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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Boards of Nursing and Medicine, Department of Health Professions
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18VAC90-30 18VAC90-40
<b>VAC Chapter title(s)</b>	Regulations Governing the Licensure of Nurse Practitioners Regulations Governing Prescriptive Authority for Nurse Practitioners
<b>Action title</b>	Amendments relating to clinical nurse specialists as nurse practitioners
<b>Date this document prepared</b>	8/6/21

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

Chapter 157 of the 2021 General Assembly established licensure and practice of clinical nurse specialists (CNSs) as nurse practitioners under the joint Boards of Nursing and Medicine. A regulatory action to conform 18VAC90-30 and 18VAC90-40 has been adopted by the Boards as an exempt action. However, additional amendments in sections relating to qualifications for initial licensure and for continuing competency are necessary to modify current language for consistency with the education and licensure of clinical nurse specialists who were previously registered under the Board of Nursing.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.*

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CNS = clinical nurse specialist

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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On June 20, 2021, the Board of Nursing and on August 6, 2021, the Board of Medicine adopted amendments to 18VAC90-30-10 et seq., Regulations Governing the Licensure of Nurse Practitioner and 18VAC90-40-10 et seq., Regulations Governing Prescriptive Authority for Nurse Practitioners.

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

*As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.*

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Chapter 157 of the 2021 General Assembly established licensure and practice of clinical nurse specialists (CNSs) as nurse practitioners under the joint Boards of Nursing and Medicine. A regulatory action to conform 18VAC90-30 and 18VAC90-40 has been adopted by the Boards as an exempt action, but there are other amendments that are necessary but not deemed to be exempt.

It is not expected to be controversial because the amendments are consistent with the current terminology and intended to allow for renewal of all CNSs who were previously registered by the Board of Nursing but are now licensed by the joint Boards.

### Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Boards of Nursing and Medicine 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, permit, 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, licensure, or registration. 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, permit, and the issuance of a multistate licensure privilege.*
- 5. To levy and collect fees for application processing, examination, registration, certification, permitting, 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. ...*

§ [54.1-2900](#). Definitions.

*As used in this chapter, unless the context requires a different meaning: ...*

*"Clinical nurse specialist" means an advance practice registered nurse who is certified in the specialty of clinical nurse specialist and who is jointly licensed by the Boards of Medicine and Nursing as a nurse practitioner pursuant to § [54.1-2957](#).*

§ [54.1-2957](#). Licensure and practice of nurse practitioners.

A. As used in this section:...

*J. Nurse practitioners licensed by the Boards of Medicine and Nursing in the category of clinical nurse specialist shall practice in consultation with a licensed physician in accordance with a*

*practice agreement between the nurse practitioner and the licensed physician. Such practice agreement shall address the availability of the physician for routine and urgent consultation on patient care. Evidence of a practice agreement shall be maintained by a nurse practitioner and provided to the Boards upon request. The practice of clinical nurse specialists shall be consistent with the standards of care for the profession and with applicable laws and regulations.*

**Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

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The purpose of the regulatory change is to use language consistent with the education and practice of clinical nurse specialists that will allow them to be licensed and to renew licensure to continue providing care to patients to protect public health and safety.

**Substance**

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

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Section 80 of Chapter 30 and Section 40 of Chapter 40 are amended to include the term "advanced practice registered nurse" which inclusive of clinical nurse specialists and all categories of nurse practitioners to ensure the graduate programs for clinical nurse specialists qualify them for licensure.

Section 105 of Chapter 30 is amended to allow CNSs who were registered with a retired certification by the Board of Nursing to renew their nurse practitioner license by completion of hours of continuing education rather than holding current specialty certification.

**Issues**

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary 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, include a specific statement to that effect.*

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- 1) There are no advantages or disadvantages to the public apart from clarification of terminology and the ability of some CNSs to renew licensure and continue to practice.
- 2) There are no particular advantages or disadvantages to the agency.
- 3) Other matters. The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. The Board is authorized under § 54.1-2400 to "To promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) 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.” These regulatory changes are less restrictive and necessary to administer the chapters.*

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

There are no applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected - None

Localities Particularly Affected - None

Other Entities Particularly Affected - None

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> <li>a) fund source / fund detail;</li> <li>b) delineation of one-time versus on-going expenditures; and</li> <li>c) whether any costs or revenue loss can be absorbed within existing resources</li> </ul>	<p>As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners or entities for necessary functions of regulation. All notifications will be done electronically. There are no on-going expenditures.</p>
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<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There are no costs to other agencies.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	There are no specific benefits.

**Impact on Localities**

Projected costs, savings, fees or revenues resulting from the regulatory change.	None
Benefits the regulatory change is designed to produce.	None

**Impact on Other Entities**

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Clinical nurse specialists who, prior to July 1, 2021, were registered by the Board of Nursing as advanced practice nurses and are now licensed by the joint Boards of Nursing and Medicine as nurse practitioners.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	At the end of the 3 <sup>rd</sup> quarter (FY21), there were 408 CNSs; their registration was automatically changed to licensure under the Boards of Nursing and Medicine.  It is unknown how many would be considered small businesses, but likely that almost all are employed by large health systems.  It is also unknown how many CNSs hold certifications that are now retired.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	There are no costs relating to this action.
Benefits the regulatory change is designed to produce.	This change will clarify terminology and allow some CNSs who were registered with a retired certification to renew their nurse practitioner licenses.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

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There are no viable alternatives to the proposed regulatory action, which is necessitated by statutory provisions for licensure of CNSs as nurse practitioners.

### **Regulatory Flexibility Analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

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There are no alternative regulatory methods consistent with the mandate of the Code and public health and safety. Proposed regulations are consistent with the statutory changes made by the 2021 General Assembly.

### **Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

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If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Boards of Nursing and Medicine are providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site

at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to: Elaine Yeatts at [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov) or at 9960 Mayland Drive, Henrico, VA 23233 or by fax at (804) 527-4434. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

## Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

Current chapter-section number	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
30-80	Sets out the qualifications for licensure as a nurse practitioner	<p>Subsection A requires a graduate degree in nursing or in the appropriate nurse practitioner specialty from an educational program designed to prepare <i>nurse practitioners</i>. That term is deleted and replaced with the term “<i>advanced practice registered nurse</i>.”</p> <p>Clinical nurse specialists do not graduate from “nurse practitioner” educational programs. Nationally, clinical nurse specialists are categorized as advanced practice registered nurses, along with nurse practitioners, nurse anesthetists, and nurse midwives. Therefore, the terminology is amended to “advanced practice registered nurse” to be inclusive of all categories.</p>
30-105	Sets out continuing competency requirements for renewal of licensure as a nurse practitioner	<p>Subsection A specifies that any nurse practitioner licensed after 2002 is required to hold current certification in the specialty practice by a certifying agency. CNSs who were licensed as of July 1, 2021 were previously registered by the Board of Nursing, and that registration may have been based on a certification that has now been retired and is no longer available.</p> <p>Therefore, there is an allowance added to subsection B that will permit renewal of licensure for CNSs as is allowed for nurse practitioners who were licensed prior to 2002. They may substitute 40 hours of continuing education (per biennium) if they do not hold current certification.</p>
40-40	Sets out the qualifications for initial approval of prescriptive	The section is amended with language similar to 18VAC90-30-80 to use the terminology “advanced practice registered nurse” to be inclusive of CNSs.

	authority for a nurse practitioner	
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