



## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| <b>Agency name</b>                                 | Board of Nursing, Department of Health Professions |
| <b>Virginia Administrative Code (VAC) citation</b> | 18VAC90-20   |
| <b>Regulation title</b>                            | Regulations Governing the Practice of Nursing      |
| <b>Action title</b>                                | Requirements for foreign-trained nurses            |
| <b>Date this document prepared</b>                 | 2/26/08  |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The Board of Nursing received a petition for rule-making requesting the elimination of the examination of foreign-trained nurses by the Commission on Graduates of Foreign Nursing Schools (CGFNS) as a requirement for licensure in Virginia. The purpose of the intended regulatory action is consider what criteria for evidence of minimal competency should be required for graduates of foreign nursing schools.

### Legal 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., 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), 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:*

- 1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege 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, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege 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 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

In addition, there is statutory language specifying certain requirements for foreign-trained nurses. The provision in subsection B for the CGFNS examination is permissive, giving the Board the option to eliminate the requirement:

*§ 54.1-3017. Qualifications of applicant for registered nurse's license; examination; graduates of foreign nursing education programs.*

*A. An applicant for a license to practice professional nursing shall submit evidence satisfactory to the Board that such applicant:*

- 1. Has completed an approved four-year high school course of study or the equivalent as determined by the appropriate educational agency;*
- 2. Has received a diploma or degree from an approved professional nursing education program;*
- 3. Has passed a written examination as required by the Board; and*
- 4. Has committed no acts which are grounds for disciplinary action as set forth in this chapter.*

*B. An applicant who graduated from a nursing education program in a foreign country may be required to pass the Commission on Graduates of Foreign Nursing Schools Qualifying Examination prior to admission to the examination for licensure in this Commonwealth.*

**Need**

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

The signatories to the petitions and supporting letters requesting elimination of the CGFNS examination cite the current nursing shortage as an indication that the Board should consider elimination of any barrier to licensure that is not necessary to ensure the competency of an applicant. Recruitment of nurses from other countries may help alleviate the shortage in Virginia if the barrier of CGFNS examination is removed. Since 22 other states currently do not require the CGFNS examination, foreign-trained nurses often choose to immigrate to those states instead.

Petitioners are not requesting elimination of the credentials review and the test of English proficiency; those coupled with a requirement for passage of National Council Licensing Examination (NCLEX), the national licensing examination that all nurses must take, should assure that foreign-trained nurses have the basic nursing knowledge, clinical ability, and communication skills to practice with safety. Since NCLEX is more generally available in foreign countries than in the past, many nurses are able to come to the United States fully qualified for licensure. The CGFNS examination is viewed as an additional burden for licensure in Virginia.

**Substance**

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

Regulations will be considered to eliminate the requirement for the CGFNS examination but maintain a requirement for the credentials review and test of English proficiency. The Board may also add a requirement that a RN applicant submit verification of a license from the jurisdiction where the applicant has held a license as a professional in the country of origin, similar to current language in the regulation of a practical nurse in subsection D of section 210:

- D. Such applicants for practical nurse licensure shall:*
  - 1. Submit evidence from a recognized agency that reviews credentials of foreign-educated nurses that the secondary education, nursing education, and license are comparable to those required for licensed practical nurses in the Commonwealth;*
  - 2. Request that the credentialing agency, in the country where licensed, submit the verification of licensure form directly to the board office; and*
  - 3. Submit the required application and fee for licensure by examination.*

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the*

*agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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A petition for rulemaking received October 23, 2007 was published November 27, 2007 with a request for comment until December 26, 2007. The Board received numerous letters in support of the request, as well as petitions signed by supporters. In addition to the information provided by the petitioner and supporters about the need to eliminate the CGFNS examination, the Board reviewed the current statutory and regulatory requirements, information about the CGFNS certification program, information about the CGFNS credentials evaluation service and information from the National Council of State Boards of Nursing about the requirements in other states. Based on the availability of services for verifying credentials and the policies adopted in other jurisdictions, the Board determined that it was reasonable to move forward with the promulgation of an amended regulation.

### Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

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The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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 may do so by mail, email or fax to Elaine J. Yeatts, Senior Policy Analyst, Virginia Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233 or by email to [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)). Both oral and written comments may be submitted at that time.

### Family impact

*Assess the potential 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.*

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