



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Board of Nursing, Department of Health Professions
<b>VAC Chapter Number:</b>	18 VAC 90-25-10 et seq.
<b>Regulation Title:</b>	Regulations Governing Certified Nurse Aides
<b>Action Title:</b>	New regulations - Periodic Review of 18 VAC 90-20
<b>Date:</b>	April 8, 2004

Please refer 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* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

18 VAC 90-25-10 et seq., Regulations Governing Certified Nurse Aides, is being promulgated to replace existing regulations for nurse aides and nurse aide education programs found within 18 VAC 90-20-10 et seq., Regulations Governing the Practice of Nursing. Through its regulatory review, the Board determined that a separate set of regulations for nurse aides would be clearer and less cumbersome, especially for nurse aide education programs that have specific criteria for establishing and maintaining an approved program. The proposed final regulations are identical to current requirements for nurse aide certification and educational program approval with the exception of certain rules identified during regulatory review.

Amendments to the program requirements clarify instructional expectations of the Board for maintaining approval to provide nurse aide education, including an increase in the core curriculum from 16 to 24 hours and inclusion of instruction in fall prevention and care of sensory-impaired clients. The process for reporting to the Board and for an interruption in the program is also clarified. Regulations for reinstatement of nurse aide certification have been amended to include a prohibition against reinstatement following a finding of abuse, neglect or misappropriation of property and a board guidance document that provides for the possibility of reinstatement if the finding of neglect was based on a single occurrence. As

with the nursing regulations, there are additional grounds added to the disciplinary provisions that address situations encountered in disciplinary cases before the Board.

### Changes Made Since the Proposed Stage

*Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.*

Throughout the regulation, the terms “client,” “patient,” or “resident” are used interchangeably and sometimes alternately to refer to the person for whom the CNA is providing care. The dominant term used is “client,” so for consistency and clarity, the Board has revised the regulation to define “client” and replace the terms “patient” or “resident” with that term.

In Section 80, the Board has amended some terminology to facilitate a policy decision on the use of on-line certification renewal by nurse aide. Rather than sending an application for renewal, the Board would send a notice with instructions on completing a renewal application on-line or on securing a paper copy of the renewal form. The CNA would “submit” rather than “return” the renewal application (either on-line, by mail or in-person).

In Section 100, which sets the criteria for a finding of unprofessional conduct, the Board included violating “state and federal” law related to patient privacy. After further consideration, it was concluded that state law provided sufficient protection to patients and that the Board should not be engaged in enforcement of the federal law on patient privacy (HIPAA) against individual nurse aides.

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

On March 23, 2004, the Board of Nursing adopted final regulations for 18 VAC 90-25-10 et seq., Regulations Governing Certified Nurse Aides.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law*

18 VAC 90-25-10 et seq. Regulations Governing Certified Nurse Aides was promulgated under the general authority of Title 54.1 of the Code of Virginia.

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 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 or licensure 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 or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure 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 and Chapter 25 of this title.*

Statutes governing the approval of nurse aide education and the certification of nurse aides are found in Chapter 30 of Title 54.1 of the Code of Virginia: <http://leg1.state.va.us/000/lst/h3406636.HTM>

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 provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

Regulations for nurse aide education programs and certification of nurse aides have been incorporated into the Regulations Governing the Practice of Nursing. While there have been no specific problems with the inclusion of rules for nurse aides in with rules for nurses, the Board felt that it was appropriate and advisable to separate the requirements into two distinct regulations. In addition, the nurse aide education program regulations have been stated in one section that has become quite lengthy and cumbersome. Reorganization of those requirements will make them clearer and more precise. Regulations for advanced certification of nurse aides have also been proposed in another action and will be incorporated into these regulations.

The purpose of the amendments resulting from regulatory review is to make the rules more explicit in certain areas where there has been confusion or lack of clarity and to clearly state board policy in regulation. The process and expectations of the Board in granting initial or continued approval of a nurse

aide education program are more explicitly stated to better protect students who are enrolled or applying for enrollment. Using its disciplinary cases as guidance, the Board identified several areas in nurse aide education where additional training or emphasis was needed. It also added some grounds for disciplinary action to strengthen the ability of the Board to discipline a nurse aide who has violated a patient in some manner. Increasing the knowledge and skills of nurse aides in dealing with an elderly population may improve the quality of care patients receive. Having a clearer understanding of ethical practice may prevent some cases of patient abuse or neglect. Amendments to the program requirements and the reinstatement and disciplinary provisions are proposed to ensure greater protection and improve the quality of care for a frail, very vulnerable population in the Commonwealth.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

To ensure that nurse aide education programs are providing students with the training necessary to work in a long term care environment with elderly patients, amendments are proposed to specify certain requirements for maintaining board approval, to clarify that the instructors must be licensed nurses, and to specify an additional eight hours in the core curriculum to include instruction in fall prevention, dealing with aggressive patients, communicating with sensory-impaired patients, and in the rules governing practice. Amendments will also state the board policy for reinstatement of an expired certification, including the prohibition on reinstatement if there has been a finding against a nurse aide. The ability of the Board to take disciplinary action is strengthened by adding provisions related to violating the rights or property of a patient and by an interpretation of the law on restricting the certification of a nurse aide.

## Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.*

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

Since nurse aides provide the direct patient care to patients in nursing homes or other long term care facilities, any additional training or knowledge of appropriate responses to those patients is advantageous. While the proposed regulations do not increase the total number of hours of nurse aide education, the amendments will require that an additional eight hours in the core curriculum and training in crucial areas such as fall prevention and communicating with impaired patients. Learning how to respond appropriately to aggressive patients may prevent some cases of patient abuse and better protect both the patient and the aide. Likewise, a clearer understanding of the consequences of unethical behavior may be beneficial to the nurse aides and their patients. If disciplinary action is warranted, the additional grounds for such action will ensure that an aide who has violated the rights or property of a patient is appropriately disciplined by the Board. There are no disadvantages to the public, which is better protected by more clearly stated, explicit requirements for the training and practice of nurse aides.

**Advantages or disadvantages to the agency:**

There are no specific advantages or disadvantages to the agency. There may be better compliance with board rules and policies as a result of more clearly stated regulations. There should be no additional cost associated with the licensure or enforcement activities of the Board.

**Public Comment**

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

Proposed amendments to regulations implementing recommendations from a periodic review of all regulations were published in the Virginia Register of Regulations on December 29, 2003. Public comment was requested for a 60-day period ending February 27, 2004.

A summary of the comments received in writing or electronically is as follows:

The Virginia Association of Professional Nursing Assistants (VAPNA) commented that their group supports proposed amendments to increase the core curriculum from 16 to 24 hours and inclusion of instruction in fall prevention and care for sensory-impaired clients. They expressed concern about the lack of adequate instruction in personal care skills, such as oral care, hydration and nutrition. VAPNA also supports amendments to prohibit reinstatement following a finding of abuse, neglect and misappropriation of property, except if there was only a single occurrence.

VAPNA supports a requirement that all CNA's receive their certificate following completion of a program and requests that the Board also send newly-certified assistants a copy of the statutes and regulations to guide them in making informed decisions.

**Board response:** The Board appreciates the support of the VAPNA for amendments to regulations. In response to the comment about inadequate instruction in personal care skills, the Board has stated that the regulation is sufficient but the inadequacy may relate to the performance of nurse aide programs and instructors. In response to the request for newly-certified assistants to receive a copy of statutes and regulations, the Board agrees with the commenter and does send the applicable laws and regulations with certification.

**A public hearing held before the Board on January 27, 2004, at which the following person provided comment:**

Ms. Susie Brown, operator of a CNA training program, expressed concern about the educational level of persons entering such a program. She supported a requirement that the minimal level be a high school education before training to be a certified nurse aide.

**Board response:** While the Board appreciates the importance of raising the educational level of certified nursing assistants, it does not agree with a requirement that the minimal educational level should be a high school diploma before training. Such a requirement would close approximately 80 CNA programs presently

located in high schools across Virginia. For those outside the high schools, the individual programs can set a minimum education as an entry requirement.

**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 crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

While all sections have been underlined as “new regulations”, most of the language is identical to current provisions for certified nurse aides and nurse aide education programs found in 18 VAC 90-20-10 et seq. A crosswalk from the proposed section to the current section is provided, and changes in current language are identified as follows:

Current section number	Current requirement	Proposed change and rationale
<p><b>Chapter 20</b></p> <p><b>310</b></p> <p><b>320</b></p> <p><b>330 A &amp; B</b></p>	<p>Definitions for nurse aide rules</p> <p>Delegation of authority for issuance of a certificate on behalf of the board to the executive director.</p> <p>Requirements for establishment and maintenance of a nurse aide education program. Sets out the role of an Education Special Conference Committee.</p>	<p><b>Chapter 25</b></p> <p><b>10. Definitions.</b> A definition for “Board” has been added to specify the Board of Nursing. In the definition of a “nursing facility,” the Board has added a requirement for the nursing home to be licensed or certified by the Virginia Board of Health. A definition for “client” has been added to incorporate the terms “patient” and “resident”.</p> <p>Found in subsection A of section 70 in proposed regulations.</p> <p><b>20. Establishing and maintaining a nurse aide education program.</b> Amendments to the content of this section include:</p> <ul style="list-style-type: none"> <li>• To maintain approval of a nurse aide education program, certain information is required. That includes evidence of financial support and sufficient resources. That requirement has not been sufficiently specific, so the Board recommends that the program provide evidence in the form of a current, annual budget or a signed statement of financial support from the administration.</li> <li>• To ensure that programs understand that completion and submission of biennial on-site review reports and program evaluations are essential elements for maintaining approval, a new subdivision is added.</li> </ul>

