



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Nursing; Department of Health Professions
<b>Virginia Administrative Code (VAC) citation</b>	18VAC90-20-10
<b>Regulation title</b>	Regulations Governing the Practice of Nursing
<b>Action title</b>	Consistency with model rules for Nurse Licensure Compact
<b>Date this document prepared</b>	1/30/13

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

Section 181 is amended to allow a nurse who is changing her primary state of residence to practice under the former party state license and multistate licensure privilege for a period not to exceed 90 days rather than the current limitation of 30 days while awaiting approval of application.

### 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.*

The Board of Nursing adopted the amendments to 18VAC90-20-10 et seq., Regulations Governing the Practice of Nursing on January 29, 2013.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

**Chapter 24 of Title 54.1** establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations.

*§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:*

- 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...*

Article 6 of Chapter 30 in Title 54.1 establishes the legal framework for Virginia's participation in 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.*

Since Virginia regulations for participation in the Nurse Licensure Compact need to be consistent with its Model Rules and Regulations, the amendment is adopted under a fast-track action. Permitting practice for 90 days by a nurse moving from one Compact state to another will ensure sufficient time to process documentation and avoid a gap in the licensure privilege. Nurses moving to Virginia will be able to begin employment without concern that the transfer to a new party state cannot be accomplished within the current 30-day window. The ability to practice for 90 days during the processing of the nurse's application may modestly increase the availability of nursing care for the health and safety of patients in Virginia.

## 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 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 (i) file notice of the objections 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.*

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The amendment is less restrictive, conforming to Model Rules of the Compact and therefore, not 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.) Please be sure to define any acronyms.*

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Section 181 is amended to allow a nurse who is changing her primary state of residence to practice under the former party state license and multistate licensure privilege for a period not to exceed 90 days rather than the current limitation of 30 days.

**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.*

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- 1) The primary advantage to the public is the potential increase in the employment of nurses moving from another Compact state into Virginia. There are no disadvantages.
- 2) The advantage to the Commonwealth is consistency with the Model Rules of the Compact; there are no disadvantages.
- 3) There are no other pertinent matters.

**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.*

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There are no applicable 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.

**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. The rule is consistent with other states that participate in the Nurse Licensure Compact.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<p><b>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</b></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 not incur additional costs for email notification to persons on the Public Participation Guidelines mailing lists. There will be no on-going expenditures related to this action.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>There are no costs to localities.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>The individuals affected by this regulation would be persons who are applying for a multistate licensure privilege in nursing, who are transferring from another party state.</p>
<p><b>Agency’s best estimate of the number of such</b></p>	<p>During the past fiscal year, there were 3355 RN’s</p>

<p><b>entities that will be affected. Please include an estimate of the number of small businesses affected.</b> 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>and 416 LPN's who were licensed by endorsement during FY12. Since almost half of the U.S. states belong to the Nurse Licensure Compact, it is estimated that approximately half of the endorsement applicants could potentially be affected by the change in regulations.</p>
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>There should be no costs associated with this action.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>Persons transferring from another party state will have an additional 60 days in which to have documentation sent and approved by the new state of residence (Virginia).</p>

**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.*

Articles 6D and 8C of the Nurse Licensure Compact grant authority to the Compact Administrators to develop uniform rules to facilitate and coordinate implementation of the Compact. On November 13, 2012, the Compact administrators amended the rules for issuance of a license by a Compact party state. Amendments to section 181 are made to conform to the change in time period for authorization to practice from 30 to 90 days.

**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 list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

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

For changes to existing regulation(s), use this chart:

<b>Current section number</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
181	Sets out the requirements for issuance of a license by a Compact party state	<p>C. A nurse changing the primary state of residence from another party state to Virginia may continue to practice under the former party state license and multistate licensure privilege during the processing of the nurse's licensure application by the board for a period not to exceed <del>30</del> <u>90</u> days.</p> <p>1. If a nurse is under a pending investigation by a former home state, the licensure application in Virginia shall be held in abeyance and the <del>30-day</del> <u>90-day</u> authorization to practice stayed until resolution of the pending investigation.</p> <p><i>In order to transfer from one party state to another, the nurse must provide documentation that Virginia is now his primary state of residence. Acceptable documentation is set out in subsection A. To ensure that there is no gap in the privilege to practice, the time allowed for transfer to the new home state is extended from 30 days to 90 days. If the nurse is under investigation by the former home state, the licensure application is held in abeyance and the 90-day authorization to practice stayed until there is resolution.</i></p>