

Final Proposed Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the "Rule on Rulemaking" adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules. All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week. The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of "Proposed Rule Postings" online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Administrative Rules of the Board of Nursing

/S/ Sarah Copeland Hanzas
_____, on 2/17/2023
(signature) (date)

Printed Name and Title:
Sarah Copeland Hanzas, Secretary of State

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

**1. TITLE OF RULE FILING:
Administrative Rules of the Board of Nursing**

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

22P 025

3. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Lauren Layman

Agency: Secretary of State, Office of Professional

Regulation

Mailing Address: 89 Main Street, 3rd Floor, Montpelier

Vermont, 05620-3402

Telephone: (802) 828-2883 Fax:

E-Mail: lauren.layman@vermont.gov

Web URL (WHERE THE RULE WILL BE POSTED):

[https://sos.vermont.gov/nursing/statutes-rules-](https://sos.vermont.gov/nursing/statutes-rules-resources/)

[resources/](https://sos.vermont.gov/nursing/statutes-rules-resources/)

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Kelsi Alger

Agency: Secretary of State, Office of Professional

Regulation

Mailing Address: 89 Main St, 3rd Floor, Montpelier, VT

05620-3402

Telephone: (802) 828-2191 Fax:

E-Mail: kelsi.alger@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND

COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:
(THE SPECIFIC STATUTE OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

26 V.S.A. § 1574 (granting rulemaking authority to the Board of Nursing); 3 V.S.A. § 123(11) (making the Secretary of State the adopting authority for Board rules)

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

The agency is specifically authorized by 26 V.S.A. § 1574 to "[a]dopt rules necessary to perform its duties under [chapter 28 of title 26]." Each element of the rule corresponds to an administrative responsibility assigned to the Board within chapter 28, including responsibilities to set standards for nurse licensure, nurse education programs, nursing practice, and nurse education and reentry programs.

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSIS OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

This strike-and-rewrite update to the Administrative Rules of the Board of Nursing reflects substantial changes in the legal and practice landscape since the last rule update in January, 2015. The rule minimizes administrative burdens, conforms to license uniformity and streamlining legislation in Title 3, and provides for the administration of the Nurse Licensure Compact (NLC), to which Vermont became a party state in February, 2022. The rule articulates clear nursing

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

Since the rule was last amended in January of 2015, the General Assembly has made significant changes to the general laws of professional regulation, aimed at streamlining the licensing process, promoting uniformity and consistency among licensing programs, responding to changes in federal antitrust jurisprudence. In addition, Act 64 of 2021 made Vermont a party state to the Nurse Licensure Compact, effective February 1, 2022. The updated rule is necessary to fully operationalize these policy initiatives and to maintain clarity and consistency for users of the rule.

practice standards, completing a multi-year effort by the Board and its Practice Committee to refine a body of non-rule position statements, retire those that were dated or unnecessary, and incorporate into rule those that were seen to warrant retention. Finally, the rule adds more flexible avenues by which to demonstrate ongoing nursing competency, ending exclusive reliance on practice hours.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The rule has been developed carefully in multiple duly-warned public meetings of the Vermont Board of Nursing. Board members appointed by the Governor on the strength of their professional qualifications have worked collaboratively with agency legal staff, the Executive Director for the Board, and stakeholders from the public and private sectors to ensure that the rule responds rationally and appropriately to substantial legal and practical developments bearing on nursing licensing, regulation, and practice. The Board and Office of Professional Regulation have been guided by clear state licensing policy, set out at 26 V.S.A., Ch. 57, which ordains that the purpose of occupational and professional regulation is to protect the public health, safety, and welfare, by the least restrictive means necessary to achieve those ends.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

APRNs, RNS, LPNs, MNAs, LNAs, hospitals, clinics, private provider offices, nursing homes, rehabilitation

facilities, and other nursing employers; nursing schools and education programs; acute, long-term, and residential care organizations; the Vermont Department of Health.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

The significant economic impacts of this rule are derived from Vermont's participation in the Nurse Licensure Compact. Each Board licensee will pay a one-time fee of \$13.25 to cover the cost of the federal criminal background check required by 3 V.S.A. § 123(j)(1)(A). RNS and LPNS whose primary states of residence are other Compact states may now practice in Vermont without need of a Vermont license, resulting in a biennial savings of \$150 - \$190. Compact participation is expected to yield substantial net savings to nurses and nursing employers, but net revenue loss to the agency from forgone licensing fees; however, the magnitude of these effects is contingent upon discretionary use of Compact privileges by nurses in and outside of Vermont. Act 64 (2021), Sec. 1a directs ORR to report to the Legislature, by January 15, 2024, on specific fiscal impacts.

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 12/8/2022

Time: 05:30 PM

Street Address: 89 Main St., 3rd Floor, Montpelier

Zip Code: 05620

Date: 12/12/2022

Time: 01:00 PM

Street Address: 89 Main St., 3rd Floor, Montpelier

Zip Code: 05620

Date:

AM

Time:

Street Address:
Zip Code:

Date:
Time: AM

Street Address:
Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

12/22/2022

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE
SEARCHABILITY OF THE RULE NOTICE ONLINE).

