



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 90-20-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Nursing
<b>Action Title:</b>	Advanced certification for nurse aides
<b>Date:</b>	11/22/02

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*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed.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or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed.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.*

The Board of Nursing has adopted amended regulations in compliance with the mandate in Chapter 448 of the 2001 Acts of the Assembly, which required the Board to promulgate regulations to establish a career advancement certification for certified nurse aides. Amendments establish the qualifications for advanced certification, the requirements for renewal and the criteria for an approved education and training program.

### 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.*

The Board has made the following change in 18 VAC 90-20-10 et seq:

Section 361: In response to comment on the proposed regulation, the Board added the phrase “by the board” to clarify that the disciplinary actions to which the regulation applies are those taken by the Board of Nursing rather than a facility or some other entity.

### 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 November 19, 2002, the Board of Nursing adopted final amendments to 18 VAC 90-20-10 et seq., Regulations Governing the Practice of Nursing to implement requirements of Chapter 448 of the 2001 Acts of the Assembly.

### 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 90-20-10 et seq. Regulations Governing the Practice of Nursing 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.*

**The specific statutory mandate for the Board to establish an advanced certification for nurse aides is found in:**

§ [54.1-3025.1](#). *Advanced certification; renewal.*

*A. The Board shall develop and promulgate regulations to establish a career advancement certification that will indicate enhanced competence in patient care tasks and enable certified nurse aides to expand the scope of the responsibilities and duties delegated to them. An advanced certificate shall be awarded upon successful completion of the required educational and training standards set by the Board. Each institution that desires to conduct programs to provide training for such advanced certificates shall be approved by the Board pursuant to § [54.1-3005](#).*

*B. An advanced certificate issued to a certified nurse aide shall be renewed biennially upon payment of any specified fee. The certified nurse aide shall submit proof of compliance with any requirements of law and regulation concerning competence as established by the Board.*

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the amended 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.*

The Board of Nursing is mandated by Chapter 448 of the 2001 Acts of the Assembly to promulgate regulations to establish a career advancement certification for certified nurse aides. As was stated in House Bill 1778, the purpose is “to establish a career advancement certification that will indicate enhanced competence in patient care tasks and enable certified nurse aides to expand the scope of the responsibilities and duties delegated to them.”

Since it is likely that additional responsibilities may be delegated to nurse aides with advanced certification, the Board has adopted requirements for education and training and a competency evaluation that are reasonably attainable but sufficiently rigorous to assure minimal competency of individuals working with a very vulnerable, frail population. Therefore, amended regulations establish qualifications for the applicant, continuing education requirements for renewal, and requirements for approval of a training program in order to protect the health, safety and welfare of the public.

## 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.*

Regulations establish the qualifications for advanced certification to include certification as a certified nurse aide for at least three years, no findings on the Nurse Aide Registry or disciplinary action, 120 hours of training including a competency evaluation, and a recommendation from a nursing supervisor. To renew advanced certification, a nurse aide must attest to having completed at least three hours of continuing education per year. Requirements for an approved advanced certification education program are also established to include a ratio of 10-1 for students to instructor, qualifications of instructional personnel, on-site review, a competency evaluation, record-keeping and curriculum content.

## 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:** If the advanced certification program is effective in producing more highly skilled, motivated nurse aides, as the advocates of the program have asserted, there will be definite advantages to the public, especially those who are patients in long-term care facilities. Nurse aides with advanced certification will be able to assume additional responsibilities assigned by supervising nurses – thus relieving the nursing staff of some of the more routine but essential tasks. It would be advantageous to have nurse aides who are trained to assist in rehabilitation and restoration of daily functions for the elderly and who can recognize and treat the early stages of pressure ulcers. In addition, the advanced certification would train nurse aides as leaders and mentors to others, which may help with the severe problem of retention.

The businesses that employ nurse aides, especially long-term care facilities will benefit by having employees that are able to assume additional responsibilities. However, the success of the advanced certification program is likely to depend on the willingness and ability of the employers to compensate those with advanced certification at a higher rate.

