



## Final Regulation Agency Background Document

<b>Agency name</b>	Board of Nursing, Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC90-20-10 et seq.
<b>Regulation title</b>	Regulations Governing the Practice of Nursing
<b>Action title</b>	Requirements for evidence of continued competency
<b>Date this document prepared</b>	February 4, 2013

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

### Brief summary

*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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

The Board of Nursing has adopted requirements for continuing competency activities or courses in order to renew an active license as a registered nurse or a practical nurse each biennium. The options available include a refresher course, post-licensure academic course, current specialty certification, research and teaching, active practice for 640 hours and 15 hours of courses or 30 hours of approved courses. The entities and organizations that can recognize or approve a continuing education provider are listed in regulation.

Regulations provide an exemption for nurses who have an active license as a nurse practitioner and for the second license if someone is licensed as an RN and LPN. Finally, there is a requirement for documentation of completion to be maintained for two years following renewal, and the documentation required for each type of activity or requirement is specified.

Changes to proposed regulations in the final adoption were made in response to public comment and include a definition for “contact hour”, deletion of an inaccurate phrase in the definition of

“national certifying organization”, additional activities that may be counted for continuing competency hours, and additions to the listing of approved provides of continuing education.

### 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 or board taking the action, and (3) the title of the regulation.*

On January 29, 2013, the Board of Nursing adopted final amendments to 18VAC90-20-10 et seq., Regulations Governing the Practice of Nursing.

### Legal basis

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

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (1), which provides authority to establish qualifications for licensure as necessary to ensure competence and (6), which provides the Board of Nursing the general 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:*

*1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions. ...*

*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. ...*

Additionally, § 54.1-103 authorizes the Board to require additional training of regulated persons for renewal of licensure:

*A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.*

## 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.*

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Along with national organizations and commissions, the Board of Nursing has been studying the issue of competency assessment for continuation of licensure. After a review of national recommendations, reports and regulatory models, the board has concluded that there should be evidence of continued competency for renewal of a nursing license. Registered and practical nurses are the only health professionals in Virginia who do not currently have any requirement to maintain competency beyond that required for initial licensure. While there may be value to an individual nurse in obtaining continuing education (CE), the board does not intend to rely solely on the CE model for demonstration of competency. The goal is to engage the nurse in a continuum of learning and renewal of knowledge and skills through a variety of practical and didactic experiences.

The National Council of State Boards of Nursing (NCSBN) defines continued competence as “the ongoing ability of a nurse to integrate knowledge, skills, judgment and personal attributes to practice safely and ethically in a designated role and setting in accordance with the scope of nursing practice.” The mission of a licensing board is to protect public health, welfare and safety by assuring that persons are minimally competent to practice at initial licensure and that they remain competent and safe throughout their careers. At the present time, there is no regulatory requirement that nurses demonstrate any measure of competency following initial licensure.

A 2009 report on continued competence from NCSBN states that maintaining competency to practice is a responsibility shared by the individual nurse, his or her employer, and the regulatory entity that must answer to the public. Therefore, the board has determined that there should be some regulatory framework for demonstrating continued competency for the health and safety of the patients in the care of nurses in Virginia.

## 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.*

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The Board of Nursing proposes that regulations offer options for measurement of continued competence including: 1) evidence of specialty certification from a board-approved entity; 2) nursing related coursework for academic credit or a refresher course; 3) evidence-based nursing related research and publication or teaching; 4) a combination of 15 hours of continuing education and 640 practice hours in a two-year period while holding an unencumbered license; or 5) thirty hours of continuing education hours in workshops, seminars or courses relevant to the practice of nursing.

A listing of providers recognized by the Board, requirements for persons who hold dual licensure, and provisions for extensions or exemptions are set out in regulation. Finally, specific documentation of compliance is delineated for each of the types of continued competency activities or options selected.

