

**VIRGINIA BOARD OF NURSING  
EDUCATION SPECIAL CONFERENCE COMMITTEE  
Wednesday, March 9, 2022  
Department of Health Professions – Perimeter Center  
9960 Mayland Drive, Conference Center 201 – Board Room 3  
Henrico, Virginia 23233**

**COMMITTEE MEMBERS:** Yvette L. Dorsey, DNP, RN, Chair  
Margaret J. Friedenberg, Citizen Member

**STAFF:** Jacquelyn Wilmoth, MSN, RN, Deputy Executive Director  
Randall Mangrum, DNP, RN, Nursing Education Program Manager  
Christine Smith, MSN, RN, Nurse Aide/RMA Education Program Manager  
Erin Barrett, JD, Senior Policy Analyst  
Beth Yates, Education Program Specialist

9:00 a.m. Public Comment

**INFORMAL CONFERENCES:**

9:15 a.m. Abingdon Manor, Abingdon, 0030000032  
America Medical Careers Academy, Norfolk, 0030000224  
Anytime Anykind Healthcare Services, LLC, Richmond, 0030000213  
Apple Manor Christian Assisted Living Facility, Winchester, 0030000164

10:00 a.m. Blue Ridge Pharmacy, Hillsville, 0030000122  
Colonial Home Assisted Living, Chesapeake, 0030000157  
Continuing Care Rx CCRx, Raleigh NC, 0030000075  
Dalgrow Healthcare Staffing & Training Center, Woodbridge, 0030000142  
Dominion Careers Development & Training Institute, Richmond  
0030000174

**DISCUSSION ITEMS:**

Nurse Aide petition for rule making

*Our mission is to ensure safe and competent patient care by licensing health professionals, enforcing standards of practice, and providing information to health care practitioners and the public.*

Prepared by: Beth Yates

**Agenda Items: Special Conference Committee consideration of recommendation of NOIRA to amend nurse aide education programs; recommend response to petition for rulemaking regarding nurse aide education programs**

**Included in your agenda package are:**

Copy of potential changes to 18VAC90-26-10 *et seq.*

Copy of petition for rulemaking by Gary Bahena

Copy of comments received regarding the petition for rulemaking

**Committee discussion:**

- Whether to recommend that the full Board issue a Notice of Intended Regulatory Action to do the following: 1) amend 18VAC90-26-10, 90-26-20, and 90-26-50 to allow nurse aide training to occur outside of a nursing home facility focusing on geriatric care; 2) amend 18VAC90-26-30 to update requirements of the program coordinator, primary instructor, and other instructional personnel to clarify roles and duties of each and to allow instructional personnel from other health professions to supplement the primary instructor; 3) amend 18VAC90-26-50 to require program documentation be maintained for 2 years following each site visit; and 4) amend 18VAC90-26-70 to update procedures for program closures.
  
- Recommend a response to Mr. Bahena's petition for rulemaking. Options are to:
  - Recommend the Board issue a NOIRA to amend regulations identified in the petition;
  - Recommend that the Board take no action (must specify why); or
  - Recommend a combination of the previous two actions.

*Commonwealth of Virginia*



**REGULATIONS**  
**FOR NURSE AIDE EDUCATION**  
**PROGRAMS**

**VIRGINIA BOARD OF NURSING**

**Title of Regulations: 18 VAC 90-26-10 et seq.**

**Statutory Authority: §§ 54.1-2400 and Chapter 30 of Title 54.1  
of the *Code of Virginia***

**Date: May 12, 2021**

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## **18VAC90-26-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Approval" means the process by which the board evaluates and grants official recognition to a nurse aide education program.

"Board" means the Virginia Board of Nursing.

"Client" means a person receiving the services of a certified nurse aide, to include a patient in a health care facility or at home or a resident of a long-term care facility.

["Clinical setting" means a location in which clinical practice occurs in a setting comparable in which the practice of a nurse aide may occur.](#)

"Committee" means the Education Special Conference Committee, comprised of not less than two members of the board in accordance with § [2.2-4019](#) of the Code of Virginia.

"Conditional approval" means the time-limited status that results when a board-approved nurse aide education program has failed to maintain requirements as set forth in this chapter.

["Direct client care" means nurse aide care provided to patients/clients in a clinical setting supervised by a qualified instructor.](#)

"Nurse aide education program" means a program designed to prepare nurse aides for certification.

"Nursing facility" means a licensed nursing home or an entity that is certified for Medicare or Medicaid long-term care reimbursement and licensed or certified by the Virginia Department of Health.

["NNAAP" means National Nurse Aide Assessment Program.](#)

"Primary instructor" means a registered nurse who is responsible for teaching and evaluating the students enrolled in a nurse aide education program.

"Program coordinator" means a registered nurse who is administratively responsible and accountable for a nurse aide education program.

"Program provider" means an entity that conducts a board-approved nurse aide education program.

"Site visit" means a focused onsite review of the nurse aide education program by board staff for the purpose of evaluating program components, such as the physical location (skills lab, classrooms,

learning resources) for obtaining program approval, change of location, or verification of noncompliance with this chapter or in response to a complaint.

"Survey visit" means a comprehensive onsite review of the nurse aide education program by board staff for the purpose of granting continued program approval. The survey visit includes the program's completion of a self-evaluation report prior to the visit as well as a board staff review of all program resources, including skills lab, classrooms, learning resources, and clinical facilities, and other components to ensure compliance with this chapter. Meetings with administration, instructional personnel, and students will occur on an as-needed basis.

#### **18VAC90-26-20. Establishing and maintaining a nurse aide education program.**

##### **A. Establishing a nurse aide education program.**

1. A program provider wishing to establish a nurse aide education program shall submit a complete application to the board at least 90 days in advance of the expected opening date.
2. The application shall provide evidence of the ability of the institution to comply with subsection B of this section.
3. Approval may be granted when all documentation of the program's compliance with requirements as set forth in subsection B of this section has been submitted and deemed satisfactory to the board and a site visit has been conducted. Advertisement of the program is authorized only after board approval has been granted.
4. If approval is denied, the program may request, within 30 days of the mailing of the decision, an informal conference to be convened in accordance with § 2.2-4019 of the Code of Virginia.
5. If denial is recommended following an informal conference, which is accepted by the board or a panel thereof, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia.
6. If the decision of the board or a panel thereof following a formal hearing is to deny initial approval, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

**B. Maintaining an approved nurse aide education program.** To maintain approval, the nurse aide education program shall:

1. Demonstrate evidence of compliance with the following essential elements:

- a. ~~Curriculum content as approved by the board and~~ Implementation of the board approved curriculum -as set forth in subsection A of 18VAC90-26-40 and subsection C of 18VAC90-26-50.

b. Maintenance of qualified instructional personnel as set forth in 18VAC90-26-30.

c. Classroom facilities that meet requirements set forth in subsection D of 18VAC90-26-50.

d. Maintenance of records as set forth in subsection A of 18VAC90-26-50.

e. Skills training experience in a nursing facility that has not been subject to penalty as provided in 42 CFR 483.151(b)(2) (Medicare and Medicaid Programs: Nurse Aide Training and Competency Evaluation and Paid Feeding Assistants, October 1, 2013 edition) in the past two years. The foregoing shall not apply to a nursing facility that has received a waiver from the state survey agency in accordance with federal law.

f. The use of a nursing facility in Virginia located 50 miles or more from the school shall require board approval.

fg. Agreement that board representatives may make unannounced site visits to the program.

gh. Financial support and resources sufficient to meet requirements of this chapter as evidenced by a copy of the current annual budget or a signed statement from the administration specifically detailing its financial support and resources.

hi. Completion and submission of biennial survey visit review reports and program evaluation reports as requested by the board within a timeframe specified by the board.

2. Impose no fee for any portion of the program on any nurse aide student who, on the date on which the student begins the program, is either employed or has an offer of employment from a nursing facility.

3. Provide documentation that each student applying to or enrolled in such program has been given a copy of applicable Virginia law regarding criminal history records checks for employment in certain health care facilities, and a list of crimes that pose a barrier to such employment.

4. Report all substantive changes in subdivision 1 of this subsection within 10 days of the change to the board to include a change in the program coordinator, primary instructor, program ownership, physical location of the program, or licensure status of the clinical facility.