<p>330 C</p>	<p>Requirements for instructional personnel, including the program coordinator and primary instructor, in a nurse aide educational program</p>	<ul style="list-style-type: none"> <li>• It is also required that the program provide each student with a copy of applicable Virginia law regarding criminal history records checks for employment. The Board recommends that the requirement be clarified to document that each student has been given a copy of the applicable law.</li> <li>• The requirement to report all “substantive changes” within 10 days need to be made more clear and precise; the Board proposes to specify changes that need to be so reported to include but not be limited to the following: the program coordinator, the primary instructor, ownership of the program, or facility licensure status.</li> <li>• There have been problems in the past with programs not providing students with a certificate of completion, so that is specifically added to program requirements.</li> </ul> <p><b>30. Requirements for instructional personnel.</b></p> <ul style="list-style-type: none"> <li>• Under instructional personnel, the Board recommends that it be explicitly stated that it is required for all programs to have a program coordinator and primary instructor who is a registered nurse. Further, it recommends that the primary instructor be identified as the person who does the “majority of” the teaching of the students and that she be responsible for the teaching and evaluation of students (currently the requirement is for the instructor to “participate in” the teaching and evaluation).</li> <li>• Under “other instructional personnel,” the Board recommends that their responsibilities be clarified to include assisting the primary instructor in the classroom and clinical supervision of the students. Also, the nursing license of instructional personnel must be current and unrestricted.</li> <li>• All instructional personnel should have some experience in teaching adults or high school students.</li> </ul> <p>An amendment was added to provide that the nurse aide education program may also use other persons who have particular expertise in a specific topic to teach under the direct, on-site supervision of the primary instructor in order to meet certain program objectives.</p>
<p>330 D &amp; J</p>	<p>Requirements for the content of the</p>	<p><b>40. Requirements for the curriculum.</b></p>

<p>330 E, F, G, H</p>	<p>curriculum including 16 hours of core knowledge and for making changes in the curriculum</p> <p>Other requirements for a nurse aide program, including records, length of program, and classroom facilities</p>	<ul style="list-style-type: none"> <li>• The Board recommends that the hours spent in the initial core curriculum be increased from 16 to 24 hours.</li> <li>• To update current needs and practice, the Board has amended the requirements to: delete the term “Heimlich Maneuver” and substitute “dealing with obstructed airways;” added fall prevention; specified training in responding appropriately to client’s aggressive behavior; added training in communication with sensory impaired clients.</li> <li>• In educating the nurse aide on the legal and regulatory aspects of practice, the proposed regulation adds specifically training in the consequences of abuse, neglect, misappropriation of patient property and unprofessional conduct.</li> <li>• Provisions for curriculum changes, previously found in subsection J of 18 VAC 90-20-330 are included in this section.</li> </ul> <p><b>50. Other program requirements.</b></p> <ul style="list-style-type: none"> <li>• An amendment is added to specify that the education programs must maintain a record of the skills taught and date of performance by the students. At the completion of the program, each student must be provided with the skills record and certificate of completion.</li> <li>• An amendment will clarify that a nurse aide student should specifically identify herself as a “nurse aide student.”</li> <li>• Amendments will provide for 24 hours of instruction prior to direct contact with a nursing facility client (consistent with the section on core curriculum) and that there be a minimum of 40 hours in providing direct client care. Further the observational experience shall not be counted towards the 40 hours of skills training in a clinical setting.</li> <li>• To allow the use of newer technology, subsection D (classroom facility requirements) is amended to delete “including audio-visual equipment” and to include “instructional technology and equipment” as necessary for simulating resident care.</li> </ul> <p><b>60. Requirements for continued approval; interruption or closing of a program.</b></p> <ul style="list-style-type: none"> <li>• The section on program review is amended to specify that a program is reviewed annually, either by an on-site visit or by a written program evaluation. In the intervening year between biennial on-site visits, the program coordinator is</li> </ul>
<p>330 I, K, L</p>	<p>Requirements for the periodic review of a nurse aide education program, for interruption of a program and for the closing of a program</p>	



