



Proposed Regulation Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC90-20
Regulation title	Regulations Governing the Practice of Nursing
Action title	Requirements for foreign-trained nurses
Date this document prepared	12/5/08

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

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The Board of Nursing has amended its requirements for foreign-trained nurses to eliminate the qualifying examination requirement for registered nurses but retain the educational and licensure review for comparability and the requirement for a test of English proficiency. For practical nurses educated in other countries, the credentials review is retained and a test of English proficiency is included in regulations as it is now required for an occupational visa into the United States. For both professions, the Commission on Graduate of Foreign Nursing Schools (CGFNS) is recognized in federal law and in Virginia regulation as the body that is approved to certify comparability and eligibility. However, the Board may accept other agencies that provide a similar level of assurance and thoroughness in reviewing documents and tests for English proficiency.

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 Code of Virginia citation and General Assembly

chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe 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 (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:

- 1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege 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, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.*
- 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 (§ 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. ...*

In addition, there is statutory language specifying certain requirements for foreign-trained nurses. The provision in subsection B for the CGFNS examination is permissive, giving the Board the option to eliminate the requirement:

§ 54.1-3017. Qualifications of applicant for registered nurse's license; examination; graduates of foreign nursing education programs.

A. An applicant for a license to practice professional nursing shall submit evidence satisfactory to the Board that such applicant:

- 1. Has completed an approved four-year high school course of study or the equivalent as determined by the appropriate educational agency;*
- 2. Has received a diploma or degree from an approved professional nursing education program;*
- 3. Has passed a written examination as required by the Board; and*
- 4. Has committed no acts which are grounds for disciplinary action as set forth in this chapter.*

B. An applicant who graduated from a nursing education program in a foreign country may be required to pass the Commission on Graduates of Foreign Nursing Schools Qualifying Examination prior to admission to the examination for licensure in this Commonwealth.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The Board of Nursing received a petition for rule-making requesting the elimination of the examination of foreign-trained nurses by the Commission on Graduates of Foreign Nursing Schools (CGFNS) as a requirement for registered nurse licensure in Virginia. The signatories to the petitions and supporting letters requesting elimination of the CGFNS qualifying examination cite the current nursing shortage as an indication that the Board should consider elimination of any barrier to licensure that is not necessary to ensure the competency of an applicant. Recruitment of nurses from other countries may help alleviate the shortage in Virginia if the barrier of CGFNS examination is removed. Since at least 22 other states currently do not require the CGFNS qualifying examination, foreign-trained nurses often choose to immigrate to those states instead.

Petitioners are not requesting elimination of the credentials review and the test of English proficiency; those coupled with a requirement for passage of National Council Licensing Examination (NCLEX), the national licensing examination that all nurses (RN or PN) must take, should assure that foreign-trained nurses have the basic nursing knowledge, clinical ability, and communication skills to practice with safety. Since NCLEX is more generally available in foreign countries than in the past, many nurses are able to come to the United States fully qualified for licensure. NCLEX is currently administered in Australia, Canada, England, Germany, Hong Kong, India, Japan, Mexico, Philippines, Puerto Rico and Taiwan. For applicants from those countries, the CGFNS qualifying examination is viewed as an additional burden for licensure in Virginia.

Substance

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

Regulations will eliminate the requirement for the CGFNS examination but maintain a requirement for the credentials review and test of English proficiency. Amendments will also authorize acceptance of credentialing by an agency other than CGFNS if approved by the Board.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

- 1) The primary advantage to the public may be a very modest increase in the availability of foreign-educated nurses. Since a foreign-educated nurse must pass either the CGFNS qualifying examination or NCLEX prior to being given a visa, only applicants from countries where NCLEX is offered would benefit from elimination of the qualifying examination. There are no disadvantages; nurses from other countries would continue to be required to pass NCLEX, have educational credentials comparable to those required in the U. S., have some English proficiency, and have their foreign licenses verified as valid.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) There are no other pertinent matters of interest.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are 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.

The requirements are consistent with federal requirements of the Department of Homeland Security (8 CFR Parts 103, 212, 213, 245, 248 and 299 – Rules for Certificates for Certain Health Care Workers, effective September 23, 2003).

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.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by email to Elaine Yeatts to Elaine.yeatts@dhp.virginia.gov, fax to (804) 527-4434 or by regular mail to: Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

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 applicants as licensed practical nurses and registered nurses from foreign schools of nursing.</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 of less than \$6 million.</p>	<p>The number of foreign-educated applicants for nursing licensure is currently less than 100 per year.</p>	
<p>All projected costs of the regulation for affected individuals, businesses, or other entities.</p>	<p>There should not be additional costs for foreign-educated nurses who must now obtain a VisaScreen</p>	

<p>Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>Certificate (credentials assessment and an English proficiency test) in order to obtain an occupational visa as a health care worker. For registered nurse applicants, the proposed regulations would eliminate the CGFNS Qualifying Examination requirement.</p> <p>In lieu of submitting CGFNS Certification, which includes passage of the qualifying examination, an applicant would be able to submit a credentials evaluation, including licensure verification, and an English language report for a total cost of \$403 (CGFNS cost). The elimination of the qualifying examination will only reduce the cost by \$15 but will reduce the burden of sitting for an examination that may not be necessary.</p>
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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.

