Virginia Regulatory Town Hall

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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Boards of Nursing and Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC90-30-10 et seq.
Regulation title	Regulations Governing the Practice of Nurse Practitioners
Action title	Practice in patient care teams
Date this document prepared	8/6/12

Preamble

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

1) Please explain why this is an emergency situation as described above.
2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

Chapter 213 of the 2012 Acts of the Assembly (HB346) requires the Boards of Nursing and Medicine to promulgate regulations to implement provisions of the act with 280 days of its enactment. Therefore, the Board is authorized to adopt emergency regulations establishing rules for practice of nurse practitioners in collaboration and consultation with a patient care team physician.

Legal basis

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

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Boards of Nursing and Medicine 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 mandate to promulgate regulations for the practice of nurse practitioners is found in § 54.1-2957 of the Code of Virginia:

§ 54.1-2957. Licensure and practice of nurse practitioners; practice agreements.

A. The Board of Medicine and the Board of Nursing shall jointly prescribe the regulations governing the licensure of nurse practitioners. It shall be unlawful for a person to practice as a nurse practitioner in the Commonwealth unless he holds such a joint license.

B. A nurse practitioner shall only practice as part of a patient care team. Each member of a patient care team shall have specific responsibilities related to the care of the patient or patients and shall provide health care services within the scope of his usual professional activities. Nurse practitioners practicing as part of a patient care team shall maintain appropriate collaboration and consultation, as evidenced in a written or electronic practice agreement, with at least one patient care team physician. Nurse practitioners who are certified registered nurse anesthetists shall practice under the supervision of a licensed doctor of medicine, osteopathy, podiatry, or dentistry. Collaboration and consultation among nurse practitioners and patient care team physicians may be provided through telemedicine as described in § 38.2-3418.16. Practice of patient care teams in all settings shall include the periodic review of patient charts or electronic health records and may include visits to the site where health care is delivered in the manner and at the frequency determined by the patient care team.

Physicians on patient care teams may require that a nurse practitioner be covered by a professional liability insurance policy with limits equal to the current limitation on damages set forth in § 8.01-581.15.

Service on a patient care team by a patient care team member shall not, by the existence of such service alone, establish or create liability for the actions or inactions of other team members.

C. The Board of Medicine and the Board of Nursing shall jointly promulgate regulations specifying collaboration and consultation among physicians and nurse practitioners working as part of patient care teams that shall include the development of, and periodic review and revision of, a written or electronic practice agreement; guidelines for availability and ongoing

communications that define consultation among the collaborating parties and the patient; and periodic joint evaluation of the services delivered. Practice agreements shall include a provision for appropriate physician input in complex clinical cases and patient emergencies and for referrals. Evidence of a practice agreement shall be maintained by a nurse practitioner and provided to the Boards upon request. For nurse practitioners providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the nurse practitioner's clinical privileges or the electronic or written delineation of duties and responsibilities in collaboration and consultation with a patient care team physician.

D. The Boards may issue a license by endorsement to an applicant to practice as a nurse practitioner if the applicant has been licensed as a nurse practitioner under the laws of another state and, in the opinion of the Boards, the applicant meets the qualifications for licensure required of nurse practitioners in the Commonwealth.

E. Pending the outcome of the next National Specialty Examination, the Boards may jointly grant temporary licensure to nurse practitioners.

F. As used in this section:

"Collaboration" means the communication and decision-making process among members of a patient care team related to the treatment and care of a patient and includes (i) communication of data and information about the treatment and care of a patient, including exchange of clinical observations and assessments; and (ii) development of an appropriate plan of care, including decisions regarding the health care provided, accessing and assessment of appropriate additional resources or expertise, and arrangement of appropriate referrals, testing, or studies.

"Consultation" means the communicating of data and information, exchanging of clinical observations and assessments, accessing and assessing of additional resources and expertise, problem-solving, and arranging for referrals, testing, or studies.

In addition, Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the emergency regulation is to revise requirements for practice of nurse practitioners consistent with a model of collaboration and consultation with a patient care team physician working under a mutually agreed-upon practice agreement within a patient care team. The goal of the amended regulation is to revise terminology and criteria for practice, consistent with changes to the Code in Chapter 213 of the Acts of the Assembly.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

