



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Boards of Nursing and Medicine, Department of Health Professions
VAC Chapter Number:	18 VAC 90-30
Regulation Title:	Regulations Governing the Licensure of Nurse Practitioners
Action Title:	Authorization by practice agreement with supervising physician for nurse practitioner to sign certain documents
Date:	10-14-04

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

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The adoption of an “emergency” regulation by the Boards of Nursing and Medicine was required to comply with the third enactment clause of Chapter 855 of the 2004 Acts of the Assembly. Proposed regulations replacing emergency regulations require inclusion of the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements in the written protocol between the supervising physician and the nurse practitioner.

Subsection C is added to section 120, which establishes the criteria for practice by a nurse practitioner. The new rule will require that the written protocol between the supervising physician and the nurse practitioner must include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements provided the signing of documents is 1) In accordance with the specialty license of the nurse practitioner and with the scope of practice of the supervising physician; 2) Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and 3) Not in conflict with federal law or regulation.

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 number(s), if applicable, and (2) promulgating entity, i.e., the 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 (6) 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 legal mandate to promulgate the regulation for the licensure of nurse practitioners is found in §§ 54.1-2957 and 54.1-2957.02.

§ 54.1-2957. Licensure of nurse practitioners.

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 this Commonwealth unless he holds such a joint license.

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 this Commonwealth.

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

§ 54.1-2957.02. When nurse practitioner signature accepted.

Whenever any law or regulation requires a signature, certification, stamp, verification, affidavit or endorsement by a physician, it shall be deemed to include a signature, certification, stamp, verification, affidavit or endorsement by a nurse practitioner.

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 by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the legislation and the enabling regulation is to permit licensed nurse practitioners to sign various forms and certificates and provide medical information or treatment in certain situations, including situations involving the immunization of children, examination of persons suspected of having tuberculosis, prenatal tests, nursing homes, release of certain privileged medical information, competency for driver licenses, release of certain veterinary records, and assisted living facilities. In many circumstances, it is the nurse practitioner who has performed the evaluation or examination upon which an attestation is made or a form signed. Therefore, it is reasonable that the nurse practitioner rather than the physician (who has not seen the patient) be the one authorized to sign certain papers. Public health and safety are sufficiently balanced with greater access to health care by nurse practitioners who are practicing within their specialty training and licensure and working in collaboration with supervising physicians who must periodically review their care of the patients.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

Proposed regulations require that the written protocol between the supervising physician and the nurse practitioner must include the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements provided the signing of documents is 1) In accordance with the specialty license of the nurse practitioner and with the scope of practice of the supervising physician; 2) Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and 3) Not in conflict with federal law or regulation.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

Advantages or disadvantages to the public:

There are no disadvantages to the public; the proposed rules will allow a nurse practitioner to sign certain documents and attestations on which previous law required the signature of a physician. Provided the nurse practitioner is the one that has performed the physical or treated

the patient, it is logical that he or she be the person who signed the appropriate form since the physician may not have personal knowledge of the patient’s condition. Proposed rules will ensure that there is a clear understanding, as reflected in the written protocol, about which documents requiring a signature may be signed by the nurse practitioner instead of the supervising physician. The only disadvantage may be a lack of understanding on the part of practitioners about the statutory responsibilities of a physician, who may mistakenly believe he can delegate certain medical acts that are specifically reserved for a licensed physician.

Advantages or disadvantages to the agency:

There are no specific advantages or disadvantages to the agency or the Commonwealth. Rules about the written protocol would appear to be understandable and provide appropriate guidance to licensees.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) 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; b) The agency will incur some one-time costs (less than \$2,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled.</p> <p>There will be no on-going expenditures related to this action.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The entities that are likely to be affected by these regulations would be LNP’s and their supervising physicians.</p>
<p>Agency’s best estimate of the number of such entities that will be affected</p>	<p>There are 4925 licensed nurse practitioners with approximately the same number of supervising physicians. It is unknown how many will amend the written protocol to allow the LNP to sign in lieu of a physician.</p>
<p>Projected cost of the regulation for affected individuals, businesses, or other entities</p>	<p>There are no additional costs.</p>

Alternatives

Please describe any viable 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.

There were no alternatives to the adoption of an amended regulation; it was specifically required by Chapter 855 of the 2004 Acts of the Assembly, which requires in the third enactment that “Such amendments shall require inclusion of the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements in the written protocol between the supervising physician and the nurse practitioner.” In addition, the second enactment clause provides that the law authorizing a nurse practitioner to sign certain forms and documents cannot become effective until regulations have been enacted. It reads as follows: “That this act shall take effect 60 days following the effective date of the regulations promulgated by the Board of Medicine and Board of Nursing required by the third enactment clause of this act.”

Currently, section 120 of the regulation provides that the practice of a nurse practitioner must be based on specialty education preparation as a nurse practitioner in accordance with standards of the applicable certifying organization and written protocols with the supervising physician. Therefore, it is necessary for any documentation signed by a nurse practitioner to be in accordance with the specialty license of the nurse practitioner and with the scope of practice of the supervising physician.

In addition, there are certain attestations by physicians that are required by state or federal law and will continue to be only within the purview of the physician and not delegable to a nurse practitioner (such as determining the cause of death on a death certificate). Therefore, the caveat is added that the signature must be permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia and not be in conflict with federal law or regulation. For example, § 54.1-2972 sets out when a person is deemed medically and legally dead and makes the determination of death. It specifically provides that death is determined “in the opinion of a physician duly authorized to practice medicine in this Commonwealth.” Under certain circumstances a registered nurse can pronounce death, but only a physician can determine the cause of death. This regulation could not authorize a nurse practitioner to perform a function reserved to “a physician duly authorized to practice medicine.” Likewise, Medicare does not permit certain documents to be signed by anyone other than the treating physician.

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. Public comment was accepted from August 9, 2004 to September 8, 2004. During the 30-day comment period, there was no public comment on the Notice of Intended Regulatory Action.

Family impact

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

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

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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
120	New subsection C	Sets out the requirements for the practice of a nurse practitioner in collaboration with and under the medical supervision and direction of a supervising physician. Requires practice in accordance with a written protocol with the supervising physician (s).	Adds a provision that the written protocol must include authorization for the nurse practitioner to sign certain documents in lieu of the physician. Sets out the legal and practice-specific requirements for such authorization to include that it must be: 1) In accordance with the specialty license of the nurse practitioner and with the scope of practice of the supervising physician; 2) Permitted by § 54.1-2957.02 or applicable sections of the Code of Virginia; and 3) Not in conflict with federal law or regulation..