5. Provide each student with a copy of his certificate of completion as specified in 18VAVC90-26-50.

### **18VAC90-26-30. Requirements for instructional personnel.**

#### A. The Program Coordinator or Primary Instructor shall:

1. Hold a current, unrestricted Virginia license or a multistate licensure privilege as a registered nurse; and

2. Have two years of experience as a registered nurse and at least one year of direct client care or supervisory experience in the provision of geriatric long-term care services. Experiences may include employment in a nurse aide education program or employment in or supervision of nursing students in a nursing facility or unit, geriatrics department, chronic care hospital, home care, or other long-term care setting.

AB. Program coordinator.

~~1. Each program shall have a program coordinator who must be a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege.~~

~~2. The program coordinator shall assume the administrative responsibility and accountability for the nurse aide education program to include:~~

~~a. Ensure that the provisions of subsection F of this section are maintained;~~

~~b. Maintain records as required by subsection A of 18VAC90-26-50; and~~

~~c. Perform other activities necessary to comply with subsection B of 18VAC90-26-20~~

~~32. The primary instructor may be the program coordinator, except in a nursing facility based program  
in any nurse aide education program.~~

~~43. The director of nursing services in a nursing facility-based program may serve as the program coordinator but shall not simultaneously engage in the actual classroom, skills laboratory, or clinical teaching while serving as the director of nursing services.~~

BC. Primary instructor.

~~1. Qualifications. Each program shall have a primary instructor who does the majority of the actual teaching of the students and who shall:~~

~~a. Hold a current, unrestricted Virginia license or a multistate licensure privilege as a registered nurse ; and~~

~~b. Have two years of experience as a registered nurse within the previous five years and at least one year of direct client care or supervisory experience in the provision of geriatric long term care services. Other experience may include employment in a nurse aide education program or employment in or supervision of nursing students in a nursing facility or unit, geriatrics department, chronic care hospital, home care, or other long-term care setting.~~

~~21. Responsibilities. The primary instructor is responsible for the teaching majority of instruction and evaluation of students and shall not assume other duties while instructing or~~



supervising students. A program may request an exception to the restriction on assumption of other duties. The executive director of the board shall be authorized to make the decision on requests for exception or may refer to an informal fact-finding committee for consideration as needed.

The primary instructor shall:

- a. Participate in the planning of each learning experience;
- b. Ensure that course objectives are met;
- ~~c. Ensure that the provisions of subsection F of this section are maintained;~~
- ~~d. Maintain records as required by subsection A of 18VAC90-26-50;~~
- ~~e. Perform other activities necessary to comply with subsection B of 18VAC90-26-20;~~  
~~and~~
- ~~f. Ensure that students do not perform services for which they have not received instruction and been found proficient.~~

~~ED~~. Other instructional personnel.

1. Instructional personnel from the health professions, with at least 1 year experience in their field, may supplement the primary instructor in the classroom setting.

2. Instructional personnel who assist the primary instructor ~~in providing classroom or in clinical instruction—clinical supervision~~ shall be registered nurses or licensed practical nurses.

a. A registered nurse shall:

- (1) Hold a current, unrestricted Virginia license or multistate licensure privilege as a registered nurse; and
- (2) Have had at least one year of direct client ~~geriatric~~ care experience as a ~~registered~~ nurse.

b. A licensed practical nurse shall:

- (1) Hold a current, unrestricted Virginia license or multistate licensure privilege as a practical nurse; and
- (2) Have had at least ~~two~~one years of direct client ~~geriatric~~ care experience as a licensed practical nurse.

2. ~~Responsibilities.~~ Other instructional personnel shall provide instruction under the supervision of the primary instructor.

ED. Prior to being assigned to teach in a nurse aide education program, all instructional personnel shall demonstrate competence to teach adults or high school students by one of the following:

1. Satisfactory completion of at least 12 hours of coursework that includes:
  - a. Basic principles of adult learning;
  - b. Teaching methods and tools for adult learners;
  - c. Evaluation strategies and measurement tools for assessing student learning outcomes;
  - d. Review of current regulations for nurse aide education programs;
  - e. Review of the board-approved nurse aide curriculum content; and
  - f. Review of the skills evaluated on the board-approved nurse aide certification examination; or
2. Have-:
  - a. Experience in teaching the curriculum content and skills evaluated on the board-approved nurse aide certification examination to adults or high school students; and
  - b. Knowledge of current regulations for nurse aides and nurse aide education programs.

EF. In order to remain qualified to teach the nurse aide curriculum, instructional personnel shall complete a refresher course every three years that includes a review of regulations for nurse aides and nurse aide education programs and the skills evaluated on the board-approved nurse aide certification examination.

~~F. To meet planned program objectives, the program may, under the direct, onsite supervision of the primary instructor, use other persons who have expertise in specific topics and have had at least one year of experience in their field.~~

G. When students are giving direct care to clients in clinical areas, instructional personnel must be on site solely to supervise the students. The ratio of students to each instructor shall not exceed 10 students to one instructor in all clinical areas, including the skills laboratory.

#### **18VAC90-26-40. Requirements for the curriculum.**

A. Curriculum content. The curriculum shall include classroom, skills laboratory, and clinical instruction in the following:

1. Initial core curriculum. Prior to the direct contact with a client, a student shall have completed a total of at least 24 hours of instruction. Sixteen of those hours shall be in the following five areas:
  - a. Communication and interpersonal skills.
  - b. Infection control.

- c. Safety and emergency procedures, including dealing with obstructed airways and fall prevention.
- d. Promoting client independence.
- e. Respecting clients' rights.

2. Basic skills.

- a. Recognizing changes in body functioning and the importance of reporting such changes to a supervisor.
- b. Measuring and recording routine vital signs.
- c. Measuring and recording height and weight.
- d. Caring for the client's environment.
- e. Measuring and recording fluid and food intake and output.
- f. Performing basic emergency measures.
- g. Caring for a client when death is imminent.

3. Personal care skills.

- a. Bathing and oral hygiene.
- b. Grooming.
- c. Dressing.
- d. Toileting.
- e. Assisting with eating and hydration, including proper feeding techniques.
- f. Caring for skin, to include prevention of pressure ulcers.
- g. Transfer, positioning, and turning.

4. Individual client's needs, including mental health and social service needs.

- a. Modifying the nurse aide's behavior in response to the behavior of clients.
- b. Identifying developmental tasks associated with the aging process.
- c. Demonstrating principles of behavior management by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated.
- d. Demonstrating skills supporting age-appropriate behavior by allowing the client to make personal choices, and by providing and reinforcing other behavior consistent with the client's dignity.
- e. Utilizing the client's family or concerned others as a source of emotional support.

- f. Responding appropriately to the client's behavior including aggressive behavior and language.
  - g. Providing appropriate clinical care to the aged and disabled.
  - h. Providing culturally sensitive care.
5. Care of the cognitively or sensory (visual and auditory) impaired client.
- a. Using techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).
  - b. Communicating with cognitively or sensory impaired clients.
  - c. Demonstrating an understanding of and responding appropriately to the behavior of cognitively or sensory impaired clients.
  - d. Using methods to reduce the effects of cognitive impairment.
6. Skills for basic restorative services.
- a. Using assistive devices in transferring, ambulation, eating, and dressing.
  - b. Maintaining range of motion.
  - c. Turning and positioning, both in bed and chair.
  - d. Bowel and bladder training.
  - e. Caring for and using prosthetic and orthotic devices.
  - f. Teaching the client in self-care according to the client's abilities as directed by a supervisor.
7. Clients' rights.
- a. Providing privacy and maintaining confidentiality.
  - b. Promoting the client's right to make personal choices to accommodate individual needs.
  - c. Giving assistance in resolving grievances and disputes.
  - d. Providing assistance necessary to participate in client and family groups and other activities.
  - e. Maintaining care and security of the client's personal possessions.
  - f. Promoting the client's rights to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate staff.
  - g. Avoiding the need for restraints in accordance with current professional standards.

8. Legal and regulatory aspects of practice as a certified nurse aide including consequences of abuse, neglect, misappropriation of client property, and unprofessional conduct as set forth in § 54.1-3007 of the Code of Virginia and 18VAC90-25-100.