A team care approach emphasizing collaboration and consultation will allow for more creative and fuller utilization of nurse practitioners while ensuring appropriate setting-specific physician input. The law and regulations also embrace technological and communications advances such as telemedicine not envisaged under the earlier statutes. Nurse practitioner mobility and geographic outreach into underserved areas can be facilitated by the revised practice paradigm. Collaboration and consultation on patient care within a patient care team protects public health and safety by utilizing the strengths and expertise of nurse practitioners and physicians.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, and likely impact of proposed requirements
10		Establishes definitions for words and terms used in the regulations	The definitions of "collaboration" and "consultation" are identical to the definitions specified in subsection F of § 54.1-2957. The terms "controlling institution" and "preceptor" are deleted because they are not currently used in the chapter. The term "licensed physician" is deleted and replaced by the term "patient care team physician," which is the term now used in the Code and similarly defined in § 54.1-2900. Likewise, the requirement for a protocol has been replaced in the law with a practice agreement, as specified in subsection C of § 54.1-2957. *The likely impact of the proposed changes in definitions is minimal since terms are also used and defined in the Code.*
90		Sets out the list of professional credentialing bodies acceptable for licensure by examination for nurse practitioners	The list of credentialing bodies has been amended because three of the names have been changed since this section was last amended. *The impact is additional clarity in the regulation to eliminate any possible confusion about the names of the credentialing bodies.*
100		Sets out the requirements for renewal of licensure	The word "mailed" is changed to "sent" to allow the board to send initial notices for renewal electronically. *While Nursing has not adopted that process as yet, other boards*

			at the Department of Health Professions have done so, and this change in regulation will make it clear that email notification is authorized for nurse practitioner renewal.
105		Sets out the requirements for continuing competency	An obsolete date in subsection B is deleted.
120		Sets out the criteria for practice of all nurse practitioners, except certified registered nurse anesthetists (CRNA)	Subsection A is revised for consistency with A 3 in § 54.1-2901. *The requirement for supervision of the practice of a nurse practitioner is replaced with a requirement for collaboration and consultation with a patient care team physician as part of a patient care team. The CRNA is omitted from this section because the revisions to the Code retained the supervisory requirement for that category of nurse practitioners.* Subsection B is amended to clarify that all NP practice is based on specialty education preparation as "an advanced practice registered nurse." *While the term "nurse practitioner" continues to be used in law and regulation, such person is defined in the Code as an "advanced practice registered nurse," and it is the term used in the consensus model advocated by nursing groups.* The specific standards for practice of a certified nurse midwife (CNM) are currently found in subsection D of section 121, which has been amended to reference CRNA's instead of CNM's.
121		Sets out the criteria for practice of certified registered nurse anesthetists (CRNA)	While other nurse practitioners practice in collaboration and consultation with a patient care team physician, the legislation retains the requirement of supervision for CRNA's. (See subsection B of § 54.1-2957). Therefore, a separate section on practice was established which includes the requirement to practice according to specialty education preparation, which are currently found in subsection D of section 120. *Prior to 2012 amendments to the Code, a nurse practitioner licensed as a certified nurse midwife (CNM) was allowed to practice in "collaboration and consultation" with a licensed physician. (*§ 54.1-2901 A 31). *Since all categories of nurse practitioner (except CRNA's) may now practice in collaboration and consultation, there was no need for a separate practice section for CNM's.*
n/a	122	n/a	Section 122 sets out the requirements for a practice agreement (which was described as the "protocol" for practice of an NP). Subsection A reiterates the requirement in Code for practice in accordance with a practice agreement, which may be developed and "signed" in writing or electronically.

			Subsection B sets out the basic content of a practice agreement to include periodic review of patient records, appropriate physician input in complex cases and emergencies, and the authority for the NP to sign certain documents. The practice agreement may also include provisions for visits to the site where the NP is delivering care in a manner and at a frequency determined by the team. *Required elements of a practice agreement are found in Subsection C of § 54.1-2957.* Subsection C of the regulation requires the practice agreement to be maintained by the nurse practitioner and provided upon request. Nurse practitioners providing care to patients within a hospital or health care system can include the practice agreement as part of documents delineating the nurse practitioner's clinical privileges or the electronic or written delineation of duties and responsibilities; however, the nurse practitioner is responsible for providing a copy to the boards upon request. *Requirements for maintenance, provision upon request, and inclusion of the practice agreement in hospital documents are found in Subsection C of § 54.1-2957.*

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

There are no alternatives that will achieve the essential purpose of the action.

After working together for two years, the leadership at the Medical Society of Virginia (MSV) and the Virginia Council of Nurse Practitioners (VCNP) reached an agreement that outlined a team-based care model designed to help improve access to MD and NP care and reduce paperwork. In response to recommendations emerging out of the Virginia Health Reform Initiative (VHRI) to explore solutions that address systemic challenges to access to care in the Commonwealth, the legislation passed by the General Assembly emphasizes a consultative and collaborative approach between physician and NPs with the physician providing leadership and management of the care team.

Public participation

The agency is seeking comments on the regulation that will permanently replace this emergency regulation, including but not limited to 1) ideas to be considered in the development of the

permanent replacement regulation, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

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

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (**http://www.townhall.virginia.gov**) and on the Commonwealth Calendar website (**http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi**). Both oral and written comments may be submitted at that time.

Family impact

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

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