**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.*

- 1) The primary advantage of the amended provisions would be a more highly qualified, competent corps of nurses who have obtained additional training, knowledge and competency to practice. There are no disadvantages to private citizens or businesses. Institutional employers of nurses currently require continued learning activities or courses. For those nurses who are not currently engaged in continued learning, there will be some additional costs. The availability of on-line courses at little or no cost will mean that a nurse can fulfill the requirements without taking time from work or incurring the expense of attendance at a meeting or workshop.
- 2) The primary advantage to the Board is consistency with continuing education or continuing competency requirements of all other professions in Virginia and with most other states in the U.S. There are no disadvantages to the agency.
- 3) There are no other matters of interest.

**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.*

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
10	Sets out definitions for words and terms used in regulation	<p>Definition for “contact hour” is added (50 minutes of course time)</p> <p>Definition of “national certifying organization” is amended to delete statement that it must be “accredited by a national body recognized by NCSBN”</p>	<p>Response to request for definition of a contact hour for clarity</p> <p>Response to comment from the National Council of State Boards of Nursing that it does not recognize or accredit certifying bodies.</p>

<p>221</p>	<p>Establishes the continued competency requirements for renewal of an active license</p>	<p>Subsection A: Added “developing” a nursing-related course in A 6 and A 7</p> <p>Added “a 15-week course” to A 6</p> <p>Subsection B: Added a health care provider association</p> <p>Added regionally or nationally accredited colleges or universities</p> <p>Added the American Health and Safety Institute</p>	<p>In response to comment: Sometimes the development of a course for credit or for continuing education is done by someone other than the person who teaches the course; the Board believes credit towards fulfillment of continued competency requirements should be given for either.</p> <p>For LPN programs that are not located within a college, the Board added credit for teaching or developing a course with some equivalency to a 3 semester hour course</p> <p>Several commenters requested added Va. Healthcare Association or other professional groups as approved providers for CE; the Board concurred that it was appropriate.</p> <p>Request to include community colleges as approved providers; the Board concurred but expanded the list to include other accredited educational institutions</p> <p>Request from the Institute for inclusion for advanced resuscitation courses; the Board decided it should be an approved provider. It is recognized in other regulations such as dentistry.</p>
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**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.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Beverly Soble, Va Healthcare Assn.	Supports the proposal & requests that healthcare organizations (VHCA) be added to the list of approved providers	<i>Included "health care provider association" in 221 B</i>
Becky Bowers-Lanier Va Assn of School Nurses	Strongly supports the proposed regulations	<i>Appreciated the comment</i>
Jackie Daniel Southside VA Comm College	Clarification on the 640 hours of active practice – would faculty hours be counted & whether teaching the same nursing course in subsequent years be counted	<i>Definition of "active practice" includes activities for which an active license is required Teaching the same course in subsequent years would not be counted for #6 but would be counted for active practice</i>
Melanie Ham	Asks to use approved CME courses for credit, especially for advanced practice nurses	<i>RN's who are advanced practice nurses would only have to meet CE requirements for LNP license, which typically include CME courses Also, by adding "health care provider associations", AMA-approved CME would be included.</i>
Linda Groah Assn of periOperative Registered Nurses	Asks whether CNOR and the CRNFA (for first assistants) credential would count as national certifying organizations for CC requirements	<i>With deletion of NCSBN, those credentials would meet the definition of a "national certifying organization"</i>
Gregory Huber	Recommends: 1) rewording A7 in section 221 to clarify hours of teaching CE courses; 2) include development of a CE course; and 3) increase the requirement for reactivation of an inactive license.	<i>Rewording of A7 not recommended as drafted by commenter Inclusion of "developing" courses in A6 and A7 recommended Reactivation requirements not included in this action</i>
James Stobinski Competency & Credentialing Institute	Supports proposal to accept specialty certification for renewal; should expand accrediting organization beyond NLNAC and CCNE to include ABNSC and NCCA.	<i>Definition of accreditation is not applicable to CE regulations</i>
Bonnie Niebuhr Amer Bd of Nursing Specialties and Accreditation Bd for Specialty Nursing Certification	Fully supports proposal to accept nursing certification for renewal; definition of "accreditation" limits the accreditation to academic educational program & does not include the 2 accrediting bodies for national nursing certification programs.	<i>Same as above</i>
Sharon Darby	Requests inclusion of VHCA in the list of approved providers as a source of training and education for nurses in long term care	<i>Included "health care provider association" in 221 B</i>
David Swankin Citizens Advocacy	Noted the five-step model for continued competency and expressed concern that step 1	<i>Routine periodic assessment and demonstration of</i>

