



## Virginia Department of Planning and Budget **Economic Impact Analysis**

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**18 VAC 90-26 Regulations for Nurse Aide Education Programs**  
**Department of Health Professions**  
**Town Hall Action/Stage: 5929 / 9569**  
November 14, 2022

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB's best estimate of these economic impacts.<sup>1</sup>

### **Summary of the Proposed Amendments to Regulation**

In response to a petition for rulemaking and following a review of this regulation, the Board of Nursing (Board) proposes to: 1) allow nurse aide training to occur outside of a nursing home facility; 2) allow the program coordinator or the primary instructor, but not both, to be a non-registered nurse; 3) remove requirements for geriatric care experience for registered nurse or licensed practical nurse instructors; 4) allow instructional personnel from other health professions to supplement the primary instructor, and to also reduce the two year experience requirement for a licensed practical nurse acting as other instructional personnel to one year; 5) specify that program documentation be maintained for two years following each site visit; and 6) require notification if a program has been inactive for a year.

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

## Background

Some of the proposed changes were specifically prompted by a petition for rulemaking<sup>2</sup> and others resulted from staff efforts to identify potential changes that could improve training, the accessibility of training, and the ability of nurse aide education programs to hire qualified instructional personnel. According to the Board, nurse aide education programs have struggled to place their students in nursing home facilities given the restrictions that have been in place for several years due to the COVID-19 pandemic.<sup>3</sup> In addition, programs have had difficulty in obtaining and retaining qualified personnel to teach in nurse aide education programs. In order to address these issues, the Board proposes amendments to this regulation as discussed below.

## Estimated Benefits and Costs

One of the proposed amendments would allow nurse aide training to occur outside of a nursing home facility. Currently, nurse aide education programs are required to provide skills training experience in a “nursing facility” specifically. Additionally, there is a limitation that only five of the 40 hours of direct client care training may occur outside of geriatric long-term care facilities. However, due to the COVID-19 pandemic and the associated restrictions on who can enter in these facilities, the education programs have struggled to comply with this requirement, which probably prompted the petition for rulemaking.<sup>4</sup> The Board proposes to allow skills training to occur in a “clinical setting” which is broader than the nursing facility. This proposed change would broaden the types of facilities where training can occur and should provide additional options to the education programs and their students.

The Board also proposes to change the requirements for program coordinators, primary instructors, and other instructional personnel in a way to make the requirements less restrictive. Currently, both the program coordinator and primary instructor must hold a license as a registered nurse. Under the proposed amendments, only the program coordinator or primary instructor would be required to hold a license as a registered nurse. This would allow training programs to be in compliance even if they only had a single registered nurse (acting as either the

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<sup>2</sup> <https://townhall.virginia.gov/l/viewpetition.cfm?petitionid=356>.

<sup>3</sup> See page 1 at [https://townhall.virginia.gov/l/GetFile.cfm?File=27\5929\9569\AgencyStatement\\_DHP\\_9569\\_v1.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=27\5929\9569\AgencyStatement_DHP_9569_v1.pdf)

<sup>4</sup> Arguably even before the pandemic, the U.S. Supreme Court’s ruling on June 22, 1999, in *Olmstead v. L.C.* which requires that individuals with disabilities be served in the most integrated settings possible has resulted in moving many nursing home residents into community based programs severely restricting nursing home services growth over two decades and thereby educational and training opportunities available through them.

coordinator or as the primary instructor) as opposed to having to have two registered nurses on staff. Also, the requirement for direct client care experience in geriatric services for registered nurse or licensed practical nurse instructors would be removed, thereby allowing additional experience from other clinical settings. Similarly, this change would provide some relief to the training programs by expanding the pool of potential trainers. Additionally, the requirements for other instructional personnel who supplement the primary instructor would be amended to permit health professionals other than registered nurses and licensed practical nurses to become instructors. Currently, the other instructional personnel that support the primary instructor are required to be either a registered nurse or a licensed practical nurse. Moreover, the proposal would reduce the two year experience requirement for a licensed practical nurse as other instructional personnel to one year. Again, these changes open the possibility of other health professionals supplementing the primary instructor, expand the pool of individuals who may be hired to help the primary instructor, and provide some relief to the training programs.

