



Proposed Regulation Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC90-20-10 et seq.
Regulation title	Regulations Governing the Practice of Nursing
Action title	Provisional licensure to obtain clinical experience required for licensure
Date this document prepared	9/24/13

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

Chapter 712 (Senate Bill 1245) of the 2011 Acts of the Assembly authorized the Board of Nursing to revise its regulations to provide for provisional licensure for applicants as registered nurses to obtain clinical experience. The legislation further required that the Board promulgate regulations to implement the provisions of the act to be effective within 280 days of its enactment. The Board submitted the emergency regulation for executive branch review on September 29, 2011. The statutory deadline for regulations to be in effect was December 31, 2011, but the Secretary of Health and Human Resources requested that the Board re-examine the proposed emergency regulations to address concerns expressed by Excelsior College, a competency-based nursing program. Re-submitted emergency regulations became effective on August 1, 2013 and will remain in effect until January 28, 2015 or until replaced by permanent regulations.

The key provisions of the regulations are: 1) requirements for qualification and submission of documents for approval as a provisional licensee; 2) requirements for 500 hours of direct client care in the role of a registered nurse including various areas of nursing; 3) provisions for

acceptance of previous clinical experience towards meeting the 500-hour requirement; 4) requirements for supervision of a provisional licensee, including the qualifications and responsibilities of the supervising nurse; and 5) provision for expiration and renewal of a provisional license.

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.

NCLEX = National Council Licensing Examination

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person'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:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

...

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 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

The specific authorization to promulgate regulations for provisional licensure for RN applicants is found in:

§ 54.1-3017.1. Registered nurse provisional license.

The Board may issue a provisional license to an applicant for licensure as a registered nurse who has met the educational and examination requirements for licensure, in order to allow the applicant to obtain clinical experience, as specified by the Board in regulation. A person

practicing under a provisional license shall only practice under the supervision of a licensed registered nurse, in accordance with regulations established by the Board.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The intent of the regulatory action in the adoption of emergency regulations is compliance with the statutory mandate of Chapter 712 of the 2011 Acts of the Assembly to “*promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.*” The Act provides for issuance of a provisional license to an applicant for registered nurse licensure in order to obtain the clinical experience specified in regulation. The provisional licensee is to practice under supervision, “*in accordance with regulations established by the Board.*”

Legislation authorizes the Board to adopt regulations to provide a pathway to licensure by the issuance of a provisional license to allow a graduate who has met the educational and examination requirements but is lacking clinical experience to obtain such experience by practicing under the supervision of a registered nurse for a period of time. The regulations for provisional licensure will assure that the RN applicant gains experience across the life span in all areas of nursing practice and that his practice will be overseen by an RN with at least two years of clinical practice experience. The supervisor is responsible for the assignment of duties consistent with the knowledge and skills of the provisional licensee and must be prepared to intervene if necessary for the health and safety of clients receiving care from a provisional licensee.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

The provisions are: 1) to establish regulations that will provide a reasonable alternative for qualifying for licensure by granting a provisional license to an RN applicant who has otherwise met the educational and examination requirements but is lacking clinical experience in the role of an RN. Regulations will allow an applicant credit for supervised clinical hours in a current educational program and for holding an active, current license as a licensed practical nurse. The applicant will be given a year in which to complete 500 hours (or less with prior credits), which may be accomplished on a part-time basis; and 2) to require appropriate oversight of a provisional licensee practice across all aspects of nursing practice in order to assure that the RN is minimally competent to practice upon granting of full licensure.

Issues

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

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- 1) The primary advantage to the public is the potential for an increased supply of registered nurses who are qualified by education and supervised clinical experience to provide care to patients. There is also an advantage to certain graduates of educational programs who are not qualified for licensure because they lack the requisite clinical experience; the proposed regulation offers a pathway to licensure. There are no disadvantages.
 - 2) There are no advantages or disadvantages to the Commonwealth or the agency.
 - 3) There are no other pertinent matters of interest.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1

of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail to Elaine Yeatts at Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or elaine.yeatts@dhp.virginia.gov or by fax to (804) 527-4434. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