Center	(routine periodic assessment) and step 5 (demonstrate/evaluate competency) were not included in proposed regulations. Cannot support without a requirement for initial assessment.	<i>competency which are conducted and validated by an accrediting or credentialing organization would be very burdensome and costly for licensees and the Board. At this time, there is no nationally recognized mechanism for continuing competency assessment for RN's and LPN's. While the Board appreciates that the 5-step model would be the ideal, it does not recommend the additional cost and burden at this time.</i>
David DeBiasi AARP	Good step but concerned that there is no requirement for assessment of continuing competency. Should revise to require periodic assessment and to include in the list of recognized providers of CE other non-nursing clinical provider organization such as pharmacy, physician and social work	<i>Same as above. By adding "health care provider associations", other non-nursing provider organizations would be included.</i>
Bonnie Niebuhr, Amer Bd of Nursing Specialties and Accreditation Bd for Specialty Nursing Certification	Support proposal to accept nursing certification as demonstrating continuing competence. However, definition of accreditation in section 10 only includes NLNAC or CCNE, the 2 academic accrediting bodies.	<i>Definition of accreditation is not applicable to CE regulations</i>
Lora Epperly, CCR	Supports the proposal; requests additional of health care provider association to list of approved CE providers	<i>Include "health care provider association" in 221 B</i>
Donna Goyer Carilion Clinic	Asked several questions relating to implementation	<i>Questions may be answered in Q and A which will be posted on-line when regulations are finally approved</i>
Lynne Grief Board of Certification for Emergency Nursing	Supports the proposal; requests the definition of national certifying organization be revised to go include accrediting bodies other than NCSBN	<i>Recommend deletion of NCSBN, so accrediting body would be listed in definition</i>
Julie Bayly Administrator Riverside Convalescent Center	Supports the proposal; requests inclusion of VHCA as approved provider of CE	<i>Include "health care provider association" in 221 B</i>
Cheryl Hewlett	Requests the Board to offer basic competency reviews on-line at little or no expense or publish website partners who do so	<i>The Board of Nursing is not staffed for development of competency reviews as CE courses. On-line courses/webinars are available at little or no</i>

		<i>expense from providers listed in regulation</i>
Sandra Harless	Working full-time should be sufficient; no additional requirements for continuing competency necessary	<i>An additional requirement of 15 hours plus active practice does over a two-year period does not seem unreasonable.</i>
Lindsay Beaver National Council of State Boards of Nursing	NCSBN does not recognize certifying or accrediting organizations; amendment should remove "recognized by NCSBN"	<i>Recommended deletion of "and is accredited by a national body recognized by NCSBN" in definition of National certifying organization</i>
Helen Reed Director of Nursing Radford Health & Rehab Center	Supports continuing competency; nursing is a forever learning career	<i>Appreciated the comment</i>
Rosa Abbott Va. Beach School of Practical Nursing	Suggests a definition of "contact hour;" list of providers or approval agencies seems too limiting; accept CE credit for precepting a nursing student or orienting new nurse; allow CE credit for online or electronic courses. Raised questions about implementation and enforcement.	<i>- Included definition of "contact hour" as 50 minutes -Inclusion of "health care provider association broads the provider list -Precepting or orienting would be part of active practice -Online or electronic courses are acceptable if provided by an organization/entity on approved list</i>
Deborah Zeller Va. Assn of School Nurses	Strongly endorses proposal	<i>Appreciated the comment</i>
Ralph Shenefelt Health and Safety Institute	Requests addition of American Safety and Health Institute for approval of courses in advanced resuscitation and elimination of the American Red Cross	<i>Included American Safety and Health Institute but did <u>not</u> eliminate the American Red Cross</i>
Lori Wack BRCC Nursing Program Head	Questions about implementation and which courses would a nursing educator be allowed to count; suggests adding Community Colleges in section 221 B.	<i>Included "regionally accredited colleges and universities" in 221 B</i>
Tammy Dean, Prince William County School of Practical Nursing	Asks if "specialty certification" covers LPN programs and whether teaching an LPN course should be included in the provision that allows credit for teaching hours for college credit	<i>Added "a 15-week course" to the teaching qualification in 221 A #6.</i>

