



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Nursing /Department of Health Professions
VAC Chapter Number:	18 VAC 90-25-10 et seq.
Regulation Title:	Regulations Governing Certified Nurse Aides
Action Title:	New regulations - Periodic Review of 18 VAC 90-20
Date:	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

18 VAC 90-25-10 et seq., Regulations Governing Certified Nurse Aides, is being promulgated to replace existing regulations for nurse aides and nurse aide education programs found within 18 VAC 90-20-10 et seq., Regulations Governing the Practice of Nursing. Through its regulatory review, the Board determined that a separate set of regulations for nurse aides would be clearer and less cumbersome, especially for nurse aide education programs that have specific criteria for establishing and maintaining an approved program. The proposed regulations are identical to current requirements for nurse aide certification and educational program approval with the exception of certain rules identified during regulatory review.

Proposed amendments to the program requirements clarify instructional expectations of the Board for maintaining approval to provide nurse aide education, including an increase in the core curriculum from 16 to 24 hours and inclusion of instruction in fall prevention and care of sensory-impaired clients. The process for reporting to the Board and for an interruption in the program is also clarified. Regulations for reinstatement of nurse aide certification have been amended to include a prohibition against reinstatement following a finding of abuse, neglect or

misappropriation of property and a board guidance document that provides for the possibility of reinstatement if the finding of neglect was based on a single occurrence. As with the nursing regulations, there are additional grounds added to the disciplinary provisions that address situations encountered in disciplinary cases before the Board.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

18 VAC 90-25-10 et seq. was promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*

7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*

8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*

9. *To take appropriate disciplinary action for violations of applicable law and regulations.*

10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*

11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*

12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

Statutes governing the approval of nurse aide education and the certification of nurse aides are found in Chapter 30 of Title 54.1 of the Code of Virginia:

<http://leg1.state.va.us/000/lst/h3406636.HTM>

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Regulations for nurse aide education programs and certification of nurse aides have been incorporated into the Regulations Governing the Practice of Nursing. While there have been no specific problems with the inclusion of rules for nurse aides in with rules for nurses, the Board felt that it was appropriate and advisable to separate the requirements into two distinct regulations. In addition, the nurse aide education program regulations have been stated in one section that has become quite lengthy and cumbersome. Reorganization of those requirements will make them clearer and more precise. Regulations for advanced certification of nurse aides have also been proposed in another action and will be incorporated into these regulations.

The purpose of the amendments resulting from regulatory review is to make the rules more explicit in certain areas where there has been confusion or lack of clarity and to clearly state board policy in regulation. The process and expectations of the Board in granting initial or continued approval of a nurse aide education program are more explicitly stated to better protect students who are enrolled or applying for enrollment. Using its disciplinary cases as guidance, the Board identified several areas in nurse aide education where additional training or emphasis was needed. It also added some grounds for disciplinary action to strengthen the ability of the Board to discipline a nurse aide who has violated a patient in some manner. Increasing the knowledge and skills of nurse aides in dealing with an elderly population may improve the quality of care patients receive. Having a clearer understanding of ethical practice may prevent some cases of patient abuse or neglect. Amendments to the program requirements and the reinstatement and disciplinary provisions are proposed to ensure greater protection and improve the quality of care for a frail, very vulnerable population in the Commonwealth.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

To ensure that nurse aide education programs are providing students with the training necessary to work in a long term care environment with elderly patients, amendments are proposed to specify certain requirements for maintaining board approval, to clarify that the instructors must be licensed nurses, and to specify an additional eight hours in the core curriculum to include instruction in fall prevention, dealing with aggressive patients, communicating with sensory-impaired patients, and in the rules governing practice. Amendments will also state the board policy for reinstatement of an expired certification, including the prohibition on reinstatement if there has been a finding against a nurse aide. The ability of the Board to take disciplinary action is strengthened by adding provisions related to violating the rights or property of a patient and by an interpretation of the law on restricting the certification of a nurse aide.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary

advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Advantages or disadvantages to the public:

Since nurse aides provide the direct patient care to patients in nursing homes or other long term care facilities, any additional training or knowledge of appropriate responses to those patients is advantageous. While the proposed regulations do not increase the total number of hours of nurse aide education, the amendments will require that an additional eight hours in the core curriculum and training in crucial areas such as fall prevention and communicating with impaired patients. Learning how to respond appropriately to aggressive patients may prevent some cases of patient abuse and better protect both the patient and the aide. Likewise, a clearer understanding of the consequences of unethical behavior may be beneficial to the nurse aides and their patients. If disciplinary action is warranted, the additional grounds for such action will ensure that an aide who has violated the rights or property of a patient is appropriately disciplined by the Board. There are no disadvantages to the public, which is better protected by more clearly stated, explicit requirements for the training and practice of nurse aides.

Advantages or disadvantages to the agency:

There are no specific advantages or disadvantages to the agency. There may be better compliance with board rules and policies as a result of more clearly stated regulations. There should be no additional cost associated with the licensure or enforcement activities of the Board.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus ongoing expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Projected cost to the state to implement and enforce:

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

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

(iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$5,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be

made to incorporate those into anticipated mailings and Board meetings already scheduled. There should be no on-going expenditures related to the proposed amendments.

Projected cost on localities:

There are no projected costs to localities.

Description of entities that are likely to be affected by regulation:

Nurse aide education programs, nurse aide students, and certified nurse aides.

Estimate of number of entities to be affected:

There are 231 approved nurse aide education program that must meet the requirements of these regulations. Approximately 5 programs are in the process of organizing and may seek Board approval. There are approximately 36,000 nurse aides certified by the Board.

Projected costs to the affected entities:

There are no additional costs to the affected entities for compliance with the amended regulations.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

While all sections have been underlined as “new regulations”, most of the language is identical to current provisions for certified nurse aides and nurse aide education programs found in 18 VAC 90-20-10 et seq. A crosswalk from the proposed section to the current section is provided, and changes in current language are identified as follows:

18 VAC 90-25-10. Definitions. (18 VAC 90-20-310)

A definition for “Board” has been added to specify the Board of Nursing.

In the definition of a “nursing facility,” the Board has added a requirement for the nursing home to be licensed or certified by the Virginia Board of Health.

(18 VAC 90-20-320. Delegation of authority.) Subsection A of 18 VAC 90-25-70 in proposed regulations.

18 VAC 90-25-20. Establishing and maintaining a nurse aide education program. (18 VAC 90-20-330 A and B)

Amendments to the content of this section include:

- To maintain approval of a nurse aide education program, certain information is required. That includes evidence of financial support and sufficient resources. That requirement has not been sufficiently specific, so the Board recommends that the program provide evidence in the form of a current, annual budget or a signed statement of financial support from the administration.
- To ensure that programs understand that completion and submission of biennial on-site review reports and program evaluations are essential elements for maintaining approval, a new subdivision is added.
- It is also required that the program provide each student with a copy of applicable Virginia law regarding criminal history records checks for employment. The Board recommends that the requirement be clarified to document that each student has been given a copy of the applicable law.
- The requirement to report all “substantive changes” within 10 days need to be made more clear and precise; the Board proposes to specify changes that need to be so reported to include but not be limited to the following: the program coordinator, the primary instructor, ownership of the program, or facility licensure status.
- There have been problems in the past with programs not providing students with a certificate of completion, so that is specifically added to program requirements.

18 VAC 90-25-30. Requirements for instructional personnel. (18 VAC 90-20-330 C)

- Under instructional personnel, the Board recommends that it be explicitly stated that it is required for all programs to have a program coordinator and primary instructor who is a registered nurse. Further, it recommends that the primary instructor be identified as the person who does the “majority of” the teaching of the students and that she be responsible for the teaching and evaluation of students (currently the requirement is for the instructor to “participate in” the teaching and evaluation).
- Under “other instructional personnel,” the Board recommends that their responsibilities be clarified to include assisting the primary instructor in the classroom and clinical supervision of the students. Also, the nursing license of instructional personnel must be current and unrestricted.
- All instructional personnel should have some experience in teaching adults or high school students.
- An amendment was added to provide that the nurse aide education program may also use other persons who have particular expertise in a specific topic to teach under the direct, on-site supervision of the primary instructor in order to meet certain program objectives.