9. Occupational health and safety measures.

10. Appropriate management of conflict.

11. Observational and reporting techniques.

12. Substance abuse and opioid misuse.

**B. Unit objectives.**

1. Objectives for each unit of instruction shall be stated in behavioral terms that are measurable.

2. Objectives shall be reviewed with the students at the beginning of each unit.

**18VAC90-26-50. Other program requirements.**

**A. Records.** Original documentations shall be maintained for a period of 2 years following each site/survey visit to include:

1. Each nurse aide education program shall develop and maintain an individual record of major skills taught and the date of performance by the student. At the completion of the nurse aide education program, the program shall provide each nurse aide with a copy of this record and a certificate of completion from the program, which includes the name of the program, the board approval number, date of program completion, and the signature of the primary instructor or program coordinator.

2. A record of the graduates' performance on the state-approved nurse aide certification examination (the National Nurse Aide Assessment Program or NNAAP) shall be maintained.

3. A record that documents the disposition of complaints against the program shall be maintained.

**B. Student identification.** The nurse aide students shall wear identification that clearly distinguishes them as a "nurse aide student." Name identification on a badge shall follow the policy of the facility in which the nurse aide student is practicing clinical skills.

**C. Length of program.**

1. By May 12, 2023, the program shall be at least 140 clock hours in length, at least 20 hours of which shall be specifically designated for skills acquisition in the laboratory setting.

2. The program shall provide for at least 24 hours of instruction prior to direct contact of a student with a client.

3. Clinical training in clinical settings shall be at least 40 hours of providing direct client care. ~~Five of the clinical hours may be in a setting other than a geriatric long-term care facility.~~ Hours of observation shall not be included in the required 40 hours of skills-clinical training.

4. Time spent in employment orientation to facilities used in the education program must not be included in the 140 hours allotted for the program.

D. Classroom facilities. The nurse aide education program shall provide facilities that meet federal and state requirements including:

1. Comfortable temperatures.
2. Clean and safe conditions.
3. Adequate lighting.
4. Adequate space to accommodate all students.
5. Current instructional technology and equipment needed for simulating client care.
6. Equipment and supplies sufficient for the size of the student cohort.

**18VAC90-26-60. Requirements for continued approval.**

A. Program review.

1. Each nurse aide education program shall be reviewed annually either by a survey visit by an agent of the board or by a written program evaluation. Each program shall be reviewed by a survey visit at least every two years following initial review or by a site visit whenever deemed necessary by the board to ensure continued compliance.
2. The program coordinator shall prepare and submit a program evaluation report on a form provided by the board in the intervening year that a survey visit is not conducted.
3. Any additional information needed to evaluate a program's compliance with regulations of the board must be submitted within a timeframe specified by the board.

B. Continued, conditional, or withdrawal of approval.

1. The board shall receive and review the report of the survey visit or program evaluation report and may grant continued approval, place a program on conditional approval, or withdraw approval.
  - a. Granting continued approval. A nurse aide education program shall continue to be approved provided the requirements set forth in subsection B of 18VAC90-26-20 are maintained.
  - b. Placing a program on conditional approval. If the board determines that a nurse aide education program (i) has not filed its biennial survey visit or program evaluation report; (ii) is unresponsive or uncooperative in the scheduling of the survey or site visit; or (iii)

is not maintaining the requirements of subsection B of 18VAC90-26-20, as evidenced by the survey visit or program evaluation report, the board may place the program on conditional approval and the program provider shall be given a reasonable period of time to correct the identified deficiencies. Within 30 days of the mailing of a decision on conditional approval, the program may request an informal conference to be convened in accordance with § 2.2-4019 of the Code of Virginia.

(1) The board shall receive and review reports of progress toward correcting identified deficiencies. When a final report is received at the end of the specified time showing corrections of deficiencies, the board may grant continued approval.

(2) If the program provider fails to correct the identified deficiencies within the time specified by the board, the board may withdraw approval.

c. Withdrawing approval.

(1) If the board determines that a nurse aide education program is not maintaining the requirements of subsection B of 18VAC90-26-20, an informal conference will be convened in accordance with § 2.2-4019 of the Code of Virginia. If the recommendation to withdraw approval following an informal conference is accepted by the board or a panel thereof, no further action will be required unless the program requests a formal hearing.

(2) The program provider may request a formal hearing before the board or a panel thereof pursuant to § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia if it objects to any action of the board relating to withdrawal of approval.

2. If the decision of the board or a panel thereof following a formal hearing is to withdraw approval or continue on conditional approval with terms or conditions, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

**18VAC90-26-70. Interruption or closing of a program.**

A. Interruption of program.

1. When a program provider does not hold classes for a period of one year, the program shall notify the board, and shall be placed on inactive status and shall not be subject to compliance with subsection B of 18VAC90-26-20 .

2. At any time during the year after the program is placed on inactive status, the program provider may request that the board return the program to active status by providing a list of the admitted student cohort and start date.

3. If the program provider does not hold classes for two consecutive years, the program shall be considered closed and shall be subject to the requirements of subsection B of this section. In the event that a program desires to reopen after closure, submission of a new program ~~approval~~ application shall be required.

B. Closing of a nurse aide education program. When a nurse aide education program closes, the program provider shall:

1. Notify the board of the date of closing.
2. Submit to the board a list of all graduates with the date of graduation of each.

**18VAC90-26-80. Requirements for an approved advanced certification education program.**

A. The advanced certification education program shall be approved by the Virginia Board of Nursing. An approved advanced certification education program shall also be an approved nurse aide education program as set forth in 18VAC90-26-20.

B. An advanced certification education program shall consist of a minimum of 140 hours, at least 20 hours of which shall be specifically designated for skills acquisition in the laboratory setting. There shall also be a minimum of 40 hours of clinical skills instruction in direct client care with onsite supervision by instructional personnel. When nurse aides are engaged in direct client care in the course of advanced certification training, the ratio shall not exceed 10 students to one instructor.

C. The instructional personnel in an approved advanced certification education program shall meet the requirements as set forth in 18VAC90-26-30.

D. The curricula of an approved advanced certification education program shall, at a minimum, meet the requirements of 18VAC90-26-40.

E. Each advanced certification program shall develop an individual record of major skills taught and the date of performance by the student. At the completion of the program, the program shall provide each nurse aide with a copy of this record and a certificate of completion, as specified in 18VAC90-26-50 A.

F. An advanced certification education program shall develop and submit to the board a competency evaluation based on the curriculum content required in 18VAC90-26-40. Such an evaluation shall include both a written test on the curriculum and an assessment of manual skills. A record of the reports of each graduate's performance on the nurse aide certification examination (the National Nurse Aide Assessment Program or NNAAP) shall be maintained for a minimum of three years.

G. Program review shall be in accordance with requirements of 18VAC90-26-60 and shall be conducted concurrently with the onsite review of the basic nurse aide education program. Loss of



board approval for the basic nurse aide education program shall automatically result in the loss of approval for the advanced certification education program.

H. When an advanced certification education program closes, the program provider shall comply with 18VAC90-26-70 B.

**18VAC90-26-90. Required curriculum content for an advanced certification education program.**

A. In addition to the curriculum content specified in 18VAC90-26-40, an advanced certification education program shall include classroom, skills laboratory, and clinical instruction in the following curriculum:

1. Leadership and mentoring skills.
  - a. Principles of adult learning;
  - b. Learning styles;
  - c. Evaluation methods to assess learner knowledge;
  - d. Communication techniques and communication barriers; emphasizing cultural diversity of coworkers and clients;
  - e. Conflict management;
  - f. Precepting and mentoring new certified nurse aides;
  - g. Teamwork;
  - h. Contributing to care plan development and implementation;
  - i. Organizational responsibilities; and
  - j. Principles of documentation.
2. Care of the cognitively impaired client.
  - a. Signs and symptoms of dementia;
  - b. Concepts and techniques for addressing the unique needs and behaviors of individuals with dementia, including agitation, combativeness, sundown syndrome, wandering, and forgetfulness;
  - c. Basic concepts of communication with cognitively impaired clients, including techniques to reduce the effects of cognitive impairment;
  - d. Basic concepts of behavior management with cognitively impaired clients; and
  - e. Recognizing changes in the client's condition and reporting and documenting such changes.
3. Restorative care.

- a. Anatomy and physiology with emphasis on the effects of aging;
- b. Pathophysiology of common disorders of the elderly;
- c. Measures to assist clients with common medical problems;
- d. Recognizing changes in the client's condition and reporting and documenting such changes;
- e. Concepts to maintain or improve client mobility and ability to perform activities of daily living; and
- f. Rehabilitation procedures.

