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## Fast-Track Regulation Agency Background Document

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| <b>Agency name</b>                                    | Board of Nursing, Department of Health Professions |
| <b>Virginia Administrative Code (VAC) citation(s)</b> | 18VAC90-19   |
| <b>Regulation title(s)</b>                            | Regulations Governing the Practice of Nursing      |
| <b>Action title</b>                                   | Nametag for foreign graduates                      |
| <b>Date this document prepared</b>                    | 1/28/20  |

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 VAC7-10), 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

In response to a petition for rulemaking, the Board has amended 18VAC90-19-130 to allow an applicant who is a graduate of a foreign education program and is practicing nursing during a 90-day period following submission of an application to use the title "RN Applicant" on a nametag.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

N/A

## 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 January 28, 2020, the Board of Nursing amended the following 18VAC90-10-130, Regulations Governing the Practice of Nursing.

## 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."*

*As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.*

The Board is amending 18VAC90-19-130 in response to a petition for rulemaking. The petition was overwhelming supported by public comment, so the Board has adopted the proposed amendment by a fast-track process.

## 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 (6), 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: ...*

*5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege 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 (§ 2.2-4000 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. ...*

## Purpose

*Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

The amendment will allow the use of the term RN applicant for foreign graduates awaiting approval for licensure; it is consistent with the nametag requirement for U.S. graduates practicing during a 90-day approval period. Since all applicants complete the same licensing examination and foreign graduates undergo a rigorous evaluation process, the amended nametag designation continues to protect public health and safety by indicating that the nurse providing care is an applicant for licensure who has been approved by the Board to practice for a certain period of time.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

The Board has amended 18VAC90-19-130 to allow an applicant who is a graduate of a foreign education program and is practicing nursing during a 90-day period following submission of an application to use the title "RN Applicant" on a nametag, rather than the designation of "Foreign graduate applicant."

## Issues

*Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

- 1) There are no primary advantages or disadvantages to the public; the public is equally protected by use of the amended title.
- 2) There are no advantages or disadvantages to the Department.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under 54.1-2400 to "promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. which are reasonable and necessary to administer effectively the regulatory system." There is no restraint on competition that results from this regulation and is in accord with the General Assembly's policy as articulated in § 54.1-100.

**Requirements More Restrictive than Federal**

*Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

There are no applicable federal regulations.

**Agencies, Localities, and Other Entities Particularly Affected**

*Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

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| <p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:<br/>                 a) fund source / fund detail;<br/>                 b) delineation of one-time versus on-going expenditures; and<br/>                 c) whether any costs or revenue loss can be absorbed within existing resources</p> | <p>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 or entities for necessary functions of regulation. All notifications will be done electronically.<br/>                 There are no on-going expenditures.</p> |
| <p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>  | <p>None</p>  |
| <p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>  | <p>None</p>  |

**Impact on Localities**

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| Projected costs, savings, fees or revenues resulting from the regulatory change. | None |
| Benefits the regulatory change is designed to produce.                           | None |

**Impact on Other Entities**

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| Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.  | Foreign-educated nurses who have applied for RN licensure  |
| 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:<br>a) is independently owned and operated and;<br>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.  | In the first quarter of FY20, there were 3025 new licenses issued for registered nurses. The agency does not have an estimate of how many are foreign graduates. |
| All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:<br>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;<br>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;<br>c) fees;<br>d) purchases of equipment or services; and<br>e) time required to comply with the requirements. | There are no costs.  |
| Benefits the regulatory change is designed to produce.   | Elimination of any perceived or actual discrimination against foreign-educated nurse applicants based on a designation on the nametag.                           |

**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.*

The action is a less burdensome and intrusive alternative that meets the essential purpose of protecting the public. It was supported by 328 commenters on the petition for rulemaking in a 30-day comment period that ended 12/25/19.

### Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

There is no regulatory flexibility; the nametag requirement is set in regulation.

### Public Participation

*If an objection to the use of the fast-track process is received within the 30-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: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

### Detail of Changes

*Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.*

| <b>Current section number</b> | <b>Current requirement</b>  | <b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>   |
|-------------------------------|---|---|
| 18VAC90-19-130                | Establishes requirements for applicants from foreign nursing education programs | <p>An amendment to subsection D changes the requirement for an applicant who is a foreign graduate practicing during a 90-day temporary period following application. Currently, the applicant must use the designation “foreign nurse graduate;” the amended regulation will allow use of the term “RN applicant” on a nametag and when signing official records.</p> <p><i>Advocates for the petition and the proposed amendment, primarily the Philippine Nurses Association, support the change to avoid an undue and unnecessary discrimination against foreign-educated nurses. These applicants must take the same NCLEX examination as those in the U.S. and undergo an evaluation of their education to determine that it is equivalent in rigor to U. S. applicants, so there should not be a double-</i></p> |

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|  |  | <p><i>standard. Section 110 currently requires an applicant from an approved nursing education program to work for 90 days while awaiting licensure. Those applicants use the designation of RN applicant.</i></p> |
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