The common theme in the proposed changes is a shift from the emphasis on the type of education and experience gained in a nursing facility setting to that gained in other settings such as assisted living facilities, home care, and hospitals. Nursing facility care is probably more intensive overall compared to other settings, but allowing additional settings would offer additional educational and training opportunities and may thereby increase the pool of available instructors.<sup>5</sup> In addition, not all nurse aides actually obtain employment in a nursing home. This leads to overinvestment in this aspect of nursing aide education and training for those who may never work in a nursing facility. Under the proposed changes, the education and experience provided to nursing aides may more closely align with their actual work experience after graduation and thereby improve the allocation of scarce resources.

One of the remaining proposed changes would specify that documentation be maintained for two years following a site or survey visit. Currently, the language requires records to be

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<sup>5</sup> One of the comments states “COVID has created an issue with interacting with patient in a long term setting and to be honest it does not give you a lot of diversity of the type of patients that you will encounter. By engaging in the same routine care of patients, CNAs can become stagnant in their skills and quite frankly that is dangerous for our long term care population. I have seen this first hand. Also, I do have hospital experience as a CNA, which is most of my professional career. The hospital setting gives you the ability to see different patients on a routine basis and allows the chance to use different skills daily making the CNA well rounded. Additionally, the CNA has the ability to learn new skills that she would necessarily not be able to learn in the long term care setting. Personally, I was able to learn to do bladder scanners on patients.” See

<https://townhall.virginia.gov/l/ViewComments.cfm?commentid=119235>

maintained but does not state for how long. Specifying the record-keeping requirements will assist the Board in its oversight responsibilities and ensure the programs have clarity about the Board's expectations. The proposed duration of two years may be more or less than what an individual program may already be doing, and thus may extend or shorten the duration compared to their current practice. To the extent that these programs already maintain the required documentation, any extension or shortening would not introduce significant costs or benefits, but data is not available on the industry's current record keeping practices.

Finally, the Board proposes to require a program which has not held classes for one year to notify the Board of the program's inactivity. The Board states that this change is necessary because, under the current regulatory language, there is a requirement to place the program's approval on inactive status if a program is inactive for one year. However, there is currently no reporting requirement for the education programs. This leads the Board to discover program closures well after the program has been inactive for one year. Thus, this change would help provide timely and accurate information to the Board in so far as which programs should be designated as inactive.

### **Businesses and Other Entities Affected**

This regulation affects nurse aide education programs and their students. There are currently 236 nurse aide programs in Virginia. The Board does not track or regulate students, so an estimate of the number of students that would be affected is not available. The Board reports that there were 3,767 students undergoing testing for certification as a nurse aide in 2021, but that number is not comprehensive as many students do not participate in testing because they are able to work without certification. No nurse aide program or students appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>6</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities

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<sup>6</sup> Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

combined. As noted above, the proposed changes generally allow education and training opportunities available from settings other than nursing facilities be utilized. The remaining changes regarding specification of two years in records maintenance and notification of inactive status do not appear to have the potential to pose significant costs. Thus, no adverse impact is indicated.

### **Small Businesses<sup>7</sup> Affected:<sup>8</sup>**

No data are available to assess whether the education programs meet the definition of a small business.

### **Localities<sup>9</sup> Affected<sup>10</sup>**

The proposed amendments do not disproportionately affect any particular localities and do not introduce costs for local governments.

### **Projected Impact on Employment**

The proposed amendments are expected to expand the pool of instructors educational programs can hire from which is essentially an increase in the available supply of potential instructors. Such a flexibility may allow them to maintain or expand the size of their programs. Thus, an increase in the number of instructors hired by the programs may be expected or a potential decrease may be avoided. However, since at least some of these instructors may hold jobs elsewhere currently, the impact on total employment may not be large.

### **Effects on the Use and Value of Private Property**

The proposed changes that allow utilization of education and experience available in settings other than nursing facilities provide additional opportunities to the programs in terms of

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<sup>7</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

<sup>8</sup> If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>9</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>10</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

where they can provide training and who they can hire as instructors. These flexibilities should provide some cost avoidances and improve their asset values.

The proposed amendments do not affect real estate development costs.