



townhall.virginia.gov

Proposed Regulation Agency Background Document

Agency name	Board of Long-Term Care Administrators, Department of Health Professions
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC95-20 18VAC95-30
VAC Chapter title(s)	Regulations Governing the Practice of Nursing Home Administrators Regulations Governing the Practice of Assisted Living Facility Administrators
Action title	Regulatory Reduction 2023
Date this document prepared	10/2/2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

This regulatory action was initiated to implement changes targeted towards regulatory reduction as specified in Executive Order 19. The changes contained within this action include simple line-item elimination of needless regulation and the addition of inactive licensure for both practice groups.

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.

CE – Continuing Education
AIT – Administrator-in-training

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 the ORM procedures, “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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The impetus for this action is [EO19 \(2022\)](#)

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.

Regulations of the Board of Long-Term Care Administrators are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Virginia Code § 54.1-2400(6) specifically states that the general powers and duties of health regulatory boards shall be “[t]o promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system.”

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 is intended to solve.

The purpose of this action is to advance compliance with Executive Order 19, requiring all agencies and regulatory bodies to reduce regulatory requirements by 25%

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.

This action was initiated to implement changes targeted towards regulatory reduction as specified in Executive Order 19. The changes being considered include the following:

- Create a pathway for inactive licensure for nursing home administrators and assisted living facility administrators in new sections 18VAC95-20-201 and 18VAC95-30-91;
- Eliminate requirements for attestations of compliance with existing laws from application and renewal requirements throughout both chapters;
- Remove requirements for all documents in an application for licensure to be submitted at the same time throughout both chapters; and
- Remove requirements to obtain new preceptors within 60 days upon interruption of a preceptor program in 18VAC95-20-440 and 18VAC95-30-200

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.

- 1) The primary advantages to the public are reduced regulatory burden by eliminating needless attestations and requirements.
- 2) There are no primary advantages or disadvantages to the agency or the Commonwealth.
- 3) The Director of the Department of Health Professions has reviewed the proposal and performed a competitive impact analysis. Any restraint on competition as a result of promulgating these regulations is a foreseeable, inherent, and ordinary result of the statutory obligation of the Board to protect the safety and health of citizens of the Commonwealth. The Board is authorized under § 54.1-2400 “[t]o 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.” The promulgated regulations do not conflict with the purpose or intent of Chapters 1 or 25 of Title 54.1.

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

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “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

Consistent with § 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 the proposed 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: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources.</p>	<p>The Board may accrue additional revenue from the inactive license fee, dependent on the numbers of practitioners who choose to become inactive instead of letting their license expire when they are not presently practicing. The amount of revenue is difficult to predict.</p>
<p><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.</p>	<p>There are no expected costs, savings, fees, or revenues to other state agencies from this regulatory change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There are no expected costs, savings, fees, or revenues for any state agency benefitting from this regulatory change,</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees, or revenues resulting from the regulatory change.</p>	<p>There are no expected costs, savings, fees or revenues to localities from this regulatory change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There are no expected benefits to localities from this regulatory change.</p>

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>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.</p>	<p>There is no impact on individuals, businesses, or other entities that may be affected by this change.</p>
--	--

<p>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:</p> <p>a) is independently owned and operated, and;</p> <p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>As of Q4 2023 the Board of Long-Term Care Administrators had 2,159 licensees. There will be no small businesses affected.</p>
<p>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:</p> <p>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</p> <p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</p> <p>c) fees;</p> <p>d) purchases of equipment or services; and</p> <p>e) time required to comply with the requirements.</p>	<p>There will be no cost associated with this change for affected individuals.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Reduction of unnecessary burdens when completing forms and renewing licensure, which will save time for those filling them out. Inactive licensure will reduce costs to maintain a license with the Board while not actively practicing.</p>

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.

These are existing regulations. The only way they may be revised is through Board action.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B 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.

- 1) There are no alternative regulatory methods to consider.
- 2) There are no alternative regulatory methods to consider.
- 3) There are no alternative regulatory methods to consider.
- 4) This

regulatory change does not impact small businesses. 5) This regulatory change does not impact small businesses.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Not applicable.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Michelle Hamilton	Listed proposed regulatory changes the Board should consider	The proposed changes were not within DHP’s regulatory chapters, thus the Board cannot implement any of the changes recommended.
Kim Hurt	Listed proposed regulatory changes the Board should consider	The proposed changes were not within DHP’s regulatory chapters, thus the Board cannot implement any of the changes recommended.
Margaret Nolen	Listed proposed regulatory changes the Board should consider	The proposed changes were not within DHP’s regulatory chapters, thus the Board cannot implement any of the changes recommended.
Samuel Estep	Listed proposed regulatory changes the Board should consider	The proposed changes were not within DHP’s regulatory chapters, thus the Board cannot implement any of the changes recommended.
Brandie French	Listed proposed regulatory changes the Board should consider	The proposed changes were not within DHP’s regulatory chapters, thus the Board cannot implement any of the changes recommended.

