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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC90-19
Regulation title(s)	Regulations Governing the Practice of Nursing
Action title	Clinical nurse specialist certification
Date this document prepared	6/7/19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Board is initiating rulemaking in response to a petition from the Virginia Association of Clinical Nurse Specialists, which requested changes to regulations relating to registration of a clinical nurse specialist (CNS). The Board intends to amend section 210 to clarify that it will accept for registration evidence of a clinical nurse specialist certification that has been retired or is the core certification, provided it has been maintained and is current. Likewise, a retired or core certification that remains current qualifies a clinical nurse specialist to renew registration.

In subsection B of section 210, the regulation will be amended to address renewal of a lapsed registration and reinstatement of a registration that has been suspended or revoked. Regulations will be aligned with those in section 190 relating to the reinstatement of a nursing license.

The goal of the amendments is to facilitate CNS registration and continued practice.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document. .

N/A

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The impetus for the regulatory change is a petition for rulemaking from the Virginia Association of Clinical Nurse Specialists.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’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 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:

- 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.*

...

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 authority for the Board of Nursing to register clinical nurse specialist 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: ...

9. To maintain a registry of clinical nurse specialists and to promulgate regulations governing clinical nurse specialists; ...

§ 54.1-3018.1. Registration of clinical nurse specialists.

The Board may register an applicant as a clinical nurse specialist if the applicant:

- 1. Holds a valid license to practice professional nursing pursuant to this article; and
- 2. Has successfully completed a graduate-level clinical nurse specialist program within a regionally accredited college or university that meets all educational qualifications and standards established by national certification guidelines and holds a national clinical nurse specialist certification that prepares the professional nurse to deliver advanced nursing services.

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

Regulations were recently amended to align regulatory provisions on national certification with the language of the Code in § 54.1-3018.1 (effective 3/22/19). Further amendments will clarify that the Board will accept a specialty examination that has now been retired but the certification has been maintained or will accept the core examination for national certification as a clinical nurse specialist. Amendments are also necessary to assure that a registered nurse who has allowed his CNS registration to lapse for more than one renewal cycle is safe and competent to resume advanced practice by requiring a criminal history background check and providing evidence of current certification.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Board intends to amend section 210 to clarify that it will accept for registration evidence of a clinical nurse specialist certification that has been retired or is the core certification, provided it

has been maintained and is current. Likewise, a retired or core certification that remains current qualifies a clinical nurse specialist to renew registration.

In subsection B of section 210, the regulation will be amended to address renewal of a lapsed registration and reinstatement of a registration that has been suspended or revoked. Regulations will be aligned with those in section 190 relating to the reinstatement of a nursing license.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

Since the requirements for registration are set in regulation, amendments are necessary to make any changes. There are no alternatives that meet the essential purpose of protection of the public.

In the petition, the Association recommended a number of changes that were either unnecessary because the suggested language is duplicative of general law or would exceed the statutory authorization for practice of a clinical nurse specialist. For example, a provisional registration, as requested by the petition, is not authorized by statute. Likewise, a registration, license or certification from another state cannot be accepted in lieu of national certification, as the statute requires an applicant to hold “a national clinical nurse specialist certification that prepares the professional nurse to deliver advanced nursing services” (§ 54.1-3018.1 of the Code of Virginia).

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation and the costs and benefits of the alternatives stated in this notice or other alternatives.

Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency’s contact if you’re interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulation.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and 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: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website , www.townhall.virginia.gov, or by mail, email or fax to Elaine Yeatts, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, 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. In order to be considered comments must be received by the last day 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 (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

A regulatory panel will not be used to develop the proposed regulation.