<p><b>340 &amp; 350 A</b></p>	<p>Requirements for initial certification by examination, including administration and passage of a competency evaluation. Requirements for initial certification by endorsement</p>	<p>responsible for a report in order for the committee to recommend continued approval. Other amendments clarify that the committee may recommend that a program be placed on conditional approval or may refer the matter to the full board for a hearing.</p> <ul style="list-style-type: none"> <li>• The section on interruption of a program is amended to specify that if the program provider does not “hold classes” for one year, the program may be placed on inactive status, if the program does not hold classes for two years, the program is considered closed.</li> </ul> <p><b>70. Initial certification for the nurse aide registry.</b></p> <ul style="list-style-type: none"> <li>• Subsection A is currently found in 18 VAC 90-20-320 and has not been amended.</li> <li>• Subsection B is currently found in 18 VAC 90-20-340 and has not been amended.</li> <li>• The Board has amended the provision that allows a nurse aide to be eligible for certification by examination if she is currently enrolled in a nursing education program and has completed at least one clinical nursing course consisting of at least 40 contact hours in direct adult client care.</li> <li>• The requirement for an applicant for certification by endorsement is amended to require verification from <b>each</b> state in which the applicant has been registered, certified or licensed. Currently, the requirement is only for the past two years, but the Board needs to be aware of any findings of patient neglect, abuse or misappropriation of client property by another state at any time.</li> </ul>
<p><b>350 B &amp; C</b></p>	<p>Requirements for renewal and reinstatement of a certificate</p>	<p><b>80. Renewal or reinstatement of certification</b></p> <ul style="list-style-type: none"> <li>• The reinstatement provisions need to be clarified to state that if the certificate has lapsed for more than 90 days, the applicant must verify performance of nursing-related activities during the two years immediately preceding the application for reinstatement of certification. If the work requirement is not met, the applicant must retake and pass the examination. Nursing-related activity is required by federal rules for a nurse aide to remain on a nurse aide registry.</li> <li>• A requirement should be stated in regulation specifying the Board’s current policy that, after 90 days following expiration of a certificate, a nurse aide must apply to have certification reinstated. An applicant for reinstatement is not eligible if there was a previous finding of abuse, neglect or misappropriation of property, whether the</li> </ul>

<p><b>350 D &amp; E</b></p> <p><b>360</b></p>	<p>Requirements for providing evidence of a name change and duplicate certificate and for maintaining a current address with the board.</p> <p>Grounds for denial, revocation or suspension of a nurse aide certification</p>	<p>certificate has been revoked or lapsed.</p> <ul style="list-style-type: none"> <li>An amendment is also proposed to state that, if there has been a finding of neglect based on a single incident, an individual is eligible to petition the Board for removal of that finding provided the petitioner can prove through employment and personal history that it does not reflect a pattern of abusive behavior or neglect. Such a petition may be granted only one time and only after one year has passed since the finding. This is currently stated in a Guidance Document of the Board but needs to be incorporated in regulation.</li> </ul> <p><b>90. Requirements for certified nurse aides</b> There are no amendments proposed for the current requirements.</p> <p><b>100. Disciplinary provisions</b></p> <ul style="list-style-type: none"> <li>Subdivision 1 on fraud or deceit is amended to clarify that it refers to procuring or attempting to obtain a certificate.</li> <li>Subdivision 2 is amended to specify that unprofessional conduct may include the performance of acts beyond those authorized in the Drug Control Act or in accordance with regulations of the Board on delegation of tasks to unlicensed persons.</li> <li>From the disciplinary matters involving nurse aides, the Board identified a need to add several provisions to the section on unprofessional conduct including: 1) entering into an inappropriate relationship with a client that violates professional boundaries; 2) giving or accepting money or property for any reason other than fee for service; 3) obtaining money or property from a client by fraud, misrepresentation or duress; and 4) violating the privacy of clients or confidentiality of patient records unless required to do so by law.</li> <li>A new subdivision is added to specify what is meant in the Code (§ 54.1-3007(7)) about a “restriction” in another state or the District of Columbia. That would include: 1) having a finding of abuse, neglect or misappropriation of patient property in another state; or 2) being placed on the abuse registry in another state.</li> </ul>
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## Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.*

The proposed regulatory action does not have any impact on the institution of the family or the rights of parents, does not encourage or discourage economic self-sufficiency or affect the marital commitment. The amendments do not increase or decrease disposable family income.