Alice Reynolds	Listed proposed regulatory changes the Board should consider	The proposed changes were not within DHP's regulatory chapters, thus the Board cannot implement any of the changes recommended.
Commonwealth Senior Living	Listed proposed regulatory changes the Board should consider	The proposed changes were not within DHP's regulatory chapters, thus the Board cannot implement any of the changes recommended.
Patrice Cherry	Listed proposed regulatory changes the Board should consider	The proposed changes were not within DHP's regulatory chapters, thus the Board cannot implement any of the changes recommended.
Luke Peterson	Listed proposed regulatory changes the Board should consider	The proposed changes were not within DHP's regulatory chapters, thus the Board cannot implement any of the changes recommended.
Erika Cruz	Listed proposed regulatory changes the Board should consider	The proposed changes were not within DHP's regulatory chapters, thus the Board cannot implement any of the changes recommended.
Tommy Comer	Listed proposed regulatory changes the Board should consider	The proposed changes were not within DHP's regulatory chapters, thus the Board cannot implement any of the changes recommended.
Virginia Assisted Living Association (VALA)	Listed proposed regulatory changes the Board should consider	Some of the proposed changes were already planned changes by the Board, however some were outside the scope presented by the NOIRA, so they were not considered in an effort to not stall this action.
Leigh Morehead	Listed proposed regulatory changes the Board should consider	The proposed changes were not within DHP's regulatory chapters, thus the Board cannot implement any of the changes recommended.
Kristen Gregory	Offered general support for the Board	The support was acknowledged and appreciated.
Judy Hackler	Repeat of VALA's comment	Repeat of VALA's comment response
Dana Parsons	Requested a RAP to make regulatory reduction changes	The Board does not see a need for a RAP considering the proposed changes are simple and meant to be easy steps towards the 25% reduction goal

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.

The Board of Long-Term Care Administrators is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of the 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://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Erin Barrett, Agency Regulatory Coordinator, 9960 Mayland Drive, Henrico, VA 23233 or erin.barrett@dhp.virginia.gov or by fax to (804) 915-0382. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

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 the existing VAC Chapter(s) and the proposed regulation. If the 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.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter – section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
18VAC95-20-80		Fees table	Addition of “Inactive nursing home administrator license renewal” and “fee for late inactive licensure renewal” to the fees table with the addition of inactive licensure with this action. The inactive licensure renewal fee was determined by comparing inactive licensure renewal fees among other Boards and determining an amount comparable to those. This will allow a licensee to maintain an inactive license with the Board while not actively practicing for a reduced rate than maintaining a full, active license and would also allow them to quickly re-enter the workforce as opposed to the process of getting a new license.

			Table numbers change as well due to the addition of the two line items.
18VAC95-20-130 (C)		C. Examination fees are to be paid directly to the service contracted by the board to administer the exam	Elimination of the wording “contracted by the board to” and addition of the wording “or entity that.” The Board does not contract with a test provider, but instead simply require a national exam to obtain licensure. The new language is intended to clarify that the Board does not contract exams directly with a provider.
18VAC95-20-175 (C)(2)		d. Signature of an authorized representative of the approved sponsor	Obtaining a signature can be difficult with virtual continuing education and the Board can find proof of participation on the electronic CEs if needed. This is an outdated regulation.
18VAC95-20-175 (C)(3)		3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of completion on forms provided by the board and evidence of attendance or participation as provided by the approved sponsor	Adding “or as documented in the NAB continuing education registry” as this is where the Board searches to find CE information, reducing a burden on the licensee to provide information the Board can easily find.
18VAC95-20-180		(A) A person who fails to renew his license or preceptor registration by the expiration date shall....	Replacing the word “shall” with “may” as no licensee is required to renew their license should it lapse. This word change clarifies that someone MAY regain their license with the addition of a late fee should they miss the renewal window.
18VAC95-20-201	New section	New section	Language for inactive licensure is pulled from other boards that have inactive licensure. This addition allows licensees an additional pathway to licensure, which is considered a reduction of burden by the ORM. It also allows licensees who are not actively practicing but want to keep their license a way to do so at a lower cost than an active license. An inactive licensee may not practice in their profession but may request to have their license reactivated should they desire to practice again by providing proof of

