



Final Regulation Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 90-20-10 et seq.
Regulation title	Regulations Governing the Practice of Nursing
Action title	Implementation of the Nurse Licensure Compact
Document preparation date	May 17, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Proposed regulations will replace emergency regulations adopted by the Board of Nursing as required to comply with the second enactment clause of Chapter 49 of the 2004 Acts of the Assembly, which states “That the Board of Nursing shall promulgate regulations to implement the provisions of the Nurse Licensure Compact to be effective within 280 days of the enactment of this act.” Emergency regulations will expire on August 24, 2005.

Proposed regulations set out the regulations for implementation of the Nurse Licensure Compact including rules for issuance of a multistate licensure privilege, moving from one party state to another, notification of licensure denial to a former party state, limitations by disciplinary order on practice under a multistate privilege, a licensee’s access to information in the licensure information system, and inclusion of the multistate privilege in the disciplinary provisions.

Statement of final agency action

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

On May 17, 2005, the Board of Nursing adopted a final regulation for 18VAC90-20-10 et seq. to establish consistency in regulations with provisions of the Nurse Licensure Compact implemented on January 1, 2005.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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

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

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

...

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

The specific legal mandate to promulgate the regulation for implementation of the Nurse Licensure Compact is found in:

§ [54.1-3005](#). Specific powers and duties of Board.

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

14. To enter into the Nurse Licensure Compact as set forth in this chapter and to promulgate regulations for its implementation; ...

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 explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

In 2003, the General Assembly enacted Chapter 249, which created the authorization for Virginia's membership in the Nurse Licensure Compact effective January 1, 2005. Sections 54.1-3030 through 54.1-3040 provide the legal basis for the Compact and specific statutory language for participation and administration. With so much specificity about the Compact in the Code, the only regulations that are necessary relate to procedural matters of issuing a license in a compact state, limitations of a multistate privilege after a disciplinary proceeding, and access to data on the coordinated licensure system. It is also necessary to include the multistate licensure privilege in the authority of the Board to render findings of unprofessional conduct and take disciplinary action. Without such an amendment, it would not be possible for the Board to enforce its regulations for a nurse or clinical nurse specialist practicing in Virginia with a multistate licensure privilege issued by another Compact state. Amended rules are necessary to protect the health and safety of the public by ensuring that all nurses and clinical nurse specialists who provide care to patients in Virginia, whether they hold a license or a multistate privilege, will be held to the same standards of professional conduct.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Proposed regulations set out the rules for the issuance of a license with a multistate licensure privilege, including the evidence required to establish a primary state of residence, the procedure for changing the state of residence, and the policy for notification if a state denies licensure to an applicant. There are also new rules for limitations placed by a board on a multistate licensure privilege and for access to the coordinated licensure information system. Changes to existing regulations in Chapter 20 are intended to include those who hold a multistate licensure privilege in provisions that set out the causes for taking disciplinary action.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

Advantages or disadvantages to the public:

There are no disadvantages to the public; the proposed rules will ensure that nurses practicing in Virginia under a multistate licensure privilege are held to the same standards as those practicing with a Virginia license. Likewise, any limitation or monitoring required by a disciplinary order would be imposed equally. There may be some advantage to the public in that access to health

care may be improved by the availability of nurses who reside in other states but will come into Virginia to work. However, the Compact also makes it easier for Virginia nurses to go to other Compact states to work, so the result may not create a net gain for health care in the state.

Advantages or disadvantages to the agency:

There are no specific advantages or disadvantages to the agency or the Commonwealth. Rules to implement the specific provisions of law will give guidance to the Board and its licensees on questions about declaration of a home state, limitations on practice and access to information.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section 280 is amended in the final action for consistency with the Compact by adding “multistate licensure privilege” in regulations that refer to a registered nurse licensed in Virginia and by setting out a schedule for renewal of registration as a clinical nurse specialist if one does not have a RN license that is being renewed in Virginia. Without the amendments, it would not be possible for a person with a multistate licensure privilege to practice nursing in Virginia to obtain a registration as a clinical nurse specialist.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Proposed regulations were published on January 10, 2005 with a 60-day comment period ending on March 11, 2005. A public hearing on proposed regulations was held on January 25, 2005. There were no comments received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10	n/a	Establishes definitions for words & terms used in the regulation	Adds a reference to words and terms already defined in § 54.1-3030 for the Nurse Licensure Compact and defines the term “primary state of residence” as the state of a person’s declared permanent or principal

n/a	181	n/a	<p>home for legal purposes. That term is used in the context of issuance of a multistate privilege by the board.</p> <p>Sets out the rules for issuance of a multistate licensure privilege</p> <p>Subsection A provides the rule for issuance based on evidence necessary for a determination of primary state of residence, such as a driver’s license, voter registration card, or tax return. Under the Compact, the Board can only issue a multistate privilege if a nurse declares Virginia as his primary state of residence. If a nurse currently holds a Virginia license but resides in another Compact state, he will declare that state as his primary state and be issued a multistate privilege by that board. If a nurse currently holds a Virginia license but resides in a non-Compact state, he will retain his Virginia license as a single-state license.</p> <p>Subsection B provides the regulations governing the multistate privilege of a nurse moving from one party state to another. Practice under the former home state license and multistate privilege is allowed for up to 30 days to allow for processing of licensure in Virginia, unless the nurse is under a pending investigation by the former state. In that case, the licensure application is held and the 30-day authorization stayed until the case is resolved. A license issued by a former home state is no longer valid upon issuance of a license by Virginia; and if Virginia denies licensure, it must notify the former home state, where action may be initiated in accordance with laws and regulations of that state.</p>
n/a	182	n/a	<p>Section 182 sets out the limitations on a multistate privilege Included in all disciplinary orders that limit practice or require monitoring would be the requirement that the licensee subject to the order shall agree to limit practice to Virginia during the period in which the order is in effect. A nurse may be allowed to practice in other party states while an order is in effect with prior written authorization from both the board and boards of other party state. This provision is necessary to conform Virginia’s disciplinary orders to the Compact</p>

n/a	183	n/a	<p>and ensure that all party states are aware of any limitations on practice.</p> <p>Section 183 sets out the rules for access to information in the coordinated licensure information system by a licensee. It provides that a licensee may submit a request in writing to the board to review the public data relating to the licensee maintained in the coordinated licensure information system. In the event a licensee asserts that any related data is inaccurate, the burden of proof would be upon the licensee to provide evidence that substantiates such claim. The board must verify and correct inaccurate data in the information system within ten business days.</p>
280	n/a	Establishes the criteria for registration and renewal of a clinical nurse specialist.	<p>Section 280 is amended in the final action for consistency with the Compact by adding “multistate licensure privilege” in regulations that refer to a registered nurse licensed in Virginia and by setting out a schedule for renewal of registration as a clinical nurse specialist if one does not have a RN license that is being renewed in Virginia. Without the amendments, it would not be possible for a person with a multistate licensure privilege to practice nursing in Virginia to obtain a registration as a clinical nurse specialist.</p>
300		Sets out the authorization for taking disciplinary action and the definitions of unprofessional conduct	<p>Amendments ensure that: 1) persons practicing under a multistate licensure privilege are subject to the same disciplinary provisions as those holding a single state license, and 2) it is clear that a violation of regulations could be considered unprofessional conduct and subject a licensee or multistate licensure privilege holder to disciplinary action.</p>

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact of the proposed regulatory action on the institution of the family and family stability.