



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	Practice of certified nurse specialists
Date this document prepared	11/2/11

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*.

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 intent of the planned regulatory action is to respond to a petition for rulemaking from the Virginia Chapter of the National Association of Clinical Nurse Specialists, requesting the Board to examine its regulations for the practice of clinical nurse specialists (CNS) for consistency with the consensus model of the National Council of State Boards of Nursing for the Advanced Practice Registered Nurse (APRN) for currency of the CNS role in today's health care environment. The Board is also aware of the Institute of Medicine (IOM) report on the Future of Nursing and of the need for reexamination of the role and regulation of CNS's.

Comment on the petition was requested until May 1, 2011; 65 persons commented on the Virginia Regulatory Townhall in favor of licensing clinical nurse specialists as advanced practice nurses. Support was also received from the Legislative Coalition of Virginia Nurses, the Virginia Chapter of the American College of Nurse Midwives, and the Vice President of Neurosciences at Bon Secours Virginia Health System.

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 to its general powers and duties, the Board of Nursing has specific powers and duties relating to clinical nurse specialists. The Board has statutory authority to regulate CNS educational programs, but has never exercised that authority.

§ 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: ...

9. To approve programs that entitle professional nurses to be registered as clinical nurse specialists and to prescribe minimum standards for such programs;

10. To maintain a registry of clinical nurse specialists and to promulgate regulations governing clinical nurse specialists;...

The current definitions in § 54.1-3000 relating to the practice of a clinical nurse specialist are:

"Clinical nurse specialist" means a person who is registered by the Board in addition to holding a license under the provisions of this chapter to practice professional nursing as defined in this section. Such a person shall be recognized as being able to provide advanced services according to the specialized training received from a program approved by the Board, but shall not be entitled to perform any act that is not within the scope of practice of professional nursing.

"Professional nursing," "registered nursing" or "registered professional nursing" means the performance for compensation of any nursing acts in the observation, care and counsel of individuals or groups who are ill, injured or experiencing changes in normal health processes or the maintenance of health; in the prevention of illness or disease; in the supervision and teaching of those who are or will be involved in nursing care; in the delegation of selected nursing tasks and procedures to appropriately trained unlicensed persons as determined by the Board; or in the administration of medications and treatments as prescribed by any person authorized by law to prescribe such medications and treatment. Professional nursing, registered nursing and registered professional nursing require specialized education, judgment, and skill based upon knowledge and application of principles from the biological, physical, social, behavioral and nursing sciences.

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.

Clinical nurse specialists are licensed registered nurses with graduate preparation to practice in specialized clinical areas. The clinical nurse specialist (CNS) provides direct patient care and consultation for other health care practitioners to influence care outcomes. Their specialty area of practice may be by population (pediatrics, geriatrics, women's health, etc.), by setting (critical care, emergency room), by disease or medical subspecialty (diabetes, oncology, pulmonary, cardiology), by type of care (psychiatric/mental health, palliative care, rehabilitation), or by type of problem (pain management, wound, cardiac surgery, trauma). The role of the CNS incorporates research (evidence-based and best practice); education (towards clinical standards and reduction of variability); administration (the broad scope of health care delivery inclusive of

performance metrics and fiscal improvements); mentoring (appropriate succession planning to create the next generation of nursing leadership to guide a highly fluid profession); and patient care (the improvement to systems of care delivery and the training of proficient staff to reduce variability and complications).

Because the current regulations governing the practice of the CNS have not been revised in more than a decade, they may not adequately address the practices and roles of the CNS in the current delivery of health care. CNS practice has evolved and expanded to a variety of practice settings, hospitals, mental health outpatient, etc. Education preparation has become more comprehensive. The advanced practice role of the CNS is unique in that it integrates care across the continuum and three spheres of influence – patient, nurse, and system. In each of these spheres of influence, the primary goal of the CNS is continuous improvement of patient outcomes and nursing care. Changes may be needed to more accurately reflect the practice, education and functions of the CNS in clinical practice to adequately protect the health and safety of patients under their care.

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 its petition, the Virginia Chapter of the National Association of Clinical Nurse Specialists requested that the Board review its regulations governing the practice of CNS's and determine whether statutes and/or regulations would need to be changed to accomplish the following:

- Recognize and license the CNS as an APRN in Virginia
- Ensure that the CNS practice to the full extent of their education, skills and competencies
- Recognize national standards for comprehensive, entry level competencies and behaviors of graduates of academic programs that prepare CNS's
- Provide the public, regulators and employers with a standardized definition of the role and scope of practice for the CNS
- Allow for regular monitoring of CNS workforce supply and demand
- Continue to provide title protection for the CNS
- Review congruency with consensus model

In its review of regulations, the Board will focus on CNS practice requirements and standards set for entry level competency. Recognition of the Advanced Practice Registered Nurse and congruency with the consensus model advocated by the National Council of State Boards of Nursing will additionally require statutory changes that may result from activities and recommendations from the Board of Health Professions, the General Assembly or other advocacy groups.

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.

At the April 13, 2011 meeting of the Committee of the Joint Boards of Nursing and Medicine, a video from The National Council of State Boards of Nursing entitled, “*The Consensus Model for APRN Regulation: Licensure, Accreditation, Certification, and Education*,” was viewed. The video provided the following information:

- Beginning in 2004, nurse leaders worked together to develop new national standards for advance practice registered nurses. The standards would ensure that the education, accreditation, certification, licensure and practice requirements for advance practice registered nurses are the same throughout the country, which will allow them to work in various states without meeting different licensure requirement, in addition to ensuring patient safety.
- The consensus model requires an advance practice registered nurse to have a graduate level education, regardless of their role. The goal is to ensure safe and competent people to practice.
- The consensus model benefits the public by increasing access to qualified health care.
- APRN’s benefit from the consensus model because it eliminates their need to meet different requirements for each state.
- The new national standard would require each educational program to be accredited by one of the major nursing accrediting bodies.

In addition to the petition from the clinical nurse specialists, the Virginia Association of Nurse Anesthetists has requested that the Board look for opportunities in current regulations to fit in with the consensus model. The Committee voted to request that the Boards of Nursing and Medicine consider the consensus model and the changes that would be necessary for implementation.

The consensus model for advanced practice registered nurses will likely be considered by the Board of Health Professions in its study of nurse practitioner scope of practice and team delivery of health care. At its meeting on June 20, 2011, the Regulatory Research Committee of the Board reviewed a draft workplan of the study into potential scope of practice barriers which may adversely affect team healthcare delivery in Virginia. The workplan is in response to the Secretary’s request for assistance for the Virginia Health Reform Initiative (VHRI). At the May 3, 2011 meeting, the Board directed the Committee to first focus on Nurse Practitioners and then Pharmacists. While clinical nurse specialists are not nurse practitioners and are solely regulated by the Board of Nursing, any changes in the statute that are consistent with the consensus model may affect the role and title of the CNS.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including 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.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board will use a participatory approach to the development of regulations by invitation to the Virginia Chapter of the National Association of Clinical Nurse Specialists to participate in meetings at which the regulations are reviewed and amendments developed. Employers and educators of CNS’s will be encouraged to participate as the Board reviews its current regulations and recommends amendments.

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 family and family stability.