**Advantages or disadvantages to the agency:** There are no particular advantages to the state agency that regulates nurses, since this is a new state mandate that exceeds the federal requirement for a Nurse Aide Registry. As such, there is no federal funding available. Program review and approval will have to be conducted by staff of the Board without the ability to charge the programs a fee. However, it is anticipated that the application and renewal fees paid by the nurse aides will cover most of the cost of an advanced certification program. No additional

employees in the Department of Health Professions will be necessary to implement provisions of law and regulation.

### 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 regulations were published in the Virginia Register of Regulations on August 12, 2002. Public comment was requested for a 60-day period ending October 11, 2002. The following written comment has been received:**

From the Virginia Health Care Association – The VHCA strongly supports the proposed regulations for the establishment of a career advancement certification for nurse aides that expands the scope of responsibilities and delegated duties. Three recommendations were made for amendments: 1) Section 361 A. 3. be amended to clarify that the disciplinary actions disqualifying an applicant would be those taken by the Board of Nursing rather than some other entity; 2) Section 361 A. 4. be amended to specify that the recommendation for advanced certification must come from a supervising, licensed nurse at the facility where the nurse aide currently works; and 3) Section 362 A. 2. be clarified to provide that facility sponsored training would count for the hours of continuing education.

**Board response:** 1) The Board has amended section 361 A 3 to clarify that the disciplinary actions that would disqualify a CNA would be those taken by the Board; 2) The Board did not amend the requirement for a supervisor's recommendation. Given the mobility of nurse aides, it should only be necessary to get a recommendation from someone who has supervised practice for at least six months within the past year – that may not be the supervisor at the facility where the CNA currently works; 3) The Board did not feel it was necessary to clarify that facility sponsored training would count for hours of CE, since the rule states that the completion of education and training must be verified by the employer on the renewal form.

From a CNA Program Director - Recommends changing the requirement for 3 years of work prior to applying for advanced certification. Some CNA's demonstrate leadership skills within a short time frame and should not have to wait 3 years.

**Board response:** The Board followed the recommendation of the Advisory Committee that the advanced certification should be granted to persons who have demonstrated not only the necessary knowledge and skills but also an ability to practice in a long term care environment in accordance with state and federal rules. The Board believes that it is necessary for the CNA to have at least 3 years of safe, ethical practice before an advanced certification is warranted.

From a person at HCAHealthcare – Recommends the inclusion of more specific tasks, such as accuchecks, gravity fed tube feedings, routine oxygen therapy, nebulizer treatments, etc. Does not believe the advanced curriculum is very different from the regular CNA curriculum.

Believes section 450 would allow the non-licensed staff as much or more responsibility as the advanced CNA.

**Board response:** The certification of nurse aides is a federal mandate for employment in long term care facilities, so the advanced certification is also directed to that practice. Nursing assistants who work in acute care are “unlicensed persons”, and as such, are covered by section 450 on delegation.

**A Public Hearing before the Board of Nursing was held on September 24, 2002 at which public comment was received from two individuals, as summarized below:**

Beverly Soble, representing the Virginia Health Care Association, supported the proposed regulations and referred to written comments which would be sent to the Board.

Lorrene Maynard, CNA, representing the Virginia Association of Professional Nursing Assistants, requested the Board’s support and encouragement of the profession to protect not only the public but also the nursing assistants. Specifically, she requested that the renewal fee for advanced certification be minimal with \$10 of the fee used to offset the \$45 renewal fee for nurse aide certification. She also requested that an additional \$1 be added to fund training for nurse aides at a central training site for the development of a stable workforce in long term care. She encouraged the Board to initially select a number of assistants for advanced training and continue until half of the nursing assistants are so trained.

**Board response:** The Board has set a minimal renewal fee to cover the cost of approving educational programs, reviewing applications and administering an advanced certification program. An additional credential or license issued by the Board necessitates the additional fee and cannot be used to offset the renewal fee for the basic certification. (For example: Nurse practitioners must also maintain their RN license and pay both renewal fees.) A fund for training of nurse aides (similar to the Nursing Scholarship Program funded by an additional \$1 on nurse renewals) must be established in the Code; the Board does not have the authority to establish such a fund. The selection of assistants for advanced certification will not be the choice of the Board; it is likely that individual CNA’s will choose to seek additional training and certification or that individuals will be encouraged and supported by a facility to do so.

