



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Boards of Nursing and Medicine /Department of Health Professions
<b>VAC Chapter Number:</b>	18 VAC 90-30-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Nurse Practitioners
<b>Action Title:</b>	Requirement for consistency in educational program and professional certification
<b>Date:</b>	

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

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

Currently, 18 VAC 90-20-120 states that the practice of licensed nurse practitioners shall be based on specialty education preparation as a nurse practitioner and in accordance with standards of the applicable certifying organization and written protocols as defined in 18 VAC 90-30-10, but the regulation does not clearly state that the educational preparation, certifying examination and specialty certification must be consistent with the specialty license issued by the board. In addition, 18 VAC 90-30-10 defines an approved program as one that offers a master's degree in advanced practice nursing, but the regulation needs to clearly state that a graduate degree is required for licensure. Amended regulations clarify that congruency in education, certification and licensure is required and that a graduate degree is necessary for initial licensure. Amendments will also provide an avenue for licensure to those who may not meet current qualifications but who have been safely practicing on other states as an advanced practice nurses. Finally, categories of nurse practitioners and names of certifying bodies that are not consistent with current specialty certifications have been updated accordingly.

## 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) provides the Boards of Nursing and Medicine 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. ...*

The specific legal mandate to promulgate the regulation for the licensure of nurse practitioners is found in § 54.1-2957.

***§ 54.1-2957. Licensure of nurse practitioners.***

*The Board of Medicine and the Board of Nursing shall jointly prescribe the regulations governing the licensure of nurse practitioners. It shall be unlawful for a person to practice as a nurse practitioner in this Commonwealth unless he holds such a joint license.*

*The Boards may issue a license by endorsement to an applicant to practice as a nurse practitioner if the applicant has been licensed as a nurse practitioner under the laws of another state and, in the opinion of the Boards, the applicant meets the qualifications for licensure required of nurse practitioners in this Commonwealth.*

*Pending the outcome of the next National Specialty Examination, the Boards may jointly grant temporary licensure to nurse practitioners.*

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

## 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 and the problems the proposal is intended to solve.***

In recent months, questions have been raised about the qualifications of several applicants for licensure as nurse practitioners. Consequently, the Boards identified issues related to licensure and addressed them by proposing several amending the regulations. Regulations governing the licensure of nurse practitioners do not clearly state that an applicant for initial licensure in a specialty area of practice must have a graduate degree from an advanced practice educational program and certification by national examination that are both consistent with that area of practice. Regulations specify that a nurse practitioner is only authorized to practice in the specialty of her education and certification, but do not specifically require that the education and certification be congruent. Therefore, a nurse whose specialty education and examination qualified him to practice as an “adult nurse practitioner” should not be licensed as a “family nurse practitioner” because there would be no assurance that he was minimally competent to treat a pediatric population.

Congruency in the degree program and national certification and examination with the licensure and practice of nurse practitioners is intended to protect the health and safety of patients who are in their care. Likewise, minimal competency for initial licensure at the advanced practice level should require a minimum of a master’s degree, which is the threshold for accreditation of educational programs. While nurse practitioners practice collaboratively with physicians under a written protocol, they often assume much of the primary responsibility for patients’ health care. Therefore, it is essential that their educational preparation and specialty certification ensure their competency to provide care in a particular category of practice.

In order to provide entry into licensure in Virginia for nurse practitioners who have safely practiced in other states but who would not meet the graduate-level educational requirement, new regulations are adopted for licensure by endorsement. Licensure in good standing or eligibility for reinstatement and professional certification in a specialty category consistent with educational preparation should provide adequate evidence of competency to practice in Virginia and should adequately protect the public health and safety.

## 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.)*

At its August, 2003 meeting, the Committee of the Joint Boards reiterated that the policy of the Board should be to license individuals whose advanced practice educational program and area of certification are congruent. Likewise, the National Council of State Boards of Nursing published a position paper in 2002 recommending regulations to that effect. Currently, 18 VAC 90-30-80 states that the qualifications for initial licensure as a nurse practitioner include evidence of completion of an approved educational program designed to prepare nurse practitioners and submission of evidence of professional certification by an agency accepted by the boards. The regulation has been amended to specify that both the qualifying education program and the professional certification must relate to the category of nurse practitioner licensure and practice, as designated in section 70 of the regulations. Therefore, if a nurse has been educated as a

family nurse practitioner, but certified as an adult nurse practitioner, he could not be licensed as a family nurse practitioner because the certifying examination did not test for minimal competency in family practice, including services to children. To protect the health and safety of the public, the boards must ensure that licensees have demonstrated competency through their educational program as well as the certifying examination to treat the population of patients for which they are being licensed.