A petition for rulemaking received October 23, 2007 was published November 27, 2007 with a request for comment until December 26, 2007. The Board received numerous letters in support of the request, as well as petitions signed by supporters. In addition to the information provided by the petitioner and supporters about the need to eliminate the CGFNS examination, the Board reviewed the current statutory and regulatory requirements, information about the CGFNS certification program, information about the CGFNS credentials evaluation service and information from the National Council of State Boards of Nursing about the requirements in other states. Based on the availability of services for verifying credentials and the policies adopted in other jurisdictions, the Board determined that it was reasonable to move forward with the promulgation of an amended 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; requirements for licensure as a nurse are set in regulations adopted by the Board.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Perry Francisco	Change is long overdue and will keep Virginia competitive in attracting foreign nurses	Board concurs with the comment
Teresa Haller, President Virginia Nurses Association	Supportive of Board’s intent to eliminate the CGFNS qualifying examination. The credentials review, test of English proficiency, verification of licensure in another country and passage of NCLEX provide sufficient evidence of competency.	Board concurs with the comment
Donna Richardson, CGFNS Director of Governmental Affairs	Notes the current relevancy of the CGFNS Qualifying Exam; Homeland Security requires passage of either the qualifying exam or NCLEX to obtain an occupational visa. However, requirements proposed by the Board could be satisfied with a certificate from the CGFNS Certification Program or the International Commission on Healthcare Professions (IHP) VisaScreen Assessment or a CGFNS Credentials Evaluation Service report.	Board concurs with the comment

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 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.

Current section number	Current requirement	Proposed change and rationale
10	Provides definitions for words and terms used in this chapter.	<p>Adds a definition for “CGFNS” as the Commission on Graduates of Foreign Nursing Schools.</p> <p><i>Since there are several references to the Commission in the proposed regulations, the use of the initials is less cumbersome.</i></p>
210	Sets out licensure qualifications for applicants from other countries	<p>In subsection B, requirements for applicants from other countries seeking licensure as registered nurses are amended by:</p> <ol style="list-style-type: none"> 1. Eliminating the requirement for passage of the qualifying examination from CGFNS. 2. Retaining a requirement for evidence from CGFNS that the secondary education, nursing education, and license are comparable to those required for registered nurses in the Commonwealth; and 3. Specifying that evidence of passage of an English language proficiency examination be approved by the CGFNS, unless the applicant meets the CGFNS criteria for an exemption from the requirement; and <p><i>Currently, evidence of passage of the CGFNS qualifying examination is required. Prior to being allowed to sit for the CGFNS qualifying examination, an applicant must undergo a credentials review that verifies comparability of the education and licensure of the applicant. CGFNS also requires passage of TOEFL, an English language proficiency examination, unless the applicant comes from an English-speaking country and attended an English-speaking nursing program. CGFNS sends the Board a certification that the applicant has completed all steps and is qualified to sit for NCLEX, the nursing licensure examination. The proposed regulation would retain all current qualifications and requirements, except the qualifying examination would be eliminated.</i></p> <p><i>Federal law requires passage of the CGFNS Qualifying Examination or passage of NCLEX prior to obtaining a visa. Therefore, the change in Virginia regulations will only benefit those foreign-educated nurses from countries in which NCLEX is offered (such as the Phillipines).</i></p> <p>A new subsection C sets out the requirements for applicants for practical nurse licensure, which are identical to those for registered nurses, except the education and licensure must be comparable to those required for practical nurses in Virginia.</p> <p><i>Currently, the requirements for practical nurses are set out in subsection D, but since the credentials review and English proficiency requirements would be similar to RN</i></p>

		<p><i>requirements, the two sections were placed in sequence. The requirements for a credentials review and licensure verification are not changed. However, there is an added requirement for a test of English proficiency. Such a requirement is necessary to ensure that applicants are able to practice with safety and skill in any setting in Virginia. Board staff is questioned by employers and applicants about a measure of English proficiency, so requiring such a test would provide that assurance. In its comment on the NOIRA, the CGFNS noted that an educational assessment with proof of English proficiency is essential for LPN's, who are often the providers of choice in long-term care and home health, arenas with healthcare delivery to a very vulnerable population and less registered nurse supervision. They also noted that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 mandates that a foreign-educated nurse must be competent in oral and written English in order to obtain an occupational visa.</i></p> <p>A new subsection E authorizes the Board to accept credentials from recognized agencies, other than CGFNS, that review credentials of foreign-educated nurses if such agencies have been approved by the board.</p> <p><i>While the Board <u>strongly</u> encourages the use of CGFNS for all foreign-educated nurses, it has accepted credentials for practical nurse applicants from a small number of other agencies. CGFNS is nationally and internationally recognized for its integrity and reliability and is the only agency that has been approved for registered nurse credentialing. It is also recognized in federal law as the agency recognized to do credentials evaluations for foreign-educated nurses. CGFNS noted in its comment that it has been contacted by various state boards of nursing asking for consultation about questionable diplomas and transcripts for practical nurse applicants. Without the appropriate expertise to do so, it is difficult for Board staff is evaluate whether an unknown credentialing body is accurately and honestly determining comparability and licensure in a foreign country.</i></p>
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