



Virginia
Regulatory
Town Hall

Emergency Regulation Agency Background Document

Agency Name:	Board of Medicine, Department of Health Professions
VAC Chapter Number:	18 VAC 90-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Nursing
Action Title:	Workforce data collection
Date:	7/18/00

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

Amendments to regulation are required in order to conform to an enactment clause in Chapters 587 and 701 of the 2000 Acts of the Assembly requiring the Board to promulgate regulations within 280 days of enactment for the implementation of workforce data collection for nurses. The deadline for having emergency regulations in effect is January 12, 2001.

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

The legal authority to promulgate the emergency regulation is in second enactment clauses of House Bill 1249 and Senate Bill 488 of the 2000 Acts of the Assembly, which state: *"That the Board of Nursing shall promulgate regulations to implement the provisions of this act within 280 days of enactment."*

The Board is mandated to *"promulgate regulations to implement the provisions of this section. Such regulations shall include: (i) the specific number and types of nursing workforce data elements to be collected; (ii) the process by which the information is collected, stored, and made available to interested parties; (iii) provisions to ensure the confidentiality of the data to be collected and to protect the identity of all individuals submitting information; and (iv) other provisions as determined by the Board."*

The Office of the Attorney General has certified that the "emergency situation" which exists is specified in § 9-6.14:4.1 (C)(5)(ii) of the Code of Virginia as one in which the agency is required by statutory law to have a regulation in effect within 280 days from the enactment of the law.

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

A new section of the Code of Virginia (§ 54.1-3012.1) stipulates that the Board shall collect, store and make available nursing workforce information on the various categories of nurses *"with such funds as are appropriated for that purpose."* Therefore, the Board is mandated to promulgate regulations for the collection of data on the nursing workforce, but the extent of data collection and distribution is dependent on the amount of General Fund money available through the budget.

The law further specifies in subsection C of § 54.1-3012.1 the data elements to be collected to include *i) demographic data; (ii) level of education; (iii) employment status; (iv) employment setting such as in a hospital, physician's office, or nursing home; (v) geographic location of employment; (vi) type of nursing position or area of specialty; and (vii) number of hours worked per week.* It requires the Board to collect and update information biennially and to make the data available to interested parties only in aggregate form. Information which could identify individual nurses cannot be released in any form or manner.

The Code has specifically set out minimal requirements for data elements, a schedule for collection and provisions for confidentiality, but the Board is required to promulgate regulations that address at least the data elements to be collected, the process for collection and distribution, and provisions for confidentiality.

The Code of Virginia, as amended by Chapters 587 and 701 also adds the collection, storage and distribution of nursing workforce information to the powers and duties of the Board prescribed in § 54.1-3005.

Most of the issues related to workforce data collection have already been addressed by passage of the legislation in HB1249 and SB488. That legislation, as introduced, would have required the Board of Nursing to collect, store and distribute information from special dedicated funds of the Board, which are derived from fees charged to nurses. Since the data is intended for workforce planning and not for public protection, the Office of the Attorney General ruled during a previous session of the General Assembly that the Board could not use its funds for that purpose. Therefore, the enabling legislation was amended to specify that data collection would occur with "*such funds as are appropriated for this purpose.*" Accompanying the legislation was a budget amendment appropriating \$40,000 for each of the two years of the biennium for data collection by the Board.

With the limitation of the funding and the specific prohibition against distribution of information which identifies individual nurses, some of the intended uses for and issues related to data collection became moot. For example, some nursing education programs had wanted to use the information to send mailings to nurses, customized according to data provided on a survey by the Board. That would require identification of nurses by name and address with the responses given on the data survey form, which is prohibited by law. Also, collection of data on all 140,000 nurses licensed or certified under the Board will not be possible with the funds available. With only \$40,000 available each year to collect, store and develop reports, the Board will be required to solicit information from a sampling of its licensees. A sampling of the workforce may be useful but may not provide the extensive informational base that hospitals and educational institutions had intended to be accumulated.

Once the parameters of the legislation and the limitations of funding were discussed and understood by an advisory group on nursing workforce data, issues surrounding the promulgation of regulations were resolved in favor of rules that are reflective of and conforming to the law. By making available data on the nursing workforce, institutions charged with

planning for nursing education and employment will be able to more accurately plan their curriculum and recruitment to address manpower needs for the future.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

While there was no alternative to the legal mandate for promulgation of regulations, the scope of nursing workforce data collection is limited by the amount appropriated for that purpose and the restriction of distribution of information that identifies an individual nurse. The Board elected to propose regulations that are consistent with the provisions of law but do not expand the limited scope of the collection requirement. It did consider alternatives to the wording of data collection surveys, which are required by other states and nursing organizations. The content of the survey form was not set forth in regulation, but the general data elements to be collected were specified. An ad hoc advisory committee, composed of representatives of nursing organizations, educational institutions and other health related groups met to discuss the legislation, its limitations, and the type of data that was essential for inclusion in any gathering and transmittal of information on the nursing workforce. The recommendations of that group were considered by the Board in the adoption of proposed regulations.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the emergency action on the institution of the family and family stability including to what extent the 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.

The Board has determined that there is no impact on the family or family stability, the rights of parents, economic self-sufficiency or disposable family income as a result of amendments to regulations.