Additionally, questions have arisen about the degree requirement for an applicant as a nurse practitioner. The definition of an “approved program” specifies that the program must be “offered by a school of nursing or jointly offered by a school of medicine and a school of nursing which grant a master’s degree in nursing.” Therefore, in the opinion of the Boards, a graduate of an approved program should have at least a master’s degree, but the regulations stating the qualifications for licensure do not specify that a graduate degree in advanced practice nursing is required. The Boards have amended section 80 to clearly state that qualification.

The addition of a requirement for a graduate degree for initial licensure could disqualify a few persons who graduated in previous years from bachelor-level programs and who are seeking licensure from other states. Therefore, regulations for licensure by endorsement specify minimal qualifications, including licensure in good standing and certification by a national certifying body but do not require a graduate degree in advanced practice nursing.

## 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.*

### **Advantages or disadvantages to the public:**

There are no disadvantages to the public. Access to health care provided by nurse practitioners will not be affected, as there should be no additional barriers to licensure. Amendments to regulation will clarify the qualifications necessary to obtain licensure and facilitate licensure of nurse practitioners moving from other states. Amendments will also offer greater assurance that the nurse practitioner is adequately prepared and competent in the specialty area of his practice.

### **Advantages or disadvantages to the agency:**

There are no specific advantages or disadvantages to the agency or the Commonwealth. More specificity in the rules may alleviate questions and misunderstandings from applicants.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<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 incur some one-time costs (less than \$2,000) 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 will be no on-going expenditures related to amending this chapter.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>None</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>The entities that are likely to be affected by these regulations would be applicants for licensure and licensed nurse practitioners.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected</b></p>	<p>There are 4848 persons licensed as nurse practitioners in Virginia; the amendments should have no effect on current licensees. There may be a small number (fewer than three per year) who do not meet the criteria set forth in regulation because their nurse practitioner educational program and specialty certification are not congruent with the type of specialty license being sought. However, those applicants are currently being denied licensure based on board counsel’s interpretation of law and regulation.</p>
<p><b>Projected cost of the regulation for affected individuals, businesses, or other entities</b></p>	<p>There are no additional costs.</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.*

In section 120 of the regulations, the Boards have provided that “the practice of licensed nurse practitioners shall be based on specialty education preparation as a nurse practitioner and in accordance with standards of the applicable certifying organization and written protocols.” Therefore, in the opinion of Board counsel, regulations already stipulate that a licensee can only practice in accordance with his specialty education and the corresponding specialty certification. However, to ensure that the regulations on specialty education and certification are clearly stated, an amendment is the only viable alternative.

The Committee of the Joint Board discussed the possibility of adopting a guidance document stating the position of the boards on this issue. Such a document would not have the force of law or regulation and could be used in making a case decision on denial of licensure. Decisions of the boards on licensure of nurse practitioners have always been based on the boards' interpretation of the regulation and have not previously been challenged.

Until recently, certifying agencies have generally accepted candidates for examination whose educational program was consistent with the specialty area for which certification was being sought. The agencies have begun to accept a few candidates with different educational backgrounds – such as a person seeking certification as a psychiatric nurse practitioner whose training was as a clinical nurse specialist not a nurse practitioner. Consequently, the boards have received several applications from persons without consistent educational and examination credentials, and they must now address this issue through a regulatory action to avoid confusion and be sure that the rule is clearly stated for applicants.

In examining the issue of congruency of education and certification, it became apparent that there was a disparity between the expectations of the Boards for a graduate degree in nursing, as stated in the definition of an “approved program” and the actual wording of the regulation in section 80 that sets out the qualifications for initial licensure. With an amendment to specify that a graduate degree is required, the Boards also addressed the lack of provision for licensure by endorsement, so applicants from other states who met acceptable qualifications for licensure at an earlier time will not be held to the current requirements of the Boards.

### Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

An announcement of the Board's intention to amend its regulations pursuant to recommendations of the periodic review was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the PPG mailing list for the Board. Public comment was accepted from December 15, 2003 until January 14, 2004. During the 30-day comment period, there was no public comment on the Notice of Intended Regulatory Action.

### Family impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

There is no impact on the institution of the family and family stability.

