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Fast-Track Regulation
Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC90-60
Regulation title(s)	Regulations Governing the Registration of Medication Aides
Action title	Periodic review
Date this document prepared	9/20/18

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations.*

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Pursuant to its periodic review of Chapter 60, the Board has amended regulations to clarify certain provisions, make some rules less burdensome and add requirements that are necessary for protection of the public or the medication aide. Additional requirements include: 1) more information on the certificate of completion; 2) process for withdrawal of approval of a medication aide training program; 3) a new section on reinstatement after revocation or suspension; and 4) language clarifying that the Board may take disciplinary action for any violation of the chapter, including the standards of practice.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

N/A

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On September 18, 2018, the Board of Nursing amended 18VAC90-60-10 et seq., Regulations Governing the Registration of Medication Aides.

Mandate and Impetus

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

As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

As required by Executive Order 14 (2018), the Board of Nursing conducted a periodic review of this chapter. The amendments are either less restrictive and clarifying or intended for consistency with similar regulations for nurse aide or nursing education programs. There are no substantive changes, so the amendments are not expected to be controversial.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Nursing the authority to promulgate regulations to administer the regulatory system and authorization for delegation to an agency subordinate:

> ***§ 54.1-2400 -General powers and duties of health regulatory boards***
> *The general powers and duties of health regulatory boards shall be:*
>
> *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 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. …

The specific statutory authority for registration of medication aides and approval of training programs is found in:

§ 54.1-3005. Specific powers and duties of Board.

In addition to the general powers and duties conferred in this title, the Board shall have the following specific powers and duties:…

16. To register medication aides and promulgate regulations governing the criteria for such registration and standards of conduct for medication aides;

17. To approve training programs for medication aides to include requirements for instructional personnel, curriculum, continuing education, and a competency evaluation;

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

It is necessary to retain the current chapter because its provisions protect the health and safety of a vulnerable population of residents in assisted living to whom medications are administered. The regulatory changes are consistent with the principle that regulations should be clearly written and easily understandable.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

Pursuant to its periodic review of Chapter 60, the Board has amended regulations to clarify certain provisions, make some rules less burdensome and add requirements that are necessary for protection of the public or the medication aide. Additional requirements include: 1) more information on the certificate of completion; 2) process for conditional approval or withdrawal of approval of a medication aide training program; 3) a new section on reinstatement after revocation or suspension; and 4) language clarifying that the Board may take disciplinary action for any violation of the chapter, including the standards of practice.

Issues

Please identify the issues associated with the regulatory change, including: 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, include a specific statement to that effect.

1) There are no substantive changes to the regulation so there are no real advantages or disadvantages to the public. The additional information on a certificate of completion and the additional year in which the applicant has to take the examination are advantageous to a person seeking registration as a medication aide. Most of the amendments are technical and clarifying.
2) There are no advantages or disadvantages to the agency or the Commonwealth, except clearer regulations may result in fewer inquiries to staff.
3) There are no other pertinent matters of interest. The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to "*promulgate regulations in accordance with the Administrative Process Act which are reasonable and necessary to administer effectively the regulatory system.*"
   The proposed amendments are a foreseeable result of the statute requiring the Board to protect the health and safety of citizens of the Commonwealth.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There is no applicable federal requirement.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	There are no projected costs or savings resulting from the change. 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; The agency will incur no additional costs for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	None
For all agencies: Benefits the regulatory change is designed to produce.	None

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	No costs
Benefits the regulatory change is designed to produce.	None

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Medication aides, applicants for registration as medication aides, and approved medication aide training programs.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	Medication aide training programs – 284 Medication aides – 6595 Medication aides are employees of licensed assisted living facilities. While some training programs are offered by large health care entities that include assisted living facilities, most are operated by small businesses.

All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	None
Benefits the regulatory change is designed to produce.	Regulations are that consistent and more easily understood.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The amendments do not change the substance of the chapter; there are no alternatives that meet the essential purpose of training and registering medication aides.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There are no alternative regulatory methods for clarifying or making a regulation less restrictive other than promulgating a regulatory action.

Public Participation

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed

with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Detail of Changes

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
20		Sets out requirements for identification of med aides and for maintenance of an address of record	Subsection A is amended to delete the requirement that a nametag must include the aide's first and last name. The amended requirement allows the assisted living facility in which the med aide works to set the policy on names, but retains the requirement that the name tag must include the title under which the person is practicing. *A similar change was made in the nursing regulations in response to a petition for rulemaking and a substantial amount of support for the amendment.* Subsection C is amended to delete the word "mailed" and insert the word "sent" because all boards are instituting electronic renewal notices. A licensee or registrant who does not respond to an email is mailed a paper renewal.
30		Sets out fees for registration and renewal	Subsection C is amended to replace the term "competency evaluation" with "state examination." *Applicants are sometimes confused, thinking the competency evaluation is different from the state examination that they are required to pass to become a registered medication aide.* Subsection D is deleted as the one-time renewal fee reduction is expired.
40		Sets out requirements for establishing and maintaining a medication aide training program	Subsection B 6 is amended to specify that the certificate of completion should include the name of the program, the approval number from the board, and the signature of the instructor. *This is currently the expectation and guidance for certificates, but the Board sometimes gets inquiries from training programs or applicants.*
60		Sets out requirements for the medication aide training program curriculum	Subsection D is amended to allow rather than "require" training programs to provide one or more modules that can be used to satisfy continuing education.

70		Sets out other requirements for training programs	Amendments to subsection B and C reference changes made in other sections of the chapter.
	75	Sets out the process for placing a training program on conditional approval or withdrawing approval	The Board does not have specific language for the process in place when it is necessary to put a program on conditional approval or to withdraw approval. The same process is used as for nursing or nurse aide programs, so the regulations were modeled from Chapters 26 and 27. (18VAC90-26-60 and 18VAC90-27-230)
90		Sets out requirements for initial registration	Subsection A is amended to provide a fourth pathway or option for documentation of training in client/patient care to include a clinical nursing course that includes at least 40 hours of clinical experience in direct client care within the past 12 months. *The addition is optional and would allow an applicant who has already had such a course began training as a medication aide without an additional program in client care.*
91		Provides requirements for provisional practice	An amendment to subsection C clarifies that the identification required as a provisional medication aide must appear on a nametag worn in the facility.
92		Sets out requirements for registration by endorsement	Changing “competency evaluation” to “state examination”
100		Sets out requirements for renewal or reinstatement of registration	Subsection A is amended to replace the word “application” with notice or renewal notice as more descriptive of what registrants receive. Subsection D is added to clarify that reinstatement after revocation or suspension is an additional process requiring an application and payment of a fee specified in section 30. The requirement for a person whose registration is revoked to wait three years before application for reinstatement is found in § 54.1-2408.2. *Minimum period for reinstatement after revocation*.
120		Sets out the disciplinary provisions for medication aides	Under the meaning of unprofessional conduct, subsection division 2 m is amended to clarify that the Board may take disciplinary action for a violation of any provision of regulation, including the standards of practice.