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.*

<b>Current section number</b>	<b>Proposed new section number, if</b>	<b>Current requirement</b>	<b>Proposed change, rationale, and consequences</b>
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	<b>applicable</b>		
10	n/a	Sets out definitions for words and terms used in regulations	<p>Defines “active practice” as activities performed, whether or not for compensation, for which an active license to practice nursing is required.</p> <p><i>A nurse engaged in active practice receives some credit towards meeting the requirements for continuing competency needed for renewal of an active license. The definition is intentionally broad to encompass many types of functions and activities with the practice of nursing – whether or not those activities are performed for compensation.</i></p> <p>Changes in final action:</p> <p>Defines a “contact hour” as 50 minutes of continuing education coursework or activity. Amends definition of “national certifying organization” to delete recognition by NCSBN.</p> <p><i>Explanation above</i></p>
220	n/a	Sets out requirements for biennial renewal of licensure.	<p>Subsection B is amended to delete the requirement for the Board to send a renewal notices to the last known address of record “no less than 30 days prior to the last day of the licensee's birth month.”</p> <p><i>The requirement to send a renewal notice to an address of record is moved to subsection C. Renewal notices are typically sent between 45 and 60 days in advance of the deadline.</i></p> <p>Subsection B is amended to specify that after a certain date, a nurse would be required to meet the requirements for continued competency set forth in 18VAC90-20-221 in order to renew an active license.</p> <p><i>The date would be set at the time of publication to reflect at least two years of advance notice. Licensees would have a full two-year renewal cycle in which to meet the proposed requirements.</i></p> <p>Subsection C is added to require that a notice for renewal of license be sent by the board to the last known address of the licensee.</p>
n/a	221	n/a	<p>Subsection A sets out the <u>nine</u> types of learning activities, courses, or practice hours that can be used to fulfill the Board’s requirement for evidence of continuing competency, including:</p> <p>1. Current specialty certification by a national certifying organization, as defined in 18VAC90-20-</p>

		<p>10; or</p> <ol style="list-style-type: none"> <li>2. Completion of a minimum of three credit hours of post-licensure academic education relevant to nursing practice, offered by a regionally-accredited college or university; or</li> <li>3. A board-approved refresher course in nursing; or</li> <li>4. Completion of nursing-related, evidence-based practice project or research study; or</li> <li>5. Completion of publication as the author or co-author during a renewal cycle; or</li> <li>6. Teaching or developing a nursing-related course resulting in no less than three semester hours of college credit, a 15-week course or specialty certification; or</li> <li>7. Teaching or developing nursing related continuing education courses for up to thirty (30) contact hours; or</li> <li>8. Fifteen (15) contact hours of workshops, seminars, conferences or courses relevant to the practice of nursing and 640 hours of active practice as a nurse; or</li> <li>9. Thirty (30) contact hours of workshops, seminars, conferences or courses relevant to the practice of nursing.</li> </ol> <p><i>The diversity of activities and combination of learning opportunities and practice hours is intended to reflect the broad range of practices and types of nursing among licensees in Virginia. Those selected to fulfill the Board's continuing competency expectation were deemed to have value in assisting the nurse in honing skills, increasing core knowledge and expanding awareness of new research and learning.</i></p> <p>Subsection B lists the organizations and entities that must recognize or approve the workshops, seminars, conferences, or courses that meet the requirements of A8 and A9:</p> <ol style="list-style-type: none"> <li>1. American Nurses Credentialing Center (ANCC)/ American Nurses Association (ANA);</li> <li>2. National Council of State Boards of Nursing (NCSBN);</li> <li>3. Area Health Education Centers (AHEC) in any state in which the AHEC is a member of the National AHEC Organization;</li> <li>4. Any state nurses association;</li> </ol>
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			<p>5. National League for Nursing (NLN);</p> <p>6. National Association for Practical Nurse Education and Service (NAPNES);</p> <p>7. National Federation of Licensed Practical Nurses (NFLPN);</p> <p>8. A licensed health care facility, agency or hospital;</p> <p>9. A health care provider association;</p> <p>10. A regionally or nationally accredited college or university;</p> <p>11. The American Heart Association, the American Safety and Health Institute or the American Red Cross for courses in advanced resuscitation; or</p> <p>10. Virginia Board of Nursing or any state board of nursing.</p> <p><i>Given the broad range of entities and organizations that are authorized to approve or recognize CE providers, a licensee should have numerous options available at little or no cost.</i></p> <p>Subsection C provides: 1) that persons dually licensed as a registered nurse and a licensed practical nurse only have to meet one of the continued competency requirements as set forth in subsection A.; and 2) that registered nurses who also hold an active license as a nurse practitioner only have to meet those requirements for licensure renewal and renewal of prescriptive authority. Subsection D provides an exemption for the first renewal after initial licensure.</p> <p>Subsection E provides for an extension for good cause provided there is a written request at least 60 days prior to renewal date.</p> <p>Subsection F provides for an exemption for certain circumstances beyond the control of the licensee.</p> <p>Subsection G specifies that continued competency hours and activities ordered in a disciplinary proceeding cannot be counted toward requirement for renewal.</p> <p>Language in subsections C through G is consistent with continuing competency regulations of other boards at the Department.</p>
n/a	222	n/a	<p>Section 222 provides rules for documenting compliance.</p> <p>Subsection A specifies that all licensees are required to maintain original documentation of</p>