**Detail of Changes**

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Current requirement &amp; Proposed change</b>	<b>Rationale</b>
10	<p>Definitions. Current definition for an “approved program” references the American Association of Colleges of Nursing, which is changed to the Commission on Collegiate Nursing Education. The reference to the National League for Nursing is amended to add “Accrediting Commission” and the term “master’s” degree is changed to “graduate” degree.</p>	<p>Current regulations reference an Association that no longer accredits advanced nursing programs. Amendments correct that reference and clarify the name of the entity within the National League for Nursing that offers accreditation of advanced practice nursing education. The reference to a master’s degree is limiting, since in a few programs, the advanced degree earned is a doctorate. Therefore, the corrected definition specifies that a “graduate” degree is offered.</p>
60	<p>Licensure, general An amendment adds section 85, licensure by endorsement.</p>	<p>Current regulations specify that licensure is based on meeting requirements in section 80, which sets out the requirements for initial licensure. Amendments will add section 85 to set out the qualifications by which an applicant may be licensed by endorsement, so this section on licensure in general must reference both.</p>
70	<p>Categories of licensed nurse practitioners. An amendment specifies that the specialty license must be consistent with specialty education and certification. Amendments delete certain outdated categories and specifies that LNP’s licensed in those categories may continue in that category, or if qualified, have their licenses</p>	<p>The amendment to specify licensure in a specialty category must be consistent with a nurse practitioner’s specialty education and certification will clarify the regulation. Currently, section 120 states that the practice of licensed nurse practitioners must be based on specialty education preparation as a nurse practitioner and in accordance with standards of the applicable certifying organization and written protocols, but it is not clearly stated that licensure, education, and certification must be congruent in a specialty area.</p> <p>Several categories of specialty licensure are being eliminated because there is no longer any professional certification for that</p>

	<p>reissued in another category.</p>	<p>specialty. In most cases, the remaining number of licensees in those categories is very small (Family Planning – 3; School – 1; Medical – 1; and Maternal/child – 0). There are 23 persons licensed as Emergency LNP’s, but the current specialty in that area is Acute Care. There are 173 persons licensed in Obstetric/Gynecologic, but the current specialty certification is Women’s Health. Licensees who hold a license in a category being eliminated will be able to retain their license or, if qualified by certification, be reissued a license in one of the remaining categories. Currently, the trend in the nation is to reduce the number of specialty categories and encourage nurse practitioners with a broader knowledge base to serve a greater number of patients and move more freely among practice areas.</p>
80	<p>Amendments specify that a graduate degree in nursing is required for initial licensure and that professional certification must be consistent with the applicant’s educational program.</p>	<p>Currently, section 80 states that an applicant must complete an approved educational program, and the definition of an approved program is one that offers a master’s degree. Therefore, it is assumed that one must have a master’s degree to qualify for initial licensure, but that has not been specifically stated. The Board has verified with all professional certifying organizations and accrediting bodies to confirm that a master’s degree or post-master’s education is required to be certified. Both sections 10 and 80 are amended to a “graduate” degree, instead of a master’s degree.</p> <p>In the vast majority of situations, the professional certifying body does not allow a nurse to set for a certification examination unless his educational preparation was consistent with that specialty. Therefore, that had been no need to specify congruency in regulation. Recently, the Board the Board has received several applications from nurse practitioners whose certification was in a specialty different from their educational preparation, so there is a need to clarify the board’s regulation.</p>
85	<p>Qualifications for licensure by endorsement. A new section is added to set out qualifications for licensure by endorsement, which include verification of licensure in good standing in another jurisdiction, evidence of professional certification consistent with the specialty area of the applicant’s educational preparation, and submission of the required application and fee.</p>	<p>Since amendments will specify that a graduate degree is required for <u>initial</u> licensure in Virginia, there was a need to ensure an opportunity for entry to licensed nurse practitioners from other states who may have been licensed at a time when a master’s degree was not required. Currently, all accredited educational programs for nurse practitioners offer a master’s or doctor’s degree, but some nurse practitioners graduated from educational programs before that was a requirement for accreditation. Licensure in good standing or eligibility for reinstatement and professional certification in a specialty category consistent with educational preparation should provide adequate evidence of competency to practice in Virginia.</p>
90	<p>Certifying agencies. The name of a certifying agency, the National</p>	<p>This is a clarifying amendment.</p>



	Certification Board of Pediatric Nurse Practitioners has been changed to Pediatric Nursing Certification Board.	
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