Virginia Regulatory Town Hall

townhall.virginia.gov

Fast Track Proposed Regulation
Agency Background Document

Agency name	Board of Nursing; Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC90-60-10 et seq.
Regulation title	Regulations Governing the Registration of Medication Aides
Action title	Regulatory reform
Date this document prepared	2/1/13

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Regulations are amended to: 1) facilitate electronic submission of documents and forms; 2) accept a certificate of naturalization as evidence of a name change; 3) clarify the process for application approval and requesting an informal conference if there is a denial; 4) allow up to 20% of the skills practice to be by simulation; 5) allow completion of a nursing education to count for training in client care; and 6) allow an exception to the prohibition for intramuscular administration of medication for glucagon.

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 18VAC90-60-10 et seq., Regulations Governing the Registration of Medication Aides 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…*

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.

The purpose of the amendments is to update language and eliminate unnecessary or outdated provisions. Inclusion of language consistent with current practices will facilitate administration of medications and submission of documentation for registration. The goal is to enable qualified applicants to obtain registration which provides the public with some assurance of competency and accountability in the administration of medications to residents of assisted living facilities.

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.

The amendments are less restrictive and not controversial. There were no comments received during the comment period on periodic review.

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.

Regulations are amended to: 1) facilitate electronic submission of documents and forms; 2) accept a certificate of naturalization as evidence of a name change; 3) clarify the process for application approval and requesting an informal conference if there is a denial; 4) allow up to 20% of the skills practice to be by simulation; 5) allow completion of a nursing education to count for training in client care; and 6) allow an exception to the prohibition for intramuscular administration of medication for glucagon.

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 to the public is facilitation of applications, expansion of educational opportunity and elimination of confusing, outdated language. There are no disadvantages.
2) The advantage to the Commonwealth is clarity in the regulations which reduces queries to board staff.
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.

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. Elimination or reduction in the regulatory burden requires promulgation of amendments to regulations.

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 enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	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.
Projected cost of the *new regulations or changes to existing regulations* on localities.	There are no costs to localities.
Description of the individuals, businesses or other entities likely to be affected by the *new regulations or changes to existing regulations*.	Medication aides or persons applying for registration.
Agency's best estimate of the number of such entities that will be affected. Please include an	There are currently 4936 persons certified as medication aides in Virginia. None would be

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.	considered small businesses.
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.	There would be no costs associated with this action.
Beneficial impact the regulation is designed to produce.	Greater efficiency in applying for registration and increased opportunity for medication administration training

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.

There are no alternatives that will accomplish the purpose of eliminating outdated language and reducing the regulatory burden.

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.

Current section number	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
20	Sets out the requirements for accuracy of records maintained by the Board	In subsection B, the amendment will allow a certificate of naturalization to be used as documentation of a name change. *The amendment is less burdensome and costly; currently a court order or a marriage certificate would be required.* In subsection C, the amendment allows a change of address to be submitted *electronically* in addition to a written submission. *The change will facilitate submission of documentation. It is less burdensome and costly for registrants.*
40	Sets out the requirements for establishing and maintaining a medication aide training program	Amendments to subsection A include: 2. ~~The application shall provide evidence~~ Initial approval may be granted when all documentation of the program's compliance with requirements as set forth in this part has been submitted and deemed satisfactory to the board. 3. ~~The committee shall,~~ If approval is denied, the applicant may request, within 30 days of the mailing of the decision, an informal conference committee convened in accordance with § 2.2-4019 of the Code of Virginia~~, receive and review the application and shall make a recommendation to the board to grant or deny approval~~. *Amendments will clarify the process for approval of a training program and for the process of requesting a hearing before an IFC is approval is denied. The regulation is not substantively changed.*
60	Sets out requirements for the program curriculum	In subsection B, the hours of instruction require 20 hours of supervised skills practice. An amendment will allow 20% of those hours to be a simulation experience. *The amendment is less restrictive and will facilitate programs in providing skills practice. The percentage is consistent with the allowance for simulation in nursing education programs.*
90	Sets out requirements for initial registration	Subsection A requires general training in direct client care; the Board has added completion of a nursing education program to the list of programs that would fulfill that requirement. In 2 c of subsection A, there is a "grandfathering" provision for persons who were already practicing as medication aides, which expired in 2009. It is deleted to avoid confusion. In subsection B, an amendment clarifies that a person who fails the examination 3 times must reenroll and complete another training program *before re-applying for registration.*

		If he/she submits an application without evidence of completion, the applicant would be denied.
92	Sets out requirements for registration by endorsement	Amendments clarify that the applicant may be deemed eligible to sit for the competency evaluation *if there are no grounds for denial of registration* and if the registration or certification in the other jurisdiction is *current or eligible for reinstatement.* There are no substantive changes; the Board currently has authority to deny an application if there are grounds or if the registration is not current and not eligible for reinstatement. The regulation is amended so ineligible applicants will not needlessly expend the application fee.
100	Sets out requirements for renewal or reinstatement	In subsection B, an amendment removes the required percentage of registrants in a random audit. Rather than a percentage set by regulation, boards typically use a statistically valid sample of its regulants for an audit.
110	Sets forth the standards of practice for medication aides	In subsection B, there is a prohibition against administration by intramuscular routes. However, medication aides are trained in and allowed to administer glucagon for emergency treatment of an insulin-dependent resident. Glucagon is administered intramuscularly, so the amendment establishes a necessary exception.