Nursing Administrative Rules

Nursing Practice

APRN, RN, LPN, LNA

Nurse



Sarah Copeland Hanzas, Secretary of State
S. Lauren Hibbert, Deputy Secretary

State of Vermont
Office of the Secretary of State
Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402
sos.vermont.gov

February 17, 2023

Rep. Trevor Squirell, Chair
Legislative Committee on Administrative Rules
c/o Charlene Dindo, Committee Assistant
Vermont State House
Montpelier, Vermont 05602

Re: Final Proposed Rule: Administrative Rules of the Board of Nursing

Dear Chair Squirell and Committee Members:

Please find enclosed the final proposed rule titled *Administrative Rules of the Board of Nursing*. These materials are also being filed with the Secretary of State today.

Accompanying this letter are the following documents:

- A. APA filing forms;
- B. The final proposed rule;
- C. The final proposed rule showing amendments to the text since proposed;
- D. Written comments received;
- E. A summary of substantial arguments, agency responses, and changes to the proposed rule; and
- F. The ICAR minutes from June 13, 2022 showing approval.

I would be happy to answer any questions the Committee may have about the final proposed rule in advance of your next meeting. Please feel free to contact me at (802) 828-2883 or via email at lauren.layman@vermont.gov.

Sincerely,

Lauren K. Layman, General Counsel
Vermont Office of Professional Regulation

Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING: **Administrative Rules of the Board of Nursing**

2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. TYPE OF FILING (PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE**.

4. LAST ADOPTED (PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE):

Log #14-054; Administrative Rules of the Board of
Nursing; January 15, 2015



State of Vermont
 Agency of Administration
 109 State Street
 Montpelier, VT 05609-0201
www.a0a.vermont.gov

[phone] 802-828-3322
 [fax] 802-828-2428

Kristin L. Clouser, Secretary

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: June 13, 2022, virtually via Microsoft Teams
Members Present: Chair Douglas Farnham, Brendan Atwood, Jared Adler, Jennifer Mojo, Diane Sherman, Mike Obuchowski and Donna Russo-Savage
Members Absent: John Kessler and Diane Bothfeld
Minutes By: Melissa Mazza-Paquette

- 2:01 p.m. meeting called to order, welcome and introductions.
- Committee discussion on process improvements is scheduled for the August meeting to allow for participation from all members.
- Review and approval of minutes from the May 9, 2022 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- Note: An emergency rule titled 'Vital Records Emergency Rule', provided by the Agency of Human Services, Department of Health, was supported by ICAR Chair Farnham on May 16, 2022. This rulemaking implements a process for individuals to amend the marker on their birth certificate to reflect the individual's gender identity. Specifically, it does the following: 1) Defines the term "non-binary" to describe the additional gender identities that may be reflected on a birth certificate. 2) Creates a process for registrants to file their Affidavit of Gender Identity with the Department.
- One public comment made by Venn [Saint Wilder].
- Presentation of Proposed Rules on pages 2-10 to follow.
- 1. 2021 Vermont Plumbing Rules, Department of Public Safety & Plumbers Examining Board, page 2
- 2. Vital Records Rule, Agency of Human Services, Department of Health, page 3
- 3. Rule 4.600 Definition of Electric Transmission Facility in 30 V.S.A. § 248, Public Utility Commission, page 4
- 4. Health Benefits Eligibility and Enrollment Rule, General Provisions and Definitions (Part 1), Agency of Human Services, page 5
- 5. Health Benefits Eligibility and Enrollment Rule, Eligibility Standards (Part 2), Agency of Human Services, page 6
- 6. Health Benefits Eligibility and Enrollment Rule, Nonfinancial Eligibility Requirements (Part 3), Agency of Human Services, page 7
- 7. Health Benefits Eligibility and Enrollment Rule, Financial Methodologies (Part 5), Agency of Human Services, page 8
- 8. Health Benefits Eligibility and Enrollment Rule, Eligibility-and-Enrollment Procedures (Part 7), Agency of Human Services, page 9
- 9. Administrative Rules of the Board of Nursing, Secretary of State, Office of Professional Regulation, page 10
- Next scheduled meeting is Monday, July 11, 2022 at 2:00 p.m.
- 3:25 p.m. meeting was paused for a 15-minute break
- Add discussion of strike-all rules for transparency at a future meeting as time allows.
- 3:50 p.m. meeting adjourned.



Presented By: Gabe Gilman and Shiela Boni

Motion made to accept the rule by Brendan Atwood, seconded by Mike Obuchowski, and passed unanimously with the following recommendations:

1. Economic Impact Analysis, #3: Check language for clarity in the first sentence – perhaps add ‘of after ‘costs’ if appropriate. Include relevant information from the Brief Summary of Economic Impact (#12 of the Proposed Filing – Coversheet) for consistency.
2. The adopting page, economic and environmental impact analyst filed in the chat and reviewed by members during the meeting must be approved by the Secretary of State. If any edits are made to those three forms, it must be refiled with ICAR.