already begun the license psychiatric nurse practitioners, the addition of that category in the regulation will be clarifying.

There are no disadvantages to the agency; there are no new requirements to be interpreted and enforced.

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 \$2,000) 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 likely to be affected by these regulations would be persons licensed as nurse practitioners or national certifying bodies that credential nurse practitioners.

Estimate of number of entities to be affected:

Currently, there are 4,400 licensed nurse practitioners in all categories in Virginia, including two persons licensed as psychiatric nurse practitioners. There are six national certifying bodies recognized in regulation for nurse practitioners.

Projected costs to the affected entities:

There should be no costs to the affected entities for compliance with these amended regulations. All six of the national certifying bodies for nurse practitioners meet the amended standard.

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.

Amendments have been recommended in the following sections of regulations:

18 VAC 90-30-10. Definitions.

The definition of “national certifying body” would be amended to require such a body to be accredited by an accrediting agency or deemed acceptable by the National Council of State Boards of Nursing.

18 VAC 90-30-70. Categories of licensed nurse practitioners.

A specialty category of psychiatric nurse practitioner is added to reflect the current listing.

18 VAC 90-30-90. Certifying agencies.

This section would be amended to require accreditation by an accrediting agency or acceptability by the National Council of State Boards of Nursing

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.

The Boards have considered whether there were any alternatives to achieving the purpose of the regulation and concluded that it is the least burdensome alternative allowable by statute. The Code required the Boards to prescribe by regulation qualifications for licensure and standards for

practice in accordance with credentialing bodies for each type of practice. The only alternative considered in the review of these regulations was an additional requirement to ensure the certifying bodies, on which the Boards rely for licensure, are accredited or approved by a professional entity or credentialing agency. Without such a requirement, there is no independent review of the specialty examinations, to ensure that they are psychometrically sound and not subject to challenge.

Currently, there are six nationally recognized entities that provide certification for nurse practitioners: 1) American College of Nurse Midwives Certification Council; 2) American Nurses' Credentialing Center; 3) Council on Certification of Nurse Anesthetists; 4) National Certification Board of Pediatric Nurse Practitioners and Nurses; 5) National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties; and 6) American Academy of Nurse Practitioners. Regulations permit the boards to accept additional professional certification from other certifying bodies upon recommendation of the Committee of the Joint Boards. This amendment will specify that those agencies must meet the criteria set forth in the definition of a national certifying body and will ensure a more reasonable and objective standard by which such a certification can be judged.

Since these regulations were last amended the Committee of the Joint Boards has, in accordance with authority granted in 18 VAC 90-30-70, added a specialty category of nurse practitioner – psychiatric nurse practitioner. (Section 70 provides: “Other categories of licensed nurse practitioners shall be licensed if the Committee of the Joint Boards of Nursing and Medicine determines that the category meets the requirements of this chapter.”) To ensure that the regulations are clear and consistent for applicants, regulants and employers, the Boards have added that category to the listing in section 70.

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 Boards (which is approximately 1100 persons on the PPG mailing list for the Board of Nursing and 250 persons on the list for the Board of Medicine). Public comment was accepted until May 8, 2002.

During the 30-day comment period, no comments were received from members of the public on the Notice of Intended Regulatory Action.

Clarity of the Regulation

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

The Committee of the Joint Boards, representing various categories of nurse practitioners and physicians who supervise nurse practitioners, has reviewed these regulations for consistency and clarity. 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 Boards are 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 nurse practitioners will be reviewed again during the 2004-05 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, and does not affect family income.