<p>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>Persons who have graduated from an education program that lacks the required 500 hours of supervised clinical experience are affected. An educational program consisting of “competency-based assessments of nursing knowledge as well as a summative performance assessment of clinical competency that has been evaluated by the American Council on Education or any other board-approved organization” will benefit by being able to recruit students who are interested in RN licensure in Virginia.</p>
<p>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</p>	<p>It is unknown how many entities may be affected, but it is likely to be a relatively small number (25 or less per year).</p>
<p>Benefits expected as a result of this regulatory proposal.</p>	<p>The benefit may be a small increase in the supply of licensed RN’s in Virginia. For the individuals who will qualify for licensure, there is a significant benefit in being employable as an RN.</p>
<p>Projected cost to the <u>state</u> to implement and</p>	<p>There are no projected costs to implement.</p>

<p>enforce this regulatory proposal.</p>	<p>Emergency regulations are already in effect, and the increased workload for handling provisional applications is not significant.</p>
<p>Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.</p>	<p>There are no costs to localities.</p>
<p>All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.</p>	<p>There are no costs for this regulatory proposal.</p>

Alternatives

Please describe any viable 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. 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 regulation.

Since the Board had a statutory mandate to promulgate regulations to implement provisions of Chapter 712 of the 2011 Acts of the Assembly, there was no alternative to regulatory action. In the process of developing regulations, the Board was presented orally and in writing the recommendations from Excelsior College, the nursing education program that requested introduction of SB1245 in the General Assembly.

Following the July 20, 2011 meeting of the Licensure Committee of the Board, at which Excelsior College representatives were present and addressed the Committee, Excelsior sent a letter requesting to appear before the Board at its September meeting. The College also requested modification to the recommendations of the Committee. Both the letter and the recommendations were included in the Board’s agenda package, and Excelsior was given the opportunity to provide extensive comment prior to the Board’s consideration of the regulations.

One of Excelsior’s recommendations was already included in the proposal - granting 150 hours of credit for an LPN. However, the other recommendation – to allow RN applicants who graduated from an out-of-state competency based associate degree nursing education program and have at least 2 years of LPN experience to be licensed as an RN with no supervised clinical experience in the role of an RN – was not a recommendation of the Licensure Committee. The Board considered the alternative suggested but concluded that: 1) the Code requires the Board to license applicants who graduated from an *approved* program; 2) a graduate of an approved nursing education program is required to have at least 500 hours of supervised clinical experience in the role of an RN; and 3) the intent of the legislation passed by the 2011 General Assembly was to provide for a provisional license “*in order to allow the applicant to obtain clinical experience, as specified by the Board in regulation.*” The Board recognizes that the role of an LPN is different in scope from that of an RN and believes that skill acquisition in the RN role is essential for public health and safety. Therefore, the Board did not accept the

recommendation to license RN applicants without at least 500 hours of supervised RN clinical experience.

Following adoption of emergency regulations in 2011, Excelsior College continued to request completion of its competency-based program and summative performance assessment be acknowledged by credit towards clinical experience hours required for licensure as a registered nurse. At its January 2013 meeting, the Board heard comment from Excelsior and agreed to the formation of a Provisional Licensure Committee to consider additional information and the request for reconsideration of the regulation by the Office of the Secretary of Health and Human Resources. At its March 2013 meeting, the Board adopted modified language and re-proposed the emergency regulation based on the recommendation of the Committee and information from Excelsior College. Representatives of Excelsior were present at the meeting and informed staff that they were satisfied with the revision to emergency regulations. Representatives were also present at the September meeting at which proposed regulations were adopted and were supportive.

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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

There were no alternative regulatory methods consistent with the health and safety of the public that will accomplish the objectives of applicable law for provisional licensure.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Laurie Nagelsmith	Excelsior College supports revised regulations so graduates can work to meet clinical experience requirements.	The Board appreciates the comment.
Nichelle Hudnall	As an LPN for 24 years, she will be able to continue her studies to become an RN by completing clinical hours with a provisional license.	The Board appreciates the comment.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

There is no potential impact on the institution of the family and family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

There were no changes since the publication of the emergency regulations.