4. Wound care.

- a. Prevention, identification and treatment of Stage I and Stage II pressure ulcers;
- b. Positioning;
- c. Sterile and clean technique;
- d. Dressing changes;
- e. Concepts of hydration;
- f. Nutrition and weight loss; and
- g. Recognizing changes in the client's condition and reporting and documenting such changes.

B. Written objectives for each unit of instruction shall be stated in behavioral terms that are measurable and shall be reviewed with the students at the beginning of each unit.

Gary K. Bahena  
Regina A. McCoy  
428 North Street  
Portsmouth, Virginia 23704  
202-236-7012

December 14, 2021

**BY E-MAIL;  
COPY BY UPS OVERNIGHT**

**Jacquelyn Wilmoth, RN, MSN**  
**Executive Director**  
**Virginia Board of Nursing**  
Department of Health Professions  
9960 Maryland Drive  
Suite 300  
Richmond, Virginia 23233

**Re: Petition for Amended Regulation -- 18VAC90-26-50.C.3., 8VAC90—  
26-20.B.1.e, 18VAC90—26-30.C.1 and 18VAC90—26-30.G**

Dear Jacquelyn:

Attached please find a copy of the **Petition for Amended Regulation** to amend 18VAC90-26-50.C.3., 8VAC90-26-20.B.1.e, 18VAC90-26-30.C.1 and 18VAC90-26-30.G to allow Licensed Hospitals to be used as acceptable settings for satisfying the clinical hours requirements for High School CNA programs. The Petition is submitted pursuant to Virginia Code §§2.2-4007, 2.2-4012.1 and 54.13028.1.

**This letter is also a request to fast-track the Petition pursuant to Virginia Code §2.2-4012.1.** The proposed Rules modifications are not expected to be controversial and need to be in place by March if they are to allow our students to avail themselves of the benefits of the proposed changes for purposes of their Spring semester.

Thank you so so much for all of your and Christine Smith's time, attention and assistance. Please do not hesitate to call me at 202-236-7012 or to e-mail me at [garybahena@windspirits.us](mailto:garybahena@windspirits.us) if you have any questions.

Sincerely,



Gary K. Bahena

**PETITION FOR RULES MODIFICATIONS  
PUBLIC SCHOOLS DISTRICTS CAREER AND TECHNICAL EDUCATION  
CERTIFIED NURSE AIDE PROGRAMS**

**Purpose**

The proposed Rules modifications will enable Virginia public high school Career and Technical Education (“**CTE**”) students in the Certified Nurse Aide (“**CNA**”) program to complete their mandatory clinical/practice hour requirements (the “**Clinical Requirement**”) in Licensed Hospital settings. Presently, Clinical Requirements may be satisfied only in Nursing Homes. Adding Licensed Hospital settings (as recently allowed during the Governor’s emergency COVID orders) will offer CNA students far greater career choice/mobility and earning potential. Adding Hospital settings will also ease the burden upon CTE programs in locales with limited or no Nursing Home settings in which to complete the Clinical Requirement.

**Background**

Of the approximately 385 public High Schools in the Commonwealth of Virginia, as of September 2021 89 provide CNA programs, often through their CTE programs, which enable students to earn a CNA Certificate by the time of high school graduation. A CNA Certificate can lead to careers in, among other settings, Nursing Home facilities, Hospitals, Assisted Living and Retirement Communities, Home Healthcare, Government facilities (including military hospitals), School Nursing, Critical/Urgent Care Clinics, Hospice and Private Practice. According to 2020 US Bureau of Labor Statistics (“**BLS**”) reports, approximately 37% of CNAs work in Nursing Homes while approximately 24% work in Hospitals – accounting for over 60% of CNA employment.

A CNA Certificate can also serve as a gateway to further education and further career advancement (with potentially significant increases in earnings potential). In fact, numerous Virginia community colleges offer programs enabling a CNA to move into other, higher earning, Certificate programs, e.g., as a Licensed Practical Nurse (a common first step). Some community colleges even provide targeted Associates of Arts degree programs designed to prepare a CNA to become a Registered Nurse.

As part of obtaining their Certificate, CNA students must complete at least 40 hours of “direct client care” in “clinical settings” comprised of “a geriatric long-term care facility” (this is the “Clinical Requirement” referred to in this Petition). 18VAC90-26-50.C.3. As a licensing matter, the Virginia Board of Nursing (the “**Nursing Board**”) has limited acceptable settings for purposes of satisfying the Clinical Requirement to “licensed nursing homes”. See 18VAC90-26-20.B.1.e. and definition of “nursing facility” in 18VAC90-26-10. In addition, “[i]nstructional personnel who assist the primary instructor in providing ... clinical supervision shall be registered nurses [RNs] or licensed practical nurses [LPNs]” who, in the case of RNs, have at least one year experience working in a Nursing Home or, in the case of LPNs, have at least two years’ experience working in a Nursing Home. 18VAC90—26-30.C.1. Finally, “instructional personnel must be on site solely to supervise the students” and “[t]he ratio of students to each instructor shall not exceed 10 students to one instructor in all clinical areas”. 18VAC90—26-30.G. In other words, RNs and LPNs who supervise clinical hours cannot be on the clock at work but must volunteer their rare hours off in order to help move high school CNA students’ careers forward.

### **Proposal**

We propose that CNA students be allowed to satisfy their Clinical Requirements in a Licensed Hospital setting. No Statutory changes will be required, however, the following Regulatory changes are necessary:

1. 18VAC90-26-50.C.3. and 18VAC90—26-20.B.1.e. need to be modified to also allow for the use of Licensed Hospital settings. The use of a Licensed Hospital setting was expressly authorized pursuant to the COVID waiver/suspension (now expired) issued by the Virginia Department of Health Professions on August 10, 2020 (amended December 28, 2020).
2. 18VAC90-26-30.C.1. needs to be modified to eliminate the current requirement that RNs and LPNs serving as Clinical Requirement instructors have prior experience working in a Nursing Home. As noted above, only 37% of CNAs work in a Nursing Home setting while 63% work

in other settings (including the 24% who work in a Licensed Hospital setting).

3. 18VAC90-26-30.G. needs to be modified to allow Clinical Requirement instructors to be on site to supervise students and to perform their regular work at the same time (“**Working Instructional Personnel**”); however, in order to ensure the safety and quality clinical training of CNA students, the 10:1 ratio of students to instructor should be reduced in this situation to 4:1. Without conjecturing as to whether RNs and LPNs in a Nursing Home setting are currently volunteering their off-duty time to act as Clinical Requirement instructors, it is unrealistic to suppose that this would occur in a Licensed Hospital setting – especially under foreseeable future conditions. Moreover, RNs in Hospital Settings already safely instruct other RNs and LPNs during their regular duty-time on a broad range of medical tasks and procedures; presumably, instructing CNA students on the 23 specific tasks included in the Clinical Requirement (e.g., taking vital signs, changing a bed pan, etc.) can likewise be done safely by an instructor also performing their regular RN and/or LPN duties – and presumably the Board reached this conclusion when it authorized the use of Hospital Facilities during COVID.

It is significant to note that none of the above Virginia requirements are contained in the Commonwealth Statutes governing CNA training and licensing and that, even with the requested modifications, Virginia’s requirements will still exceed applicable Federal requirements:

- Federal law requires a total of 75 clock hours of overall training; Virginia requires 120 hours (140 hours commencing May 12, 2023) – no change is proposed.
- Federal law requires at least 16 hours of Clinical Requirement training; Virginia requires 40 – no change is proposed.
- Federal law applicable to “Requirements for approval of a nurse aide training and competency evaluation program” does NOT limit satisfaction

of Clinical Requirements to a Nursing Home setting, nor to off-duty RNs and LPNs nor even to personnel with prior nursing home experience; rather, Federal law provides that the 16 required “supervised hours of practical training” consist of “training *in a laboratory or other setting* in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse”. 42 CFR §483.152(a)(3). See also 42 CFR §483.152(a)(5)(iv).

- No change is proposed in the Skills Listing and related requirements mandating the required skill-set for CNA students, as presently set forth in the NNAAP Virginia Nurse Candidate Handbook (August 2019).

### **Neighboring Jurisdictions – North Carolina and Maryland**

The surrounding State jurisdictions follow the path proposed in this Petition.

**Maryland.** Under Maryland law, a CNA training program must provide “40 hours ... [of] clinical training experiences in a clinical facility”. COMAR §10.39.02.07.B(2). A “clinical facility” is defined as “a setting where clients are present and that provides facilities for clinical training experiences of nursing assistants, with the faculty of the program responsible for planning, implementing, and evaluating these experiences”. COMAR §10.39.02.02.B(5).

