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Proposed Regulation Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation(s)	18VAC90-19
Regulation title(s)	Regulations Governing the Practice of Nursing
Action title	Name tag requirement
Date this document prepared	3/21/17

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

Section 50 is amended to specify that a nurse's name badge must follow the policy of the employment setting for name identification of health care practitioners. The requirement is retained for the badge to indicate the appropriate title for the license, registration, or student status under which the nurse is practicing in that setting.

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.

LPN = licensed practical nurse
RN = registered nurse

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.

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:

...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. ...

Among the powers and duties of the Board of Nursing is a statutory provision relating to name tags for nurses in certain employment settings:

§ 54.1-3005. Specific powers and duties of Board.

In addition to the general powers and duties conferred in this title, the Board shall have the following specific powers and duties:...

20. In order to protect the privacy and security of health professionals licensed, registered or certified under this chapter, to promulgate regulations permitting use on identification badges of first name and first letter only of last name and appropriate title when practicing in hospital emergency departments, in psychiatric and mental health units and programs, or in health care facility units offering treatment for patients in custody of state or local law-enforcement agencies;

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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.

The purpose of the proposed action is to promulgate a rule that adequately protects nurses but also offers sufficient information for patients who need to know what type of practitioner is providing care and how to identify the practitioner in case there is evidence of unprofessional conduct. The Board had to balance nurses' concern about their privacy and personal security with its responsibility to adopt regulations that protect the public health and safety.

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.

Section 50 is amended to specify that the policy of the employment setting for name identification of health care practitioners can determine how the nurse's name is displayed on a name badge.

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 of the amendment is greater flexibility and potentially greater protection for nurses who are concerned about their security both within and outside their practice setting. There are no disadvantages to the public because the badge must still indicate the appropriate title, so a patient would know whether this person is an RN, LPN, "patient care technician" or some other title.

2) There are no advantages or disadvantages to the Commonwealth.

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 which are reasonable and necessary to administer effectively the regulatory system.*"

The proposed name badge regulation is a foreseeable result of the statute requiring the Board to protect the health and safety of patients in the Commonwealth. It is more flexible than the current requirement and constitutes no restraint on competition.

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 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.

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 of Nursing 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 for the public comment file may do so by mail, email or fax to Elaine Yeatts at elaine.yeatts@dhp.virginia.gov or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434.. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

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.

Projected cost to the state to implement and	There are no cost for implementation and
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<p>enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>enforcement. Funds for the Board of Nursing are provided by fees charged to applicants and licensees.</p>
<p>Projected cost of the new regulations or changes to existing regulations 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 new regulations or changes to existing regulations.</p>	<p>All RNs and LPNs</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: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are 29,831 LPNs and 104,956 RNs licensed in Virginia. While some would qualify as small businesses, most are employees of medical practices, long-term care facilities, or hospital systems.</p>
<p>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 including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) 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.</p>	<p>There are no costs; the regulation is permissive and allows an employer to determine whether to retain the current format of name badges or make changes in its policy on identification of practitioners.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Potentially, greater identity protection for nurses in their employment settings.</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.

The Board is responding to a petition for rulemaking requesting an amendment to allow use of first name and last initial on a name tag for nurses in all settings. The petition requested a less burdensome and intrusive alternative to current regulations, so changes to achieve that purpose must be accomplished by amendments to Chapter 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) 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.

The proposed regulation is less stringent and offers more regulatory flexibility.

Public comment

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

The Notice of Intended Regulatory Action was published on 1/23/17 with comment received until 2/22/17. There were 207 persons who posted comments on Townhall.

Commenter	Comment	Agency response
190 persons	Agreed with petitioner that the name badge should have first name and last initial; others advocated for first name only. Some wrote generally in favor of greater protection and privacy in general.	The regulation allows the employer to adopt the policy preferred by employees and appropriate to the practice setting.
Victoria Bierman	Name badges should be site-specific. For advanced practice nurses, better to have last name on badge.	The Board adopted a flexible rule to allow employers to set their own policies.
Susan Winslow	Asked for consistency with other professionals in pharmacy, medicine, and therapy in which one's last name on the badge is used.	The Board's proposed regulation does specify the name badge should follow the policy for all health care practitioners. The employer may choose to allow nurses to use first names and last initial, but may have a different policy for others.
C. F. Kane	This should be a facility decision, not a regulation of the Board.	The proposed regulation places the decision in the employer policy.
Patricia Seifert	Does not favor first name and last initial; important to practice in a transparent manner and have accountability.	Since this commenter identified herself as self-employed, she would have the option of determining her identification on a name badge.
Stephanie Smith	People should be given the option of choosing first and last or first with last initial.	While the proposed amendment does not give the option to each individual nurse, options are available to nurses in a particular employment setting.
Jay Gilbert	Supports the petitioner request, but nurses should be given the option of choosing to use full name.	Same as above.
Leslie Durr	Does not support first name only or with last initial; other professions would not identify themselves as Harry J, rather than Dr. Jones.	The proposed regulation is consistent with the comment.
Mary Holc	Does not support regulatory action;	The titles would not change - would still be

	wants titles displayed on badges so patients know the expertise of person providing care.	required on the name badge.
Correctional centers	Several persons commented that only last names should be on a badge because it is inappropriate for offenders to address professional staff by first name.	The proposed regulation supports the flexibility of a policy suitable to the population being served.
Jennifer Dixon	As professionals, should have first and last name on badge but nurses in high risk areas should be allowed to use only first name.	Supportive of current regulation, which the Board has amended.

Family impact

Please assess the impact of this 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 list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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 follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
50	Subsection A requires a person regulated by this chapter who provides direct client care to wear identification that indicates the person’s first and last name.	The proposed change is to allow the employer to determine the name identification on a badge consistent with the policy for other health care practitioners. <i>The change allows more flexibility and equality for nurses who will be identified similarly to other health care practitioners, such as doctors, physical therapists, etc. The exception to the current rule for emergency departments and other locations where it might be dangerous or at least problematic for a patient to have a nurse’s</i>

	<i>full name has been retained because it is consistent with language in § 54.1-3005 (20).</i>
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