

The Wait is Over: The Governor has Approved the Virginia Emergency Regulations for Nurse Practitioners - Ensure Your Practice Agreement is Compliant

The 2012 Virginia General Assembly session was an important year for Nurse Practitioners in Virginia. Our Client Advisory – [Collaboration and Consultation: Changes to Virginia Nurse Practitioners' Scope of Practice](#), available [here](#), – discussed the significant revisions that were made to the Virginia statutes governing Nurse Practitioners during the 2012 legislative session. The most important change was that Virginia Nurse Practitioners now have more autonomy and are permitted to practice as part of a patient care team led by a physician with whom the Nurse Practitioner regularly consults and collaborates, as opposed to the prior model, which required physician supervision of the Nurse Practitioner.

The 2012 statutory amendments made many of the regulations governing Nurse Practitioners inapplicable, necessitating emergency regulations. While the Joint Boards of Nursing and Medicine promptly met and developed emergency regulations as required by the 2012 legislation, the emergency regulations have been tied up in the regulatory process for over a year. The emergency regulations (18 VAC 90-30-10 et seq. and 18 VAC 90-40-10 et seq.) finally became effective on [May 8, 2013](#); the day they were approved and signed by the Governor. The emergency regulations are effective immediately and are scheduled to be published in the Virginia Register of Regulations on June 3, 2013.

Because these regulations were implemented as emergency regulations,

they have not gone through the standard regulatory process and therefore have not previously been open for public comment. Public comment on the emergency regulations will be accepted beginning May 8, 2013 and will be open for one month. Under the non-standard regulatory process, emergency regulations are set to expire within twelve months of the effective date unless an additional six month extension is authorized by the Governor. Generally, during that twelve month timeframe, and as is the case here, the standard regulatory three-step process (i.e. NOIRA, Proposed Regulations, Final Regulations) is instituted to promulgate final regulations. Although currently effective, additional revisions could be made to the emergency regulations based on future public comment. Once finalized with any revisions, the regulations will be published in the Virginia Register of Regulations once again and any changes made to the regulations will be highlighted. A thirty-day waiting period will take place before the final regulations become effective either replacing the emergency regulations (if revised) or making the existing regulations permanent.

The text of the emergency regulations is available on the Virginia Regulatory Town Hall website, www.townhall.virginia.gov. The changes are no surprise. For the most part, they directly reflect the amendments made to the statutes. In summary:

- **Definitions:** Definitions for “Collaboration,” “Consultation” and “Patient Care Team Physician” were added to the regulations. The definition of “Supervision” was removed and the definition of “Practice Agreement” was amended to reflect the fact that prescriptive authority must now be incorporated into the Practice Agreement (which was formerly called a Protocol) and not maintained as a separately filed document.
- **CRNAs:** The regulations clearly reflect the statutory requirement that CRNAs (a category of Nurse Practitioner), unlike other types of Nurse Practitioners, still must be “supervised” by a physician.
- **Practice Agreement:** The regulations set forth specific elements that must be included in a Nurse Practitioner Practice Agreement. It is important to note that the Joint Boards of Nursing and Medicine have published guidance on the elements that should be included in a Practice Agreement, which contain some variations from those reflected in the emergency regulations. See Board of Nursing Guidance Document No. 90-56. The Practice Agreement provisions required by the regulations include the following:
 - ◇ Periodic review of patient charts by the patient care team physician.

- ◇ Patient care team physician site visits and frequency if determined necessary by the patient care team.
 - ◇ Physician input in complex clinical cases, patient emergencies and referrals.
 - ◇ Authority for signatures, certifications, stamps, verifications, affidavits and endorsements.
 - ◇ A description of the Nurse Practitioner's prescriptive authority including the categories of drugs and devices the Nurse Practitioner is authorized to prescribe.
 - ◇ Name or signature of the Patient Care Team Physician who has entered the Practice Agreement and agreed to serve as the patient care team physician.
 - Maintained by Nurse Practitioner: The regulations also make clear that the Practice Agreement must be maintained by the Nurse Practitioner and provided to the Boards upon request. For Nurse Practitioners providing care to patients within a hospital or health care system, the Practice Agreement may be included as part of the documents delineating the Nurse Practitioner's privileges.
 - Patient Care Team Physician Oversight: The regulations reflect the statutory expansion of a physician's ability to serve as the Patient Care Team Physician for up to six Nurse Practitioners "with prescriptive authority at any one time."
 - Disclosure: A specific requirement was added to the regulations regarding the Nurse Practitioner's responsibility to disclose, "upon request" of a patient, the name of the patient care team physician and contact information.
 - Clarification: A number of additional clarifying revisions were also made to the regulations.
- Now is a good time for all Nurse Practitioners, Patient Care Team Physicians, and hospitals or practices

that employ Nurse Practitioners to review their Practice Agreements to ensure that they comply with not only the revised statutes governing Nurse Practitioners, but also the new regulations. If you would like assistance in reviewing or developing a Practice Agreement, to ensure that it meets Virginia's requirements; if you have questions regarding the changes to the legislation or new regulations regarding Nurse Practitioners; or if you would like for us to review your existing policies and procedures or practice models, to ensure compliance with state and federal law, please feel free to contact Michelle Calloway or Clay Landa at 804-967-9604, or by email at mcalloway@hdjn.com or clanda@hdjn.com. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm's website at www.hdjn.com.

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