**North Carolina.** Like Maryland, North Carolina requires 40 hours of clinical training experience in a “medical facility”. North Carolina defines “medical facility” to include: long-term care facilities; nursing home beds within a hospital; *medical/surgical floors within a hospital*; and assisted living facilities (although ALFs are limited to 10 of the 40 hours). NC Department of Public Instruction, NCDPI Nurse Aide Clinical Site Planning and Clinical Options, NAT Standard 5.0.

### **Justification and Benefits to Students/CNA Programs of Securing Hospital Employment**

A CNA Certificate offers a terrific entry level opportunity for Virginia high school students. Upon graduation from high school with a CNA Certificate (including after

completion of the Clinical Requirement and passing the State test), the student is immediately eligible for employment in a wide variety of health-related fields, including those described above.

For 2020, the annual mean wage for CNAs in Virginia was \$29,400 – \$30,200 (\$14.43/hour) in the Hampton Roads area. As noted above, nationally approximately 37% of CNAs work in Nursing Homes while approximately 24% work in Hospitals. Yet, currently, by default, most CNA students are directed to Nursing Home settings since this is the only setting to which they may have meaningful exposure during their CNA education. Expanding the acceptable Clinical Requirement settings (and employers) to include Hospitals, which account for 24% of all CNA employment, can only be a positive. In fact, the CNA instructor in Portsmouth has expressed concern that the current Nursing Home limitation, and the student exposure to geriatric care, is discouraging CNA students in the PPS from sitting for the State CNA test and pursuing a CNA or health care career.

On a strictly salary basis, nationally for 2020, CNAs working in Skilled Nursing Facilities (which includes Nursing Homes) earned \$31,000 while CNA's in Hospital settings earned \$33,660. However, starting salaries are only one measure of opportunity. Upward mobility – especially within a single employer – is another measure. And broadening the pool of training, and, therefore, career placement environments can only help in this regard. For example, in marketing potential employers to our CNA students, the Portsmouth CTE Advisory Board focuses upon potential employers with tuition assistance programs which can assist a CNA graduate move up the health care career ladder at minimal or no cost – something important to the cohort of student in our (and probably other) CNA program. As noted above, a common next step for CNAs is to become a Licensed Professional Nurse (LPN). Tuition assistance programs greatly assist CNAs in making this move up in so far as they defray the cost of obtaining the LPN certification. As a salary comparison, for 2020, LPNs were paid \$48,820 nationally, \$47,410 in Virginia and \$60,600 in Hampton Roads. What a wonderful future and opportunity to offer to a someone with a high school degree (and CNA certificate) – a one-year add-on certificate from a community college program, at little or no cost, can result in a 30% salary increase inside of two years after high school graduation. And by



adding Hospitals as an acceptable Clinical Requirement site the Commonwealth can almost double the pool of potential employers best positioned to attract its students to just such an opportunity.

Lastly, adding Hospital settings will also greatly assist School Districts in localities where available Nursing Home sites are extremely limited. For example, while Portsmouth has three Nursing Homes, only one accepts CNA students for Clinical Requirements. In Portsmouth, the CNA program is one of the more – if not the most – popular of core CTE programs, with as many as 60 students projected to be in the program on an annualized basis as soon as Spring 2022. With a 40-hour Clinical Requirement, this translates to moving 60 students through a single Nursing Home facility in hopes of getting 2,400 clinical hours. Clearly this is not feasible – not from a short-term nor long-term perspective. Adding Portsmouth’s two Hospitals into the Clinical Requirement rotation will greatly assist PPS in continuing to offer – and to even expand – this popular and successful program.

### **Conclusion**

Hospitals should be permitted as Clinical Requirement sites. Hospitals

- Were allowed as alternate sites during COVID,
- Are allowed in neighboring jurisdictions,
- Are allowed under Federal law,
- Almost double the pool of potential *and likely* employers for Virginia high school CNA students to become exposed to while meeting their Clinical Requirement, and
- Increase the pool of acceptable Clinical Requirement sites for communities with high school CNA programs and limited Nursing Home options.

Moreover, in order to facilitate the use of a Hospital setting, Rules modifications are also required as described above regarding Clinical Requirement supervisory personnel.



SENT VIA EMAIL (Jay.Douglas@dhp.virginia.gov) AND ONLINE (townhall.virginia.gov)

February 18, 2022

Jay P. Douglas, R.N.  
Executive Director  
Virginia Board of Nursing  
9960 Mayland Drive  
Suite 300  
Richmond, Virginia 23233

***Re: Proposed Amendments to Regulations Pertaining to Nurse Aide Education Programs***

Dear Ms. Douglas:

On behalf of the Virginia Hospital & Healthcare Association's ("VHHA") 26 member health systems, with more than 125,000 employees, we are writing in support of the petition received by the Board of Nursing on January 10, 2022, requesting amendments to the Regulations for Nurse Aide Education Programs (hereafter referred to as the "Proposed Amendments"). The petitioner has requested that regulations pertaining to nurse aide education programs (the "Regulations") be amended to (i) allow the use of licensed hospitals for clinical education in addition to nursing homes; (ii) eliminate the requirement that registered nurses ("RNs") and licensed practical nurses ("LPNs") serving as clinical instructors have experience working in nursing homes; and (iii) allow clinical instructors to be on site and to perform their regular work at the same time, but reduce the ratio from 10:1 to 4:1 for students to instructors. The Commonwealth has been experiencing a health care workforce shortage for several years that has been further exacerbated by the COVID-19 pandemic. Accordingly, we strongly support the proposed amendments as one method of helping to bolster the available number of health care professionals in the Commonwealth.

**I. The Proposed Amendments Are Consistent With State And Federal Law And Regulations**

The Board of Nursing has been provided with the legal authority to establish the minimum standards of and regulations pertaining to nurse aides provided that those regulations are consistent with federal law and regulation. Virginia Code § 54.1-3005 provides that the Board of Nursing may "prescribe minimum standards and approve curricula for education programs preparing persons for licensure or certification..." and has the authority to "certify and maintain a registry of all certified nurse aides and to promulgate regulations consistent with federal law and regulation."

The Centers for Medicare and Medicaid Services ("CMS") has promulgated regulations at 42 CFR § 483.150 *et seq.* establishing minimum standards for state nurse aide training and competency evaluation programs (the "CMS Regulations") at long term care facilities. Part 483

of the Federal Code of Regulations is specifically intended to apply to long term care facilities and is titled, "Requirements for States and Long Term Care Facilities." The CMS Regulations note that training can take place at a "facility" but do not expressly identify a hospital as a "facility." The content of the CMS Regulations suggest that "facility" is intended to specifically refer to nursing, skilled nursing, or other long-term care facilities. For example, the CMS Regulations at subsection (b)(iii)(2) discuss the exclusory criteria for nurse aide training and competency evaluation programs or competency evaluation programs offered by or in a "facility." The exclusory criteria within subsection (b)(iii)(2) specifically refer to "skilled nursing" and "nursing" facilities but make no mention of hospitals. Similarly, the requirements for instructors contained in 42 CFR § 483.152(a)(5)(i) note that "[t]he training of nurse aides must be performed by or under the general supervision of a registered nurse who possesses a minimum of 2 years of nursing experience, **at least 1 year of which must be in the provision of long term care facility services**" (emphasis added). Therefore, the Proposed Amendments are consistent with the CMS Regulations which do not require nurse aide instruction to take place in hospitals or prohibit instructors who have experience in other settings from providing instruction in hospitals.

## **II. The Proposed Amendments Would Increase The Pool Of Available Nurse Aides And Instructors**

Virginia's existing nurse aide training regulations at 18VAC90-260-10 *et seq.* were drafted with the expectation that nurse aide instruction would take place solely within nursing facilities with the intent of ensuring that students caring for geriatric patients would receive training in the environment they would be working upon certification. Despite the original intent of these regulations, the existing regulations at 18VAC90-26-50(C)(3) recognize the benefit of clinical hours outside of a nursing facility setting by allowing for five out of the 40 required clinical hours to be in a setting other than a long term geriatric care facility.

Hospitals are increasingly implementing nurse aides within their staff to augment the ongoing staff shortages, and these health professionals are engaged to care for a variety of patients other than geriatric patients and in a variety of settings. The Proposed Amendments would help to increase opportunities to expand the role of nurse aides to these other settings.