New section number	Proposed change and rationale
215 A	<p><i>Proposed change:</i> Pursuant to § 54.1-3017.1, the board may issue a provisional license to an applicant for the purpose of meeting the requirement for 500 hours of direct (hands-on) client care for an approved registered nurse education program.</p> <p><i>Rationale:</i> <i>The Code specifies that a provisional license is authorized for an applicant “in order to allow the applicant to obtain clinical experience, as specified by the Board in regulation.” In regulation, it is specified that an applicant for licensure as a registered nurse must complete an RN nursing education program that includes at least 500 hours of supervised clinical experience. Therefore, subsection A states the intent for issuance of a provisional license.</i></p>
215 B	<p><i>Proposed change:</i> Such applicants for provisional licensure shall submit:</p> <ol style="list-style-type: none"> 1. A completed application for licensure by examination and fee; 2. Documentation that the applicant has successfully completed a nursing education program; and 3. Documentation of passage of NCLEX in accordance with 18VAC90-20-190 of this Chapter. <p><i>Rationale:</i> <i>The Code specifies that a provisional license is authorized for an applicant “who</i></p>

	<p><i>has met the educational and examination requirements for licensure,” which include successful completion of a nursing education program and passage of the National Council Licensing Examination. The fee referenced is the application fee; there is no additional fee for issuance of a provisional license.</i></p>
<p>215 C</p>	<p><i>Proposed change:</i> Requirements for hours of direct client care with a provisional license.</p> <ol style="list-style-type: none"> 1. To qualify for licensure as a registered nurse, direct, hands-on hours of clinical experience shall include adult medical/surgical nursing, geriatric nursing, maternal/infant (obstetrics, gynecology, neonatal) nursing, mental health/psychiatric nursing, nursing fundamentals, and pediatric nursing. Supervised clinical hours may be obtained in employment in the role of a registered nurse or without compensation for the purpose of meeting these requirements. 2. Hours of direct, hands-on clinical experiences obtained as part of the applicant’s nursing education program and noted on the official transcript shall be counted towards the minimum of 500 hours and in the areas of clinical practice. 3. For applicants with a current, active license as an LPN, 150 hours credit shall be counted towards the 500-hour requirement. **4. Up to 100 hours of credit may be applied towards the 500-hour requirement for applicants who have successfully completed a nursing education program that: <ol style="list-style-type: none"> <u>a. Requires students to pass competency-based assessments of nursing knowledge as well as a summative performance assessment of clinical competency that has been evaluated by the American Council on Education or any other board-approved organization; and</u> <u>b. Has a passage rate for first-time test takers on the NCLEX that is not less than 80%, calculated on the cumulative results of the past four quarters of all graduates in each calendar year regardless of where the graduate is seeking licensure.</u> 5. An applicant for licensure shall submit verification from a supervisor of number of hours of direct client care and the areas of clinical experiences in the role of a registered nurse. <p><i>Rationale:</i></p> <p><i>Section 120 of current regulations provides that: “Didactic content and supervised clinical experience in nursing encompassing the attainment and maintenance of physical and mental health and the prevention of illness for individuals and groups throughout the life cycle and in a variety of clinical settings.” Therefore, the hours of supervised clinical experience obtained with a provisional license must encompass practice “throughout the life cycle and in a variety of clinical settings,” as spelled out in subsection C of this proposal.</i></p> <p><i>To qualify for licensure as a registered nurse, an applicant must provide documentation of 500 hours of supervised clinical practice. Therefore, at a maximum, a provisional licensee has to complete 500 hours of supervised practice. For an applicant already licensed as an LPN, the total number of hours is reduced by 150, and any supervised experience gained within the nursing education program may be counted toward completion of the 500 hours. Guidance Document #90-28 specifies that LPN’s transitioning into a pre-licensure RN program may be granted up to 150 hours from their LPN program. Therefore, the</i></p>

