



Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC90-20-10 et seq.
Regulation title	Regulations Governing the Practice of Nursing
Action title	Issuance of single state license
Date this document prepared	7/27/10

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Regulations relating to the Nurse Licensure Compact have been amended to allow the board to license registered nurses and licensed practical nurses applicants who have had a license suspended, revoked or surrendered in another Compact state, if the nurse is eligible for reinstatement in that state but cannot be issued a license because she has moved to Virginia and Virginia is now her home state. The Code of Virginia was amended in 2010 to allow for the inclusion of regulatory language regarding the issuance of a single state license in such a case.

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 July 20, 2010, the Board of Nursing amended section 182 of 18VAC90-20-10 et seq., Regulations Governing the Practice of Nursing by 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.

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 issue a single state license to an applicant who has lost a license in another Compact state is found in § 54.1-2408:

§ 54.1-2408. Disqualification for license, certificate or registration.

A board within the Department of Health Professions shall refuse to admit a candidate to any examination and shall refuse to issue a license, certificate or registration to any applicant if the candidate or applicant has had his license, certificate or registration to practice the profession or occupation revoked or suspended, and has not had his license, certificate or registration to so practice reinstated by the jurisdiction which revoked or suspended his license, certificate or registration, except as may be necessary to license a nurse eligible for reinstatement in another party state as consistent with the Nurse Licensure Compact.

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.

If a nurse has had his license suspended or revoked by another state in the Nurse Licensure Compact and subsequently that nurse moves to Virginia, he is in a “catch-22” situation. Since he now resides in Virginia, he is ineligible by virtue of the Compact to apply for reinstatement of his nursing license in the former home state where the license was suspended or revoked. Yet, prior to July 1, 2010, § 54.1-2408 prohibited the Board of Nursing from licensing an individual who has been suspended or revoked. Therefore, even if that individual is eligible for reinstatement, he is unable to obtain a license either in Virginia or in the original Compact state. In order to protect the health and safety of patients in Virginia, the board will consider whether the applicant has met all terms and conditions and is eligible for reinstatement in the state where he was suspended or revoked.

The amendment in section 182 will ensure Virginia’s compliance with the Nurse Licensure Compact (NLC) policies and rules and provide a mechanism for the Board of Nursing to consider the application of an individual who now resides in Virginia and by virtue of the requirements of the NLC is ineligible to apply for licensure in the former home state where the license was suspended or revoked. The Nurse Licensure Compact Administrator Group has requested that all Compact states adopt regulations to conform to the NLC policy allowing for issuance of a license in this circumstance that would be valid for practice solely in the home state. States would be prohibited from issuing a license with a multistate privilege if the license had not been reinstated in the former home state.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

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 issue of licensure for an applicant who had a license that was surrendered, suspended revoked or denied in another Compact state but has met all terms and conditions is not controversial. When House Bill 662 was introduced in 2010 at the request of the Department, the inclusion of an amendment to allow such issuance was supported by all nursing groups, employers and other interested parties. Therefore, the addition of subsection B in section 182,

permitted by the passage of HB662 and the amendment to § 54.1-2408, should not be controversial.

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.)

Subsection B is added to section 182 to provide that an individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued.

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 to the public is the continued availability of nurses who have completed terms and conditions placed on their licenses in other states. There are no disadvantages.
- 2) The primary advantage to the agency is continued consistency with the Model Rules and Regulations of the Nurse Licensure Compact.
- 3) There are no other pertinent matters of interest.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected by the proposed regulation.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods for accomplishing the intent of the proposed regulation.

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 fees it charges to practitioners; b) The agency will incur some one-time costs (less than \$1,000) 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. There are no on-going costs to the agency.</p>
<p>Projected cost of the regulation on localities</p>	<p>There are no costs to localities</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The individuals affected would be certain applicants for licensure.</p>
<p>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</p>	<p>It is unknown how many applicants for licensure could qualify under this provision.</p>

of less than \$6 million.	
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 would be no additional cost.

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. 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 regulation.

In 2008, the Model Rules and Regulations for the Nurse Licensure Compact were amended by the Compact Administrators to provide additional guidance on the acceptance of identification of residence and issuance of a single state license or multistate licensure privilege. Subsequently, the Board amended its Compact regulations in 2009 to add two new identification forms acceptable as evidence as primary residency, and to allow a nurse from another country a choice of declaring either the country of origin or Virginia as the primary state. Additionally, a new regulation was adopted to specify that a single state license should be clearly marked that it is valid only in the state of issuance.

The amendment requested by the Compact in 2008, relating to the issuance of a license to an individual who has had a license denied, surrendered, suspended or revoked in another party state, was not included in the 2009 fast-track action because it was in conflict with Virginia law in § 54.1-2408. Consequently, the Department of Health Professions included an amendment in its legislative package for 2010 to amend § 54.1-2408 to permit the issuance of a licensure to an applicant who is eligible for reinstatement in another party state. With passage of that legislation (HB662), the Board is now authorized to include the Model Rules language found in subsection B of section 182.

Family impact

Please assess the 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 family.

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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
182	n/a	Sets a limitation of a multistate licensure privilege for a nurse under disciplinary orders in a Compact state.	<p>Subsection B provides: An individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued.</p> <p><i>As a member of the Nurse Licensure Compact, Virginia has followed model laws and regulations for consistency with other Compact (party) states. Since nurses with a multistate licensure privilege are allowed to practice in any Compact state, rules for licensure should be similar, if not identical, to ensure that standards are consistent.</i></p> <p><i>The amendment would allow Virginia to issue a single state license to an individual who is eligible for reinstatement but who has moved away from the Compact state that initially took disciplinary action.</i></p>