Throughout the COVID-19 pandemic, we have all seen the impact workforce shortages have had on Virginia's hospitals and health systems. Governor Youngkin recognized the "severe staffing shortages...placing an unsustainable strain on our health care system and health care workforce" in Executive Order 11 and requested flexibilities be provided to healthcare providers throughout

the Commonwealth. Indeed, these severe staffing shortages are expected to continue for the foreseeable future. Therefore, we strongly support any measure that will remove entry barriers to the health care profession, such as those suggestions included in the Proposed Amendments.

In closing, we strongly support the Proposed Amendments. The Board of Nursing has been granted broad authority under state law to promulgate regulations pertaining to nurse aide education programs provided that those regulations are consistent with federal law and regulations. As noted above, federal regulations apply to nurse aide education in nursing facilities, but do not prohibit expansion to hospital settings. By implementing the Proposed Amendments, the Board of Nursing would remove barriers to entry for potential nurse aides by allowing instruction to take place in a hospital and thus increasing the availability of training sites throughout Virginia. Additionally, by removing the requirement that RNs and LPNs serving as clinical instructors have experience working in nursing homes and allowing for clinical instructors to be on site and to perform their regular work at the same time, the available pool of instructors would increase and provide the opportunity for those who are currently employed by hospitals or considering leaving a clinical setting with the option to become nurse aide instructors.

Thank you again for the opportunity to comment on the permanent regulation. Please do not hesitate to contact Brent Rawlings ([brawlings@vhha.com](mailto:brawlings@vhha.com), 804-965-1228) or me at your convenience if we can provide any additional information.

Sincerely,



Sean T. Connaughton  
President & CEO

JAN 07 2022

## SENATE OF VIRGINIA



L. LOUISE LUCAS  
 PRESIDENT PRO TEMPORE  
 18TH SENATORIAL DISTRICT  
 ALL OF GREENSVILLE AND SUSSEX COUNTIES;  
 ALL OF THE CITY OF EMPORIA; PART OF BRUNSWICK,  
 ISLE OF WIGHT, SOUTHAMPTON, AND SURRY COUNTIES;  
 AND PART OF THE CITIES OF CHESAPEAKE, FRANKLIN,  
 PORTSMOUTH, AND SUFFOLK  
 POST OFFICE BOX 700  
 PORTSMOUTH, VIRGINIA 23705-0700

COMMITTEE ASSIGNMENTS:  
 EDUCATION AND HEALTH, CHAIR  
 COMMERCE AND LABOR  
 FINANCE AND APPROPRIATIONS  
 JUDICIARY  
 RULES

December 30, 2021

Jay P. Douglas  
 Executive Director  
 Virginia Board of Nursing  
 Department of Health Professions  
 9960 Maryland Dr., Suite 300  
 Richmond, Virginia 23233-1463

RECEIVED

JAN - 7 2021

VA BD OF NURSING

Dear, Mr. Douglas,

I am writing in support of the **Petition for Rules Modifications** to allow licensed hospitals to be used as acceptable settings for satisfying the clinical hours requirements for high school CNA programs. **I am also writing to support fast-track of the petition.**

As further detailed in the petition, allowing use of a hospital setting will substantially increase the number of qualified sites where our Public Schools CNA students may complete their clinical hours requirements and will also expose the students to potential employers offering a much broader array of career opportunities as compared to restricting the students solely to Nursing Homes. It is also significant that hospitals account for almost a full quarter of CNA hiring, that hospitals were approved settings under the COVID Executive Order and that, according to the Bureau of Labor Statistics data, hospitals offer higher wages than Nursing Homes.

CTE credentialing programs offer high schools students who might not otherwise be best-suited to direct college entry - including many minority students – an excellent way to enter a career path directly out of high school and the proposed Rules modifications would enhance this choice for our CNA students in pursuing careers in one of the more upwardly mobile and fastest growing career paths available - health care.

With every sincere sentiment of respect and with very warm personal regards, I am

Very truly yours,

A handwritten signature in cursive script that reads "L. Louise Lucas".

L. Louise Lucas  
 State Senator



Yeatts, Elaine &lt;elaine.yeatts@dhp.virginia.gov&gt;

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**Regulations of Nurse Aide Education Programs, State: 54.1-3005**

1 message

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**Mark Creasey** <mark@entwinedevents.com>

Wed, Jan 19, 2022 at 11:56 AM

To: garybahena@windspirits.us, Jacquelyn.Wilmoth@dhp.virginia.gov, jay.douglas@dhp.virginia.gov, elaine.yeatts@dhp.virginia.gov

Cc: Vickie Runk &lt;vickie@runkandpratt.com&gt;, Brian Runk &lt;brian@runkandpratt.com&gt;

Gary -

We got the request to comment on the Petition for Rulemaking regarding VA State: 54.1-3005.

"1) The use of licensed hospitals for clinical education rather than nursing homes. 2) The elimination of requirement that RNs and LPs serving as clinical instructors have experience working in nursing homes. 3) An allowance for clinical instructors to be on site and to perform their regular work at the same time, but reduce the ratio from 10:1 to 4:1 for students to instructor."

Could we possibly amend to include Hospitals "**and Assisted Living Facilities**" where an RN is available to do clinicals with students?

We at Runk & Pratt Senior Living Communities see our sites, along with other Assisted Living Programs throughout the Commonwealth, as an equal contributor to career choice/mobility and earning potential for these high school students. We too offer career advancement opportunities, increase in wage and educational assistance in getting further advanced certifications. I think far too often Assisted Living isn't given the same respect and opportunities as Nursing Homes and Hospitals, although we do equally as important work for our aging community in the Commonwealth while under equal regulations.

I think it would be a great step in connecting and bringing better centergies to our industries. We are all hurting for staffing and opportunities to get in front of potential candidates.

**Mark Creasey**

Entwined Events

Creative Director

Director of Sales

Co-Producer and Pageant Administrator - Miss Virginia Volunteer

office: 434.933.3300

cell/text: 434.941.2680

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**Gary Bahena petition received 12 14 2021 - Rgs for NA Edu Progs.pdf**

387K



COMMONWEALTH OF VIRGINIA  
HOUSE OF DELEGATES  
RICHMOND

**EILEEN FILLER-CORN  
SPEAKER**

POST OFFICE BOX 523082  
SPRINGFIELD, VIRGINIA 22152  
FORTY-FIRST DISTRICT

COMMITTEE ASSIGNMENTS:  
RULES, CHAIR

**DHP - MAILROOM**  
**JAN 14 2022**

January 7, 2022

Jay P. Douglas  
Executive Director  
Virginia Board of Nursing  
Department of Health Professions  
9960 Maryland Drive  
Suite 300  
Richmond, Virginia 23233-1463

Re: Petition for Rules Modifications Public Schools Districts Career and Technical Education Certified Nurse Aide Programs -- 18VAC90-26-50.C.3., 8VAC90-26-20.B.1.e, 18VAC90-26-30.C.1 and 18VAC90-26-30.G

Dear Mr. Douglas:

I am writing in support of the Petition for Rules Modifications to allow Licensed Hospitals to be used as acceptable settings for satisfying the clinical hours requirements for High School CNA programs. I am also writing to support fast-track of the Petition.

As you may be aware, enhancing workforce development opportunities for the residents of Virginia is among my highest priorities. This is all the more important at the high school level in so far as it allows us to channel students – especially challenged students – directly from school into a career path.

As further detailed in the Petition, allowing use of a hospital setting will substantially increase the number of qualified sites where our Public Schools CNA students may complete their clinical hours requirements. The proposed modifications will also expose the students to potential employers offering a much broader array of career opportunities as compared to restricting the students solely to Nursing Homes. In offering my support to the Petition, I believe it is significant that Hospitals account for almost a full quarter of CNA hiring, that Hospitals were approved settings under the COVID Executive Order and that, according to Bureau of Labor Statistics data, Hospitals offer higher wages than Nursing Homes. All of these things – as well as making it easier for them to satisfy their clinical requirements -- are only good for our students.

CTE credentialing programs offer high school students who might not otherwise be best-suited to direct college entry – including many minority students -- an excellent way to enter a career path directly out of high school and the proposed Rules modifications would enhance this choice

for our CNA students in pursuing careers in one of the more upwardly mobile and fastest growing career paths available – health care.