18 VAC 90-25-40. Requirements for the curriculum. (18 VAC 90-20-330 D)

- The Board recommends that the hours spent in the initial core curriculum be increased from 16 to 24 hours.
- To update current needs and practice, the Board has amended the requirements to: delete the term “Heimlich Maneuver” and substitute “dealing with obstructed airways;” added fall prevention; specified training in responding appropriately to client’s aggressive behavior; added training in communication with sensory impaired clients.
- In educating the nurse aide on the legal and regulatory aspects of practice, the proposed regulation adds specifically training in the consequences of abuse, neglect, misappropriation of patient property and unprofessional conduct.
- Provisions for curriculum changes, previously found in subsection J of 18 VAC 90-20-330 are included in this section.

18 VAC 90-25-50. Other program requirements. (18 VAC 90-20-330 E, F, G, H)

- An amendment is added to specify that the education programs must maintain a record of the skills taught and date of performance by the students. At the completion of the program, each student must be provided with the skills record and certificate of completion.
- An amendment will clarify that a nurse aide student should specifically identify herself as a “nurse aide student.”
- Amendments will provide for 24 hours of instruction prior to direct contact with a nursing facility client (consistent with the section on core curriculum) and that there be a minimum of 40 hours in providing direct client care. Further the observational experience shall not be counted towards the 40 hours of skills training in a clinical setting.
- To allow the use of newer technology, subsection D (classroom facility requirements) is amended to delete “including audio-visual equipment” and to include “instructional technology and equipment” as necessary for simulating resident care.

18 VAC 90-25-60. Requirements for continued approval; interruption or closing of a program. (18 VAC 90-20-330 I, K, L)

- The section on program review is amended to specify that a program is reviewed annually, either by an on-site visit or by a written program evaluation. In the intervening year between biennial on-site visits, the program coordinator is responsible for a report in order for the committee to recommend continued approval. Other amendments clarify that the committee may recommend that a program be placed on conditional approval or may refer the matter to the full board for a hearing. .
- The section on interruption of a program is amended to specify that if the program provider does not “hold classes” for one year, the program may be placed on inactive

status, if the program does not hold classes for two years, the program is considered closed.

18 VAC 90-25-70. Initial certification for the nurse aide registry. (18 VAC 90-20-350 A)

- Subsection A is currently found in 18 VAC 90-20-320 and has not been amended.
- Subsection B is currently found in 18 VAC 90-20-340 and has not been amended.
- The Board has amended the provision that allows a nurse aide to be eligible for certification by examination if she is currently enrolled in a nursing education program and has completed at least one clinical nursing course consisting of at least 40 contact hours in direct adult client care.
- The requirement for an applicant for certification by endorsement is amended to require verification from **each** state in which the applicant has been registered, certified or licensed. Currently, the requirement is only for the past two years, but the Board needs to be aware of any findings of patient neglect, abuse or misappropriation of client property by another state at any time.

18 VAC 90-25-80. Renewal or reinstatement of certification (18 VAC 90-20-350 B)

- The reinstatement provisions need to be clarified to state that if the certificate has lapsed for more than 90 days, the applicant must verify performance of nursing-related activities during the two years immediately preceding the application for reinstatement of certification. If the work requirement is not met, the applicant must retake and pass the examination. Nursing-related activity is required by federal rules for a nurse aide to remain on a nurse aide registry.
- A requirement should be stated in regulation specifying the Board's current policy that, after 90 days following expiration of a certificate, a nurse aide must apply to have certification reinstated. An applicant for reinstatement is not eligible if there was a previous finding of abuse, neglect or misappropriation of property, whether the certificate has been revoked or lapsed.
- An amendment is also proposed to state that, if there has been a finding of neglect based on a single incident, an individual is eligible to petition the Board for removal of that finding provided the petitioner can prove through employment and personal history that it does not reflect a pattern of abusive behavior or neglect. Such a petition may be granted only one time and only after one year has passed since the finding. This is currently stated in a Guidance Document of the Board but needs to be incorporated in regulation.

