



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Nursing, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC90-20-10 et seq.
Regulation title	Regulations Governing the Practice of Nursing
Action title	Requirements for approval of nursing education programs
Date this document prepared	1/26/10

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 has identified several problems with the quality and effectiveness of some nursing education programs and applications for approval of such programs. The intent of the regulatory action is to address problems and inadequacies that exist in some programs by requiring more accountability in reporting on clinical sites for training, in the enrollment and progression of students through the program, in oversight of programs through required site visits and surveys, and in the quality of the curriculum. By specifying certain outcome measures, the board will be better assured that programs will graduate a minimally competent entry-level nurse who practices with skill and integrity.

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 authority for the board to approve nursing education programs:

§ 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:

- 1. To prescribe minimum standards and approve curricula for educational programs preparing persons for licensure or certification under this chapter;*
- 2. To approve programs that meet the requirements of this chapter and of the Board;*
- 3. To provide consultation service for educational programs as requested;*
- 4. To provide for periodic surveys of educational programs;*
- 5. To deny or withdraw approval from educational programs for failure to meet prescribed standards; ...*
- 9. To approve programs that entitle professional nurses to be registered as clinical nurse specialists and to prescribe minimum standards for such programs;*

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.

There is a problem in Virginia with the quality of some nursing education programs. Virginia ranks below the national average in nursing students passing the National Council Licensure Examination (NCLEX), especially graduates of the practical nursing programs. The national passage rate for registered nursing programs is 88.91%; in Virginia the average is 87.95%. The national passage rate for practical nursing programs is 85.89%; in Virginia the average is **75.24%**. Neighboring states far exceed Virginia in the passage of NCLEX for practical nurses: North Carolina is 95.53%; Maryland is 92.77%; Kentucky is 93.30%; Tennessee is 92.13% and West Virginia is 86.42%.

In the most recent report of NCLEX passage (from 1/1/09 to 9/30/09), 21 of the 75 practical nursing programs in Virginia fell below the 80% benchmark set by the board in current regulations; another 22 fell below the national average for passage of the licensing examination. Of the 21 programs that fell below 80% passage, 15 are proprietary (for-profit) schools. Applications for new programs are primarily from areas of Virginia near bordering states such as Maryland that do not approve proprietary nursing education programs; North Carolina has approved one proprietary program.

These indicators and the increase in the number of proceedings involving nursing education programs are evidence that the Board of Nursing needs to revise its regulations to add specificity and rigor to its requirements and approval process. By assuring more accountability in the academic and clinical programs, the board intends to address the issues of inadequacy in clinical sites and experiences, problems with the majority of clinical sites located outside Virginia, lack of integrity in the information provided on an application, transfer of unsuccessful students from one program to another, high failure rates in examinations, and exploitation of students for profit. By addressing these issues and strengthening regulations for program approval, the board intends to assist nursing education programs in graduating nurses who will be able to practice with clinical skills and nursing knowledge adequate to protect the health and safety of patients 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.

In order to set more specific standards to address some of the issues and problems the board has encountered in recent years, the following amendments will be considered:

In section 40:

- Add in the enrollment plan a limitation on the percentage of the curriculum that could be accepted in the transfer of a student from one program to another and a limitation on the number in the class that could be transfer students. Some programs build a new class by accepting failing or problem students from other programs.
- Require more specificity about the clinical training sites in the application to ensure oversight and adequacy, including a percentage of the clinical experience that must be completed in a facility licensed in Virginia, a limitation on the number of students that may be enrolled based on the availability of clinical sites and faculty to supervise the students, more specificity about the number of students and amount of time the facility will allow for training.
- Shift some requirements (contracts for classroom space, laboratory equipment and library resources) for an initial application that necessitate financial outlay to section 50 on provisional approval to make the application process less costly.
- Require disclosure of actions or adverse decisions against a program in another jurisdiction. Add adverse action in another jurisdiction as grounds for denial of approval.
- Add some limitation of the length of the application process to ensure currency in the information initially provided with an expectation that the program admit students within six months of provisional approval.
- Require a plan for progression of students through the program to require graduation within a 150% time frame from date of matriculation into the nursing education program.
- Require an analysis which describes the geographic area and population the program intends to serve, the number of nursing programs currently in the area, the number of clinical sites available for training, and the potential impact on existing schools of nursing in order to demonstrate a need for a new nursing program.
- Clarify that advertisement of a program or enrollment of students is not acceptable until provisional approval is given; such advertisement could be grounds for denial.
- Amend the option for a site visit for initial approval to require such a visit.

In section 50:

- Require a progress report within 90 days after provisional approval and quarterly reports thereafter (currently the director is required to submit quarterly reports).

In sections 40, 50 and 60:

- Clarify that the Board has the authority to monitor and take action at any stage in the approval process for a program that is not showing progress toward meeting the requirements for approval.

In section 70:

- Specify that the approval by an “appropriate state agency” is approval from the Virginia Department of Education or from the State Council of Higher Education in Virginia.

In section 80:

- Rather than submission of the philosophy and objectives, add specific requirements and detail about the development of a written, systematic plan of evaluation that will be used

by the program for program review and be available to the board to review program progress.

In section 90:

- Require the program director and nursing faculty to maintain written documentation of professional development which could be made available for a random audit by the board. Include education in cultural diversity to deal with diverse populations, conflict resolution and teaching methodologies in both classroom and clinical settings.
- Add requirements for on-line faculty.

In section 96:

- Add provisions (definition and ratio) on simulation for clinical training currently contained in a guidance document.

In section 110:

- Specify that the information about the nursing education program must be published and provided to applicants and students and must include a grievance policy, accreditation status, and a record of complaints and their resolution.

In section 120:

- Specify that the curriculum content is applicable to all programs, regardless of the method of delivery (on-line or in person). Include definition and language about “direct client care” from the guidance document.
- Add prevention and response to disaster planning and intimate partner violence to the curriculum.

In section 140:

- Clarify that the board must be notified about a change in location for an educational program or about the addition of another location, and make arrangements for a site visit to be conducted by Board staff and approval granted by the Board before classes can be conducted at the new location. The Board must also be notified if there is a change in location or an additional site for clinical training.

In section 151:

- Change the terminology to “academic years” or “quarters.”

In section 160:

- Examine frequency of survey visits for approved programs to maintain a differential for nationally accredited programs, but ensure that certain requirements of Virginia regulations are examined consistently for all programs. May eliminate the differential for LPN and RN programs for reevaluation.

In section 170:

- Specify that the requirements for closing of a nursing education program are applicable at any stage of the process and that failure to comply with such requirements may be grounds for denial if a program reapplies for approval.

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.

The viable alternatives to proposed regulatory action are already in place and have been insufficient to address problems of quality and competency. The board has instituted a voluntary orientation program for persons/entities interested in starting a nursing education program to educate them from the outset about board requirements in regulation, pitfalls of inadequate programs, and steps to take to achieve and maintain board approval. Most programs are started with the purpose of serving a community and addressing the need for nurses; a few as profit-making enterprises in which the education of nursing students is not the main focus of the corporate entity. Since neighboring states do not approve proprietary programs, a several new programs are coming into the state, particularly in Northern Virginia, with the goal of recruiting students who will practice in D.C. or Maryland.

The board could also continue to hold proceedings to address deficiencies, place programs on conditions or initiate action to deny approval. Such proceedings are costly for the board, its members, and the respondents.

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.

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. 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 **after publication of proposed regulations**, and notice of the hearing may be found on the Virginia Regulatory Town Hall website (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.

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