Fast tracking the Petition and the adoption of the modifications is necessary in order to create the opportunity for hospitals to be used for Spring semester classes.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Eileen Filler-Corn". The signature is written in black ink and is positioned below the word "Sincerely,".

Eileen Filler-Corn





Secretariat

Health and Human Resources

Agency

Department of Health Professions

Board

Board of Nursing

 [Edit Petition](#)

Petition 356

Petition Information	
<b>Petition Title</b>	Nurse aide education programs
<b>Date Filed</b>	1/10/2022 <a href="#">[Transmittal Sheet]</a>
<b>Petitioner</b>	Gary Bahena
<b>Petitioner's Request</b>	<p>To amend regulations to allow for the following:</p> <ol style="list-style-type: none"> <li>1) The use of licensed hospitals for clinical education rather than only nursing homes.</li> <li>2) The elimination of requirement that RNs and LPNs serving as clinical instructors have experience working in nursing homes.</li> <li>3) An allowance for clinical instructors to be on site and to perform their regular work at the same time, but reduce the ratio from 10:1 to 4:1 for students to instructor.</li> </ol>
<b>Agency's Plan</b>	<p>In accordance with Virginia law, the petition will be published on January 31, 2022 in the <i>Register of Regulations</i> and also posted on the Virginia Regulatory Townhall at <a href="http://www.townhall.virginia.gov">www.townhall.virginia.gov</a> to receive public comment ending February 20 2022.</p> <p>Following receipt of all comments on the petition to amend regulations, the Board will decide whether to make any changes to the regulatory language. This matter will be on the Board's agenda for its first meeting after the comment period, which is scheduled for March 22, 2022. The Board will inform the petitioner of its decision after that meeting.</p>
<b>Comment Period</b>	<p>Ended 2/20/2022</p> <p><a href="#">9 comments</a></p>
<b>Agency Decision</b>	Pending

Contact Information	
<b>Name / Title:</b>	Jay P. Douglas, R.N. / <i>Executive Director</i>
<b>Address:</b>	9960 Mayland Drive Suite 300 Richmond, 23233

<b>Email Address:</b>	<a href="mailto:jay.douglas@dhp.virginia.gov">jay.douglas@dhp.virginia.gov</a>
<b>Telephone:</b>	(804)367-4520 FAX: (804)527-4455 TDD: (-)

*This petition was created by Elaine J. Yeatts on 12/14/2021 at 1:30pm  
This petition was last modified by Elaine J. Yeatts on 01/10/2022 at 2:25pm*

## Public Petition for Rulemaking: 356

Commenter	Title	Comment	Date/ID
JoAnna Collins	Support Petition 356	<p>As an Instructor and Coordinator, I would like to offer my support for this petition. Nurse Aide (NA) programs have difficulty securing clinical sites and this request would remove some of the clinical site barriers for nurse aide students and programs. As many hospitals prefer CNAs as entry to practice in bedside care, this would also provide experience in these facilities. Hospitals have many opportunities for students to perform skills required by NA students. Some hospital units, such as Medical-Surgical, often have more opportunities for students to perform care than nursing homes such as catheter care, bedpan, bed bath, and Vital sign measurement- skills that are the most failed on the exam demonstrating the need for more practice opportunities. I don't agree that ALL units of a hospital would be appropriate for NA students, but this could be remedied by requiring the units have skilled care, adult patients.</p> <p>Additionally, because Nurses (LPNs and RNs) approved to teach are required to have 12 hours of training before they are allowed to teach in a NA program, it is unnecessary for nurses, who are trained in all levels and stages of patient care, to have a nursing home experience requirement to teach. It is necessary for instructors to be experienced nurses, but the nursing home experience requirement is so restrictive that many well-qualified instructors are turned away from teaching. This leads to a shortage of well-qualified instructors.</p> <p>Finally, it makes sense to allow clinical instructors to oversee a lower ratio of students while they are in the facility working. With concerns about the prevalence of infection and introducing non-essential personnel to at-risk clients such as the elderly, this would be a great compromise. In my opinion, Directors of Nursing should not oversee students as they have too many responsibilities to effectively monitor students, but Staff Development Coordinators/Educators and floor nurses are great options to oversee students working on their units.</p> <p>Thank you for considering this petitioner's request. With the addition of requiring the hospital units have skilled care, adult patients, I fully support these changes.</p>	1/31/22 2:52 pm CommentID:119189
Vicki Owen, RN, Instructor/Coordinator, Amherst High School	Petition for changes to the VBON CNA program	<p>I am in FULL agreement with this Petition for Rulemaking regarding the changes to the VBON/state regulations for CNA programs!</p> <p>We, as instructors, have struggled to keep our programs afloat during the Covid restrictions. The</p>	2/2/22 3:48 pm CommentID:119204

	regulations	<p>term "difficult" would be an understatement of how hard it's been to meet the mandate clinical hours especially with the vaccine mandates and the waivers no longer allowing sites other than Long-term Care facilities. *** The only thing I'd like to add would be the allowance of using Assisted Living Facilities so that those students that are choosing not to be vaccinated (or their parents object) could still meet requirements to take their CNA certification exams! There are plenty of non-governmentally funded facilities as well as private in-Home care opportunities that need to be accommodated with CNA's.</p> <p>The rule of mandating an instructor for a CNA program to have had long term care experience is truly removing some amazing applicants from the lists of employment!</p> <p>Lastly but most important, To the powers that be: anything we can do to encourage and increase entry into the health care career clusters should be made as easy and accessible as we can make it!! We need them!</p>	
Rhonda Jones	Regulations for NA Education Programs	<p>I can not support this petition in its' entirety.</p> <p>I support using licensed hospitals "in addition to" the LTC arena but not "rather than". Students have valuable experiences in the LTC setting, including but certainly not limited to communication challenges, holistic care, basic personal care, positioning, and establishing a relationship with residents. The turnover in acute care often does not allow this to occur.</p> <p>I have to question if on-site working RN's and LPN's can give the NA the attention that is often necessary when clinical rotation begins. The introduction to providing care to a patient in an acute care facility may differ from care in LTC. LTC allows for direct care to be completed versus acute care may be more of observational role.</p> <p>I do not believe, RN/LPN's need LTC experience prior to teaching the NA class.</p>	2/8/22 11:56 am CommentID:119223
Lindsey Brown-Cooke, MSN, RN, Warren Memorial Hospital Nurse Aide Training	Petition for hospital based training	I am in full support of this petition. As a program coordinator for a hospital based program with a goal of hospital nurse aide recruitment, I can say that clinical experiences in the acute care setting would be much more beneficial for our students. Both didactic and clinical training are focused nearly exclusively on care	2/9/22 5:24 pm CommentID:119231

in the long term care setting. While this may assist in forming a foundation for learning fundamental nursing skills, it does not provide for the expansion of learning in the acute care setting nor foster critical thinking skills among students. I can certainly appreciate the benefit of the long term care setting for clinical training for nursing home based programs, however, it may somewhat hinder those destined for the acute care setting in acquiring necessary skills and knowledge that will be needed.

In addition, many of the skills needed for state certification are nearly non-existent in current healthcare practice in the long term care setting. Urinary catheters and ambulation are examples of skills rarely utilized and thus neglected in teaching when focus remains on the long term care population.

In conclusion, adding the ability to complete clinical training for nurse aides in settings other than long term care would benefit both students and the patients who will be cared for by those students.

Pam Spiker, Warren Memorial Hospital NATP Instructor

Petition-changes related to Nurse Aide Training Programs

I am in full support of having more flexibility related to clinical training environments and instructional personnel requirements. Regarding the requirement of LTC experience needed for instructors, the viable candidate pool, including nurses with exceptional acute care performance, which may be valuable for students bound for acute care or long term care practice, is limited. Severe COVID-19 outbreaks in facilities have been problematic and created barriers to training with adequate resident cohorts. With the frequency and quantity of LTC residents who are hospitalized, the geriatric portion of learning is often experienced adequately outside of the long term care setting. In addition, many of the skills required for certification testing are very rare in LTC, to include catheter care, bed baths, ambulatory weights with beam scale, bedpans, and recording urinary output. Emergency care skills and observational procedural experience is even more limited for those who are not able to attend clinical training in a hospital environment. I am asking that the current regulations be amended and updated to include training options in acute care settings.