	<p><i>credit of 150 hours for provisional licensees who hold an LPN license is consistent with current policy.</i></p> <p>** Re-proposed change: On February 19, 2013, an ad hoc committee on Provisional Licensure considered a request from the Secretary of Health and Human Resources to reconsider the emergency regulations under review. The Committee reviewed information provided by Excelsior College including:</p> <ul style="list-style-type: none"> • Revised admission criteria for Excelsior College • Documentation for military personnel eligible for admission to Excelsior College ASN/AASN programs • Length of enrollment statistics for Excelsior College students in Virginia • Excelsior College proposal to amend proposed 18VAC90-20-215 C (4) • American Council on Education (ACE) Credit Review Final Report indicating 8 semester hours of credit for successful candidates of the Excelsior Clinical Performance Nursing Examination (CPNE) • Board of Nursing guidance document 90-24 “The Use of Simulation in Nursing Education” <p>Based in the assessment of Excelsior’s Clinical Performance Nursing Examination by ACE and the Board’s own Guidance Document, which provides that up to 20% of clinical experience may be gained through simulation, the Board agreed to the insertion of #4 in subsection C. Therefore, a graduate of Excelsior College or any nursing education program that meets the criteria of #4 will be able to have 100 hours applied towards the 500 hours of clinical experience required for licensure. If the graduate is also a licensed LPN (and the majority of Excelsior students are), he will be credited with an additional 150 hours (#3 in subsection C) for a total of 250 hours.</p>
<p>215 D</p>	<p>Proposed change: Requirements for supervision of a provisional licensee.</p> <ol style="list-style-type: none"> 1. The supervisor to be on-site and physically present in the unit where the provisional licensee is providing clinical care of clients; 2. In the supervision of provisional licensees in the clinical setting, the ratio shall not exceed two provisional licensees to one supervisor at any given time. 3. Licensed registered nurses providing supervision for provisional licensee shall: <ol style="list-style-type: none"> a. Notify the board of the intent to provide supervision for a provisional licensee on a form provided by the board; b. Hold an active, unrestricted license or multistate licensure privilege and have at least two years of active clinical practice as an registered nurse prior to acting as a supervisor; c. Be responsible and accountable for the assignment of clients and tasks based on their assessment and evaluation of the supervisee’s clinical knowledge and skills; d. Be required to monitor clinical performance and intervene if necessary for the safety and protection of the clients; e. Document on a form provided by the board the frequency and nature of the supervision of provisional licensees to verify completion of hours of clinical experiences. <p>Rationale: <i>The Code specifies that a provisional licensee “shall only practice under the supervision of a licensed registered nurse, in accordance with regulations established by the Board.” The intent of subsection D is to establish the</i></p>

	<p><i>requirements for supervision to ensure appropriate oversight of a provisional licensee practice and to clarify the responsibilities of the supervisor for his practice.</i></p> <p><i>Section 95 of current regulations specifies that the ratio shall not exceed two students to one preceptor at any given in utilizing preceptors to supervise students, so the Board used the same ratio of supervisor to provisional licensees who are providing direct client care.</i></p> <p><i>In order for a supervisor to have experience necessary to appropriately assess knowledge and skills of the provisional licensee, monitor clinical performance and intervene when necessary, the Board determined that a preceptor or supervisor should have at least 2 years of active clinical experience as an RN.</i></p> <p><i>Section 96 of current regulations specifies that “faculty members or preceptors providing supervision in the clinical care of patients shall be responsible and accountable for the assignment of patients and tasks based on their assessment and evaluation of the student’s clinical knowledge and skills. Supervisors shall also monitor clinical performance and intervene if necessary for the safety and protection of the patients.” Similar language was adopted for the supervision of practice by persons with a provisional license.</i></p> <p><i>When clinical experience is obtained within an educational program, the verification of hours and experiences is documented to the school and reflected on a transcript. Since this clinical experience is not part of an educational program, the verification must be made directly to the Board to document qualification for licensure.</i></p>
215 E	<p><i>Proposed change:</i> The provisional status of the licensee shall be disclosed to the client prior to treatment and shall be indicated on identification worn by the provisional licensee.</p> <p><i>Rationale:</i></p> <p><i>Section 35 of current regulations requires that “Any person regulated by this chapter who provides direct patient care shall, while on duty, wear identification that is clearly visible and indicates the person’s first and last name and the appropriate title for the license, certification, or registration issued to such person by the board under which he is practicing in that setting.” The identification requirement for provisional licensee is consistent.</i></p>
215 F	<p><i>Proposed change:</i> All provisional licenses shall expire six months from the date of issuance and may be renewed for an additional six months. Renewal of a provisional license beyond the limit of 12 months shall be for good cause shown and shall be approved by the board. A request for extension of a provisional license beyond 12 months shall be made at least 30 days prior to its expiration.</p> <p><i>Rationale:</i></p> <p><i>A provisional licensee has to complete a maximum of 500 hours of supervised practice; most applicants will have clinical hours credited from their nursing education program or a credit of 150 hours for current licensure as an LPN. It should be reasonable to complete the required hours within 6 months, but an applicant will automatically be authorized for another 6 months on a provisional license. Therefore, if an LPN is employed at a hospital or health care facility, he may continue employment and additionally obtain supervised practice in the role of an RN at the same facility on a part-time basis. An extension beyond 12 months for practice with a provisional license would only be granted for good cause shown.</i></p>