18 VAC 90-25-90. Disciplinary provisions (18 VAC 90-20-360. Denial, revocation or suspension)

- Subdivision 1 on fraud or deceit is amended to clarify that it refers to procuring or attempting to obtain a certificate.

- Subdivision 2 is amended to specify that unprofessional conduct may include the performance of acts beyond those authorized in the Drug Control Act or in accordance with regulations of the Board on delegation of tasks to unlicensed persons.
- From the disciplinary matters involving nurse aides, the Board identified a need to add several provisions to the section on unprofessional conduct including: 1) entering into an inappropriate relationship with a client that violates professional boundaries; 2) giving or accepting money or property for any reason other than fee for service; 3) obtaining money or property from a client by fraud, misrepresentation or duress; and 4) violating the privacy of clients or confidentiality of patient records unless required to do so by law.
- A new subdivision is added to specify what is meant in the Code (§ 54.1-3007(7)) about a “restriction” in another state or the District of Columbia. That would include: 1) having a finding of abuse, neglect or misappropriation of patient property in another state; or 2) being placed on the abuse registry in another state.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Nursing and Nurse Aide Education Programs

One of statutory responsibilities of the Board of Nursing is the approval of nurse aide education programs. During its review of regulations, the Board considered the strengths and weaknesses of the requirements set forth in current regulations, discussed the issues that have arisen related to approval or disapproval of education programs, and sought advice from educators and staff involved in program review and approval. As a result, amendments are recommended to provide more specificity about Board requirements and expectations and to clarify sections on the approval process.

As part of the review, the Board received advice from its counsel that the regulations on program approval – both the requirements and the process- needed to be more definitive and objective. Rather than requiring a nurse aide education program to demonstrate financial support and resources sufficient to meet requirements, the Board would require a copy of the current annual budget or a signed statement from the administration specifying the support available for the program. In addition, the process for submission of reports, the on-site visit and action by the education special conference committee are more clearly and specifically stated.

The Board, with the help of the staff, on-site reviewers and nurse aide educators has identified areas of regulation where the requirements are inadequate to provide nurse aides with the education necessary to practice with safety and skill. The initial core curriculum in a nurse aide program has consisted of 16 hours, but the Board has determined that 8 additional hours are essential to prepare the student for direct client care. The total number of hours for a program

(120) is specified in the law and has not changed. An amendment will also make it clear that skills training must consist of at least 40 hours of providing direct patient care, not merely observing care being rendered by others. Subjects such as dealing with aggressive behavior, fall prevention, and communication with impaired patients are necessary to adequately prepare students for the practice environment in which they will work. In a nurse aide education program, the Board believes it is necessary to require the program coordinator be a registered nurse and the resource personnel to work under the direct, on-site supervision of the primary instructor.

Disciplinary Provisions

Provisions setting grounds for disciplinary actions against nurse aides have been expanded to include conduct unprofessional conduct that has been noted in testimony before the Board but for which the regulations are not definitive. Those grounds include: 1) entering into an inappropriate relationship with a patient that violates professional boundaries; 2) giving or accepting money or property for any reason other than fee for service; 3) obtaining money or property from a patient by fraud, misrepresentation or duress; 4) violating the privacy of clients or confidentiality of patient records unless required to do so by law; and 5) falsifying of student, educational, or employment records. Similar grounds are established by this Board in the regulations governing the licensure of nurses and the certification of massage therapists.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

An announcement of the Board's intention to amend its regulations pursuant to recommendations of the periodic review was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the Board (which is approximately 1100 persons). Public comment was accepted until May 8, 2002.

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

Clarity of the Regulation

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

The Board, representing various practice settings, has reviewed these regulations for consistency and clarity. Likewise, staff of the Board, who interact on a regular basis with the regulated entities reviewed the regulations and made recommendations for clarification. The Assistant Attorney General who provides counsel to the Board of Nursing has been involved during the development and adoption of proposed regulations to ensure clarity and compliance with law and

regulation. The Board is satisfied that the regulation is clearly written and will be easily understandable by the individuals affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Public participation guidelines require the Boards to review regulations each biennium or as required by Executive Order. Regulations governing certified nurse aides and nurse aide education will be reviewed again during the 2004-05 fiscal year.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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