2/9/22 5:52 pm  
CommentID:119232

Tessa Cody, Valley Health - NATP Former Student

Petition - Supporting Hospital Clinical Rotations

I am a CNA and recently finished the NATP program at Valley Health. I have experience in both long term care and the hospital setting. During my NATP clinicals, we spent time in both the long term care setting and hospital setting. As I understand, the current rule has a mandatory long term care setting clinical rotation. This is not entirely feasible. COVID has created an issue with interacting with patient in a long term setting and to be honest it does not give you a lot of diversity of the type of patients that you will encounter. By engaging in the same routine care of

2/11/22 11:13 am  
CommentID:119235

patients, CNAs can become stagnant in their skills and quite frankly that is dangerous for our long term care population. I have seen this first hand. Also, I do have hospital experience as a CNA, which is most of my professional career. The hospital setting gives you the ability to see different patients on a routine basis and allows the chance to use different skills daily making the CNA well rounded. Additionally, the CNA has the ability to learn new skills that she would necessarily not be able to learn in the long term care setting. Personally, I was able to learn to do bladder scanners on patients. This is something that I do not think I would have had the opportunity to do in the long term care setting. Sadly, by making the long term care rotation mandatory, you are creating a pigeon hole and limiting us for doing more for our patients. I hope you take this into consideration from someone who is working in the trenches as a CNA and nursing student.

Ashlee Greene-Nichols

Comments

First, as a nurse aide program director, I agree that NA students should be allowed to have clinical hours committed to a hospital setting. Most hospitals only require an entry level NA experience to practice in the acute care setting.

I do believe that nurses who are teaching in the NA program should have long-term care and acute care experience. These experiences will help ensure a good learning environment for the students and ensure that they are receiving good feedback.

I do NOT believe that we should decrease the number of students to instructor as 10:1 is the standard for all nursing programs. This number is doable and should be decreased if the facilities and faculty are available to provide a lower student-teacher ratio. Again, we have to think about our resources within our communities.

Thank you for your consideration of these comments.

2/16/22 7:47 pm  
CommentID:119266

Virginia Hospital & Healthcare Association

Proposed Amendments to Regulations Pertaining to Nurse Aide Education Programs

Dear Ms. Douglas:

On behalf of the Virginia Hospital & Healthcare Association's ("VHHA") 26 member health systems, with more than 125,000 employees, we are writing in support of the petition received by the Board of Nursing on January 10, 2022, requesting amendments to the Regulations for Nurse Aide Education Programs (hereafter referred to as the "Proposed Amendments"). The petitioner has requested that regulations pertaining to nurse aide education programs (the "Regulations") be amended to (i) allow the use of licensed hospitals for clinical education in addition to nursing homes; (ii) eliminate the requirement that registered nurses ("RNs") and licensed practical nurses ("LPNs")

2/18/22 1:24 pm  
CommentID:119561

serving as clinical instructors have experience working in nursing homes; and (iii) allow clinical instructors to be on site and to perform their regular work at the same time, but reduce the ratio from 10:1 to 4:1 for students to instructors. The Commonwealth has been experiencing a health care workforce shortage for several years that has been further exacerbated by the COVID-19 pandemic. Accordingly, we strongly support the proposed amendments as one method of helping to bolster the available number of health care professionals in the Commonwealth.

### **I. The Proposed Amendments Are Consistent With State And Federal Law And Regulations**

The Board of Nursing has been provided with the legal authority to establish the minimum standards of and regulations pertaining to nurse aides provided that those regulations are consistent with federal law and regulation. Virginia Code § 54.1-3005 provides that the Board of Nursing may “prescribe minimum standards and approve curricula for education programs preparing persons for licensure or certification...” and has the authority to “certify and maintain a registry of all certified nurse aides and to promulgate regulations consistent with federal law and regulation.”

The Centers for Medicare and Medicaid Services (“CMS”) has promulgated regulations at 42 CFR § 483.150 *et seq.* establishing minimum standards for state nurse aide training and competency evaluation programs (the “CMS Regulations”) at long term care facilities. Part 483 of the Federal Code of Regulations is specifically intended to apply to long term care facilities and is titled, “Requirements for States and Long Term Care Facilities.” The CMS Regulations note that training can take place at a “facility” but do not expressly identify a hospital as a “facility.” The content of the CMS Regulations suggest that “facility” is intended to specifically refer to nursing, skilled nursing, or other long-term care facilities. For example, the CMS Regulations at subsection (b)(iii)(2) discuss the exclusory criteria for nurse aide training and competency evaluation programs or competency evaluation programs offered by or in a “facility.” The exclusory criteria within subsection (b)(iii)(2) specifically refer to “skilled nursing” and “nursing” facilities but make no mention of hospitals. Similarly, the requirements for instructors contained in 42 CFR § 483.152(a)(5)(i) note that “[t]he training of nurse aides must be performed by or under the general supervision of a registered nurse who possesses a minimum of 2 years of nursing experience, **at least 1 year of which must be in the provision of long term care facility services**” (emphasis added). Therefore, the Proposed

Amendments are consistent with the CMS Regulations which do not require nurse aide instruction to take place in hospitals or prohibit instructors who have experience in other settings from providing instruction in hospitals.

## **II. The Proposed Amendments Would Increase The Pool Of Available Nurse Aides And Instructors**

Virginia's existing nurse aide training regulations at 18VAC90-260-10 *et seq.* were drafted with the expectation that nurse aide instruction would take place solely within nursing facilities with the intent of ensuring that students caring for geriatric patients would receive training in the environment they would be working upon certification. Despite the original intent of these regulations, the existing regulations at 18VAC90-26-50(C)(3) recognize the benefit of clinical hours outside of a nursing facility setting by allowing for five out of the 40 required clinical hours to be in a setting other than a long term geriatric care facility.

Hospitals are increasingly implementing nurse aides within their staff to augment the ongoing staff shortages, and these health professionals are engaged to care for a variety of patients other than geriatric patients and in a variety of settings. The Proposed Amendments would help to increase opportunities to expand the role of nurse aides to these other settings.

Throughout the COVID-19 pandemic, we have all seen the impact workforce shortages have had on Virginia's hospitals and health systems. Governor Youngkin recognized the "severe staffing shortages...placing an unsustainable strain on our health care system and health care workforce" in Executive Order 11 and requested flexibilities be provided to healthcare providers throughout the Commonwealth. Indeed, these severe staffing shortages are expected to continue for the foreseeable future. Therefore, we strongly support any measure that will remove entry barriers to the health care profession, such as those suggestions included in the Proposed Amendments.

In closing, we strongly support the Proposed Amendments. The Board of Nursing has been granted broad authority under state law to promulgate regulations pertaining to nurse aide education programs provided that those regulations are consistent with federal law and regulations. As noted above, federal regulations apply to nurse aide education in nursing facilities, but do not prohibit expansion to hospital settings. By implementing the Proposed Amendments, the Board of Nursing would remove



barriers to entry for potential nurse aides by allowing instruction to take place in a hospital and thus increasing the availability of training sites throughout Virginia. Additionally, by removing the requirement that RNs and LPNs serving as clinical instructors have experience working in nursing homes and allowing for clinical instructors to be on site and to perform their regular work at the same time, the available pool of instructors would increase and provide the opportunity for those who are currently employed by hospitals or considering leaving a clinical setting with the option to become nurse aide instructors.

Thank you again for the opportunity to comment on the permanent regulation. Please do not hesitate to contact Brent Rawlings (brawlings@vhha.com, 804-965-1228) or me at your convenience if we can provide any additional information.

Sincerely,

Sean T. Connaughton  
President & CEO

Jennifer Alpers,  
Program Manager,  
Health and Medical  
Sciences, FCPS

Petition  
Nurse Aide  
Education  
Programs

I would like to offer my support to amend regulations to allow for greater flexibility around the current nurse aide education programs to include:

-The use of licensed hospitals for clinical education rather than only nursing homes: I firmly believe that students enrolled in approved nurse aide education programs will benefit greatly from a broader clinical experience.

-The elimination of the requirement that RNs and LPNs serving as clinical instructors have experience working in nursing homes: We are eliminating great talent by requiring RNs and LPNs to have experience working in nursing homes.

To echo Vicki Owen, RN, Instructor/Coordinator, Amherst High School- anything we can do as educators to remove obstacles and make access to the health care career clusters education and skills more attainable should be our goal. The system is desperate for enthusiastic and fresh caregivers.

I do not support changes to decreasing the student to instructor ratio. Facilities and faculty should work together and decrease student to instructor ratios where necessary based on the capacity of the facility.

2/18/22 1:31 pm  
CommentID:119563