		<p>completion for a period of two years following renewal and to provide such documentation within 30 days of a request from the board for proof of compliance.</p> <p><i>The Board has not specified an audit but has set rules for maintenance of documentation and provision of such documents in a timely manner if so requested.</i></p> <p>Subsection B sets out the specific documentation of compliance required for each type of learning activity or course to include:</p> <ol style="list-style-type: none"> <li>1. Evidence of national certification including a copy of a certificate which includes name of licensee, name of certifying body, date of certification, date of certification expiration. Certification must be initially attained during the licensure period, or have been in effect during the entire licensure period, or have been re-certified during the licensure period;</li> <li>2. Evidence of post-licensure academic education to include a copy of transcript with the name of the licensee, name of educational institution, date of attendance, name of course with grade and number of credit hours received;</li> <li>3. Evidence of completion of a board-approved refresher course to include written correspondence from the provider with the name of the licensee, name of the provider, and verification of successful completion of the course;</li> <li>4. Evidence of completion of a nursing research or project to include an abstract or summary, the name of the licensee, role of the licensee as principal or co-principal investigator, date of completion, statement of the problem, research or project objectives, methods used and summary of findings;</li> <li>5. Evidence of authoring or co-authoring a published nursing-related article, paper, book or book chapter which to include a copy of the publication to include the name of the licensee and publication date;</li> <li>6. Evidence of teaching a course for college credit</li> </ol>
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		<p>to include documentation of the course offering, indicating instructor, course title, course syllabus and the number of credit hours. Teaching a particular course may only be used once to satisfy the continued competency requirement unless the course offering and syllabus has changed;</p> <p>7. Evidence of teaching a course for continuing education credit to include a written attestation from the director of the program or authorizing entity including the date(s) of the course(s) and the number of contact hours awarded. If the total number of contact hours totals less than 30, the licensee shall obtain additional hours in continuing learning activities or courses;</p> <p>8. Evidence of contact hours of continuing learning activities or courses to include the name of the licensee; title of educational activity, name of the provider, number of contact hours and date of activity;</p> <p>9. Evidence of 640 hours of active practice in nursing to include documentation satisfactory to the board of the name of the licensee, number of hours worked in calendar or fiscal year, name and address of employer and signature of supervisor. If self-employed, hours worked may be validated through other methods such as tax records or other business records. If active practice is of a volunteer or gratuitous nature, hours worked may be validated by the recipient agency.</p> <p><i>The methodology for documentation is consistent with requirements for other states that have similar requirements.</i></p>
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