## 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.*

### **18 VAC 90-20-360. Denial, revocation or suspension.**

The board has added performing acts beyond those authorized for an advanced certified nurse aide or assuming the duties of an advanced certified nurse aide without adequate training and competency to the list of acts for which it may deny, revoke or suspend a certificate or otherwise discipline a certificate holder.

**18 VAC 90-20-361. Requirements for initial certification as an advanced certified nurse aide.**

- In order to be certified as and use the title of “Advanced Certified Nurse Aide,” an applicant must meet the qualifications established in this section which include: 1) current certification as a certified nurse aide in Virginia; 2) certification for at least three years as a certified nurse aide; 3) no finding of abuse, neglect or misappropriation of patient property entered on the Nurse Aide Registry and no disciplinary actions taken within the five years preceding application for advanced certification; 4) a recommendation for advanced certification from a licensed nurse who has supervised the applicant in providing direct patient care for at least six months within the past year; and 5) Successful completion of a minimum of 120 hours of advanced training in an approved program which includes a competency evaluation acceptable to the board.
- An application fee of \$25 is established.

**18 VAC 90-20-362. Renewal and reinstatement of certification as an advanced certified nurse aide.**

- To be eligible to renew as an advanced certified nurse aide, a person must renew concurrently with basic certification as a nurse aide in Virginia and submit a completed renewal form and renewal fee of \$20. At least three contact hours per year of continuing education is required for renewal in any of the competency areas identified in the advanced certification training program as verified by the employer on the renewal form. The board may grant an extension or waiver of the continuing education requirement based on good cause shown by the certified nurse aide.
- An advanced certified nurse aide may renew certification for 90 days following the expiration date by meeting the renewal requirements.
- After 90 days, the advanced certification may be reinstated if the applicant for reinstatement by submission of a completed application, providing evidence of continuing education and payment of a reinstatement fee of \$30.

**18 VAC 90-20-363. Requirements for an approved advanced certification education program.**

- An advanced certification education program must also be an approved nurse aide education program as set forth in 18 VAC 90-20-330.
- An advanced certification education program must consist of a minimum of 120 hours including a minimum of 40 hours of clinical skills instruction in direct client care with on-site supervision by instructional personnel. When nurse aides are engaged in direct client care in the course of advanced certification training, the ratio shall not exceed 10 students to one instructor. The instructional personnel and the curricula in an approved advanced certification education program must meet the same requirements for those in a basic nurse aide education program.
- Each advanced certification program must develop an individual record of major skills taught and the date of performance by the student and must provide that to the student at the completion of the program.
- An advanced certification education program must develop and submit to the board a competency evaluation based on the required curriculum content. The evaluation must include both a written test on the curriculum and an assessment of manual skills. The program is required to keep a record of the reports of graduates' performance for a minimum of three years.
- The review of the program must be in accordance with requirements of 18 VAC 90-20-330 I and conducted concurrently with the on-site review of the basic nurse aide education program. Loss of board approval for the basic nurse aide education program automatically results in the loss of approval for the advanced certification education program.
- If an advanced certification education program closes, the provider must notify the board of the date of closing and submit a list of all graduates with their date of graduation.

**18 VAC 90-20-364. Required curriculum content for an advanced certification education program.**

- The curriculum for an advanced certification education program must include classroom and clinical instruction in: 1) Leadership and mentoring skills; 2) Care of the cognitively impaired client; 3) Restorative Care; and 4) Wound Care.
- Written objectives for each unit of instruction must be stated in behavioral terms that are measurable and are reviewed with the students at the beginning of each unit.

### 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.*

In its analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability, economic self-sufficiency, or the marital commitment. The proposed amendments may have a slight decrease in disposable family income for certified nurse aides who voluntarily seek advanced certification, but that should be offset by additional compensation from an employer for increased training and responsibility.