



Fast Track Proposed Regulation 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 Licensure of Nurse Practitioners
Action title	Clarification of provisional licensure
Document preparation date	11/17/05

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The proposed amendment will clarify the duration of a provisional license granted to an applicant for licensure as a nurse practitioner pending the results of the required national certifying examination for consistency with the current practice of electronic testing.

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 November 15, 2005 and on November 17, 2005, the Boards of Nursing and Medicine, respectively, adopted the proposed amendment to 18VAC90-30-10 et seq., Regulations Governing the Licensure of Nurse Practitioners as a fast track action.

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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

18 VAC 90-30-10 et seq. is jointly promulgated by the Board of Nursing and Medicine under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 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.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 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 and Chapter 25 of this title...*

The statute authorizing temporary or provisional licensure for licensed nurse practitioners is in § 54.1-2957 of the Code of Virginia.

§ 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.

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 the regulation 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.

The purpose of the proposed amendment is to clarify and specify the duration of time for which an applicant for licensure as a nurse practitioner may practice with a provisional license. Currently, there is no specific provision for the license to become invalidate if the applicant fails the certifying examination, which could allow someone to continue practicing with a provisional license even though they are not eligible for licensure. Also, the current regulation does not allow a provisional license to remain in effect after the applicant has received the results and passed the examination until the full license can be issued, which usually occurs within a couple of weeks. That has the potential of forcing a nurse practitioner to quit her practice and refrain for delivering patient care while she is awaiting issuance of her license. Either scenario is not in the best interest of the health and safety of patients who are receiving care from a nurse practitioner. The goal of the proposal is to specify that the provisional license is valid for up to six months or until the applicant passes the examination and receives a full license or until the applicant receives notice that he has failed the examination, which ever comes first.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast track action is being used because the amendment is a restatement of the provision for consistency with current practice of electronic testing by national credentialing bodies for nurse practitioners and current policy of the board. The amended regulation should be clarifying for candidates and less problematic for the agency in attempting to interpret the regulation.

Substance

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

The amended regulation will specify that provisional licensure can be granted provided the board has received evidence of the applicant’s eligibility to sit for the examination directly from the national certifying body. An applicant may practice with a provisional license for either six months from date of issuance or until issuance of a permanent license or until he receives notice that he has failed the certifying examination, whichever occurs first.

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 advantages to the public are the availability of nurse practitioners with provisional licenses who have demonstrated competency and eligibility for licensure and the assurance that an applicant who has not demonstrated competency is not authorized to continue practicing. There are no disadvantages to the public.
- 2) The primary advantage to the agency is the clarification and specificity of the rule, which enables Board staff to clearly interpret its intent and scope. There are no disadvantages.
- 3) There are no other pertinent matters of interest.

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</p>
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	already scheduled. There will be no on-going expenditures related to amending this chapter.
Projected cost of the regulation on localities	No projected cost to localities
Description of the individuals, businesses or other entities likely to be affected by the regulation	The persons affected by the regulation would be applicants for licensure by examination as nurse practitioners.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There were 389 persons licensed as nurse practitioners from 7/1/04 to 7/1/05, but most of those were licensed by endorsement, so no provisional license was issued. Our records indicate that 75 persons were issued a provisional license during that time period. Few, if any, of those issued a provisional license would be a small business entity, since nurse practitioners must work under the medical direction and supervision of a doctor. They are typically employed by a health care system, a clinic or a private physician office.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	There is no projected cost for affected individuals or businesses.

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.

The least burdensome alternative is an amendment that will clearly state the rule and policy of the Board of Nursing. Without the clarification, applicants have uncertainty about the extent of a provisional license and their authorization to continue practicing. Literally interpreted, the provisional license is supposed to end as soon as the candidate receives the results of the certifying examination (which leaves a gap in time between that date and the issuance of a full license), but the Board is not enforcing that because it would force nurse practitioners to leave their positions and not be available to provide patient care. The most reasonable and least burdensome alternative is to eliminate the problematic language in the rule.

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
80	n/a	Provisional licensure may be granted until the release of the results of the first national certifying examination for which he is eligible following his application.	<p>The amended regulation will specify that provisional licensure can be granted provided the board has received evidence of the applicant’s eligibility to sit for the examination directly from the national certifying body. An applicant may practice with a provisional license for either six months from date of issuance or until issuance of a permanent license or until he receives notice that he has failed the certifying examination, whichever occurs first.</p> <p><i>The current language of the regulation is not consistent with the today’s practice. Testing is computerized with the candidate choosing the date and testing site. The “first” examination for which the applicant is eligible could be the day after graduation since testing is conducted continuously. If interpreted literally, the regulation would render the provisional license almost meaningless. In addition, there is always a gap between the time the candidate receives the results of the examination and those results are sent to the Board and a full license issued. Again, literally interpreted, the regulations require discontinuation of the provisional license during that gap of time, even if the candidate has passed and obtained national certification.</i></p>

			<p><i>Once the national certifying bodies determine that a candidate is eligible, they give her a 3-month window of time in which to sit for the examination – the date is chosen by the candidate. Therefore, the six-month duration of provisional licensure should allow ample time for a candidate to take the exam and receive the results. If the candidate fails the examination, the provisional license is invalid. If the candidate passes the examination, the provisional license is continued until a full license is issued. The maximum duration of a provisional license would be six months.</i></p>
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