			completion of CE hours and paying the reactivation fee.
18VAC95-20-220 (3)		(iii) completed the Domains of Practice form required by the board	Eliminating this language would eliminate the duplication of a form that the licensee already completed as part of the administrator-in-training program.
18VAC95-20-230 (B)		(4). An attestation that he has read and understands and will remain current with the applicable Virginia laws and regulations relating to the administration of nursing homes	Currently, every licensee is required to attest that they know the laws and regulations when they apply for their license. An attestation to that effect is a standard part of an application and requiring a separate, additional attestation as this regulation does is unnecessary.
18VAC95-20-230		(C) With the exception of school transcripts, examination scores, the NPDB report, employer verifications, and verifications from other state boards, all parts of the application package shall be submitted at the same time.	Board staff cannot act on the application to be licensed until all parts of the application package have been submitted, and if someone does not submit a part of their application package, the Board staff asks for that information. There is no need to have regulation that requires all items to come in together, since the applicant will be unable to be licensed without including all that information. It is on the licensee to provide all the information, regardless of when they decide to do so.
18VAC95-20-300		(B) With the exception of school transcripts, all parts of the application package shall be submitted at the same time.	For similar reasons as above, this item is being eliminated. Most people do submit all their documents at once, and there seems to be no need to single out one type of document to specify could be submitted later when no application can be considered until all documentation has been received.
18VAC95-20-440 (A)		...and shall obtain a new preceptor who is registered with the board within 60 days	This item is being eliminated as it places an unnecessary and burdensome timeline on the AIT to acquire a new preceptor within an arbitrary timeline. An AIT can obtain a new preceptor whenever they are ready to continue their program.
18VAC95-30-40		Fees table	Addition of "Inactive license renewal" and "fee for late inactive licensure renewal" to the fees table with the addition of inactive licensure with this action. The inactive licensure renewal fee was

			<p>determined by comparing inactive licensure renewal fees among other Boards and determining an amount comparable to those. This will allow a licensee to maintain an inactive license with the Board while not actively practicing for a reduced rate than maintaining a full, active license and would also allow them to quickly re-enter the workforce as opposed to the process of getting a new license.</p> <p>Table numbers change as well due to the addition of the two line items.</p>
18VAC95-30-40 (C)		C. Examination fees are to be paid directly to the service contracted by the board to administer the exam	Elimination of the wording "contracted by the board to" and addition of the wording "or entity that." The Board does not contract with a test provider, but instead simply require a national exam to obtain licensure. The new language is intended to clarify that the Board does not contract exams directly with a provider.
18VAC95-30-70 (C)(2)		d. Signature of an authorized representative of the approved sponsor	Obtaining a signature can be difficult with virtual continuing education and the Board can find proof of participation on the electronic CEs if needed. This is an outdated regulation.
18VAC95-30-70 (3)		3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of completion on forms provided by the board and evidence of attendance or participation as provided by the approved sponsor	Adding "or as documented in the NAB continuing education registry" as this is where the Board searches to find CE information, reducing a burden on the licensee to provide information the Board can easily find.
18VAC95-30-80		(A) A person who fails to renew his license or preceptor registration by the expiration date shall....	Replacing the word "shall" with "may" as no licensee is required to renew their license should it lapse. This word change clarifies that someone MAY regain their license with the addition of a late fee should they miss the renewal window.
18VAC95-30-91	New Section	New Section	Language for inactive licensure is pulled from other boards that have inactive licensure. This addition allows licensees an additional pathway to licensure, which is

			considered a reduction of burden by the ORM. It also allows licensees who are not actively practicing but want to keep their license a way to do so at a lower cost than an active license. An inactive licensee may not practice in their profession but may request to have their license reactivated should they desire to practice again by providing proof of completion of CE hours and paying the reactivation fee.
18VAC95-30-130 (B) (4)		(4). An attestation that he has read and understands and will remain current with the applicable Virginia laws and regulations relating to the administration of assisted living facilities.	Currently, every licensee is required to attest that they know the laws and regulations when they apply for their license. An attestation to that effect is a standard part of an application and requiring a separate, additional attestation as this regulation does is unnecessary.+
18VAC95-30-130 (C)		(C) With the exception of school transcripts, examination scores, the NPDB report, employer verifications, and verifications from other state boards, all parts of the application package shall be submitted at the same time.	Board staff cannot act on the application to be licensed until all parts of the application package have been submitted, and if someone does not submit a part of their application package, the Board staff asks for that information. There is no need to have regulation that requires all items to come in together, since the applicant will be unable to be licensed without including all that information. It is on the licensee to provide all the information, regardless of when they decide to do so.
18VAC95-30-140 (B)		(B) With the exception of school transcripts, all parts of the application package shall be submitted at the same time.	For similar reasons as above, this item is being eliminated. Most people do submit all their documents at once, and there seems to be no need to single out one type of document to specify could be submitted later when no application can be considered until all documentation has been received.
18VAC95-30-200 (A)		...and shall obtain a new preceptor who is registered with the board within 60 days	This item is being eliminated as it places an unnecessary and burdensome timeline on the AIT to acquire a new preceptor within an arbitrary timeline. An AIT can obtain a new preceptor whenever they are ready to continue their program.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage