

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF NURSING HOME ADMINISTRATORS

[49 PA. CODE CH. 39]

Continuing Education

The State Board of Examiners of Nursing Home Administrators (Board) adopts amendments regarding continuing education requirements by amending Chapter 39 (relating to State Board of Examiners of Nursing Home Administrators) to read as set forth in Annex A.

A. *Effective Date*

The amendments will be effective upon publication in the *Pennsylvania Bulletin*. The continuing education requirement will apply to continuing education credits earned during the biennial period beginning July 1, 2002.

B. *Statutory Authority*

The Board has authority to adopt regulations pertaining to continuing education under section 9(b) of the Nursing Home Administrators License Act (act) (63 P. S. § 1109(b)).

C. *Background and Purpose*

Section 9(b) of the act requires licensees to complete continuing education as a condition of biennial renewal. Current §§ 39.31—39.64 establish the parameters of the continuing education requirement. This rulemaking clarifies, updates and expands on those provisions.

D. *Summary of Comments and Responses on Proposed Rulemaking*

Notice of the proposed rulemaking was published at 29 Pa.B. 662 (February 6, 1999). The Board received comments from the House Professional Licensure Committee (HPLC); the Independent Regulatory Review Commission (IRRC) and ten public commentators: The Hospital and Healthsystem Association of Pennsylvania (HAP); Pennsylvania Association of Non-Profit Homes for the Aging (PANPHA); Guthrie Troy Community Hospital (Guthrie); Green County Memorial Hospital (Green County); Jeannette District Memorial Hospital (Jeannette); Grand View Hospital (Grand View); Herbert Skuba, NHA; Martha Ann J. Douds, RN, NHA; Sandra K. Fine, NHA; and Stuart H. Fine, NHA. Responses to these comments are organized by subject as follows.

1. *§§ 39.41 and 39.44. Provider registration and responsibilities.*

IRRC recommended that § 39.41(a) should be changed to clarify that the term "providers" includes colleges, universities, associations, professional societies and organizations. The Board concurs and has made this change in final rulemaking.

IRRC and PANPHA noted that in proposed rulemaking, the preamble used the term "verification requirements" to describe a portion of proposed § 39.44, but that § 39.44 did not contain this term. Both commentators requested clarification. Section 39.44 delineates provider responsibilities and the term "verification requirements" was used

in the preamble to describe the records the program must keep to verify attendance by licensees. Specifically, the term described § 39.44(h) which requires that attendance records, written outlines and summary of evaluations must be retained for a 5-year period to provide verification of attendance by licensees.

2. *§§ 39.52 and 39.61. Program registration and programs requiring preapproval.*

The HPLC, IRRC and nine public commentators objected to the elimination of retroactive approval for continuing education credit. Currently retroactive approval is allowed under § 39.52(b). The HPLC, IRRC, HAP and Guthrie expressed concern about program availability. The HPLC observed the wide range of subject areas which are acceptable for continuing education credits and noted that a number of providers may not have National Association of Boards of Examiners of Long Term Care Administrators (NAB) or Board approval. The HPLC requested additional information regarding the impact of deleting retroactive approval on the availability of those programs to licensees. IRRC requested that the Board examine costs to licensees to locate and attend preapproved programs.

a. *Program availability.*

In response to the requests of the HPLC and IRRC, the Board has examined the Board's continuing education programs in 1998 and 1999. The Board concludes that requiring preapproval of programs will not have an adverse impact on the availability of continuing education programs or the cost of those programs to licensees. A licensed nursing home administrator may attend any NAB or Board-approved course anywhere and receive Board approval for continuing education credit. Licensees may locate preapproved programs by contacting the Board office, NAB (<http://www.nabweb.org/> allows licensees to search for NAB-approved programs by state), or asking the program provider if the program has been approved by the Board. In 1998 and 1999, the Board preapproved 788 programs offered by 111 providers. During the same period of time, NAB approved 1,749 courses offered by 250 providers. Within the past 2 years, licensees had the opportunity to attend 2,537 courses offered by 361 providers. In 1998 and 1999, the Board retroactively approved 436 programs for 325 licensees. The Board notes that these retroactive approval numbers encompass multiple requests for approval of one program by several licensees, as well as multiple requests for approval of several different programs by one licensee, and thus may be inflated figures. Therefore, the Board believes that there will be a more than adequate supply of preapproved programs available to its licensees.

To further assure program availability, the Board has attempted to improve the approval process for providers. The changes to the regulations streamline the approval process by reducing the time period for program approval applications and by reducing paperwork requirements for prospective providers. The time period to submit applications for new programs has been reduced from 90 to 60 days. The time period is further reduced to 30 days if the program deals with significant changes in State or Federal law or regulations which will be implemented within 60 days of their publication. Paperwork has been reduced by no longer requiring prospective providers to inform the Board of the provider's area of expertise, the adequacy of the facilities, qualifications, reputation and character of

the instructors and appropriateness of the educational materials on the provider applications. Because of the wide range of subject matter, the vast number of providers and programs that have been preapproved, the reduction in time to submit new program applications from 90 days to 60 days, and in some instances, 30 days, and the reduction in paperwork, the Board does not believe that requiring preapproval of programs will adversely affect the availability of continuing education programs. The Board has examined the cost issue and concluded that retroactive approval of continuing education programs is not demonstrably less costly than preapproval.

b. *Retroactive approval.*

IRRC suggested that instead of eliminating retroactive approval of continuing education programs, retroactive approval should be retained and limited. HAP recommended that the current requirements allowing retroactive approval should be retained and that there should be more flexibility. HAP also noted that some quality programs do not seek preapproval and that some timely topics do not have the benefit of 60 days-plus preplanning to obtain preapproval. PANPHA was pleased to see a reduction in the time for program application submission from 90 days to 60 days. PANPHA noted that many of the programs which do not obtain preapproval may have failed to do so because their primary audience is not nursing home administrators, though the program may be relevant to long term care. Martha Ann J. Douds wrote that she does not believe that National programs will seek preapproval because there may be few attendees from Pennsylvania, with even fewer of the attendees being nursing home administrators. Herbert S. Skuba stated that certain programs which do not receive preapproval are extremely beneficial and relevant to current issues. Jeanette noted that some programs are not always granted preapproval. Guthrie observed that retroactive approval has been used frequently in the past. Three public commentators (Grandview, Stuart H. Fine and Sandra K. Fine) sent letters critical of preapproved programs and noted that they believe that they have better opportunities for more pertinent education than is garnered through preapproved courses.

The Board believes that preapproval of programs for continuing education is important to insure that the program is relevant to long-term care and to prevent licensees from squandering their time and money on programs which may not subsequently be retroactively approved. It has been the experience of the Board that National programs which do not have nursing home administrators as part of their target audience and do not seek preapproval, generally offer topics that are only tangentially, if at all, related to long-term care. Additionally, many of these programs do not seek preapproval because the program directors do not believe their programs are related to long-term care. However, the Board, in light of the concerns of the commentators, has adopted IRRC's suggestion to provide for limited retroactive approval. The Board believes that attendance at preapproved programs should be encouraged and therefore, limits retroactive approval to 6 clock hours per biennium by changing § 39.52(a) and adding § 39.61(b)(5) in final rulemaking. New § 39.61(b)(5) allows for retroactive approval of up to 6 clock hours per biennium and requires licensees to demonstrate that the program is relevant to long term care in order to be retroactively approved. Licensees who submit requests for retroactive approval must submit a written request within 30 days of attending the program and must document attendance, the program provider and the program's objective.

c. *Published articles.*

IRRC noted that § 39.52(a) should include "authoring a published article" as an exception to the preapproval rule. The Board agrees and has made the change in final rulemaking. In the final rulemaking, the Board has also changed § 39.61(b)(4) to state that all published articles which the licensee uses for continuing education credit must be submitted to the Board within 30 days of publication in order to allow for timely review by the Board.

d. *College and university courses.*

IRRC noted that § 39.61(b)(2) should clearly state that college and university courses need to be preapproved by the Board. The Board concurs and has made this change in final rulemaking. The Board has also made similar changes to § 39.61(b)(3)(i) and (ii) clarifying that NAB or Board preapproval is required for the specified programs.

e. *Submission of program applications.*

IRRC recommended that licensees be allowed to individually submit applications for program preapproval when a program provider has not obtained program preapproval. The Board does not concur with this recommendation. The program provider is responsible for obtaining preapproval of programs related to long-term care because they are in the best position to know if their programs are related to long-term care. Additionally, if individual licensees were allowed to submit applications for program approval, the Board would receive and process multiple applications, one from each licensee who attended the program, and would have to respond with multiple acceptances or rejections, one to each licensee, for each program. Conversely, when a program provider submits an application, only one application needs to be processed and only one response is necessary. Further, the Board does not believe that licensees should be burdened by taking on the providers' responsibilities.

3. *§ 39.61(b). Clock hours for individual study and authoring published articles.*

IRRC recommended that proposed § 39.61(b)(3) should be clarified so that only categories in which a maximum of 12 clock hours may be taken are enumerated within the subsection. IRRC suggested removing proposed § 39.61(b)(3)(ii), creating § 39.61(b)(4), and renumbering proposed § 39.61(b)(3)(iii) to § 39.61(b)(3)(ii). The Board concurs and in final rulemaking has made the suggested changes.

IRRC questioned how clock hours would be determined for individual study in § 39.61(b)(3)(i). In final rulemaking, the Board has specified that licensees doing individual studies must use NAB or Board preapproved correspondence courses. Clock hours for correspondence courses are determined at the time the program application is received. The number of clock hours is based upon approximately how long it will take a licensee to complete the course.

IRRC questioned how clock hours would be determined for authoring a published article on long term care. In final rulemaking, the Board has made changes to § 39.61(b)(4) to clarify how clock hours will be determined for authoring a published article on long term care. To have a published article approved for continuing education credit, the licensee must submit the article within 30 days of publication. For articles published in a professional journal, the licensee may receive up to 3 clock hours per article up to a maximum of 12 credits per biennium. For articles published in a refereed journal,

which is subject to peer review, a maximum of 24 clock hours may be awarded for the article. The number of clock hours will be based upon the complexity of the subject matter or work. Because of the variability in the complexity of the subject matter, the Board believes the clock hour determination for published articles should be done on a case-by-case basis and that the clock hour determination is within the purview of the Board's expertise.

4. *§ 39.61(b)(2). Elimination of credit hours for participating in community, professional and health care activities.*

Eight commentators objected to the deletion of existing language from § 39.61(b)(2) which currently allows licensees to obtain up to 12 credit hours by actively participating in community, professional and health-care activities. Green stated that this involvement gives administrators the opportunity to learn from one another and share ideas. Green suggested that limits should be placed on how many clock hours may be obtained and that the administrators should be required to submit proof of participation such as minutes and sign in sheets. Guthrie noted that credit under this section has been frequently used in the past. HAP disagreed with the Board's assessment that these activities do not constitute education or learning that contributes directly to the professional competence of nursing home administrators. Jeanette expressed concern that eliminating credit for these activities may adversely impact an individual's willingness to participate in them. Fine and Grandview believe that eliminating this provision will increase costs, eliminate an incentive for nursing home administrators to become involved in professional activities and result in a decline in the overall quality of the NHA credential. IRRC requested that the Board explain why these activities are not valuable as continuing education for licensees.

The Board strongly believes that continuing education insures the professional competence of the licensee community. The Board believes that continuing education directly contributes to the professional competence of nursing home administrators when it is both relevant and effective. The Board has determined that continuing education is relevant to the licensee community when the program is focused on long-term care and that continuing education is most effective when it is a planned, well thought-out and structured event. Participating in community, professional and health-care activities may be worthwhile civic or social endeavors, or both. However, it has been the Board's experience that these activities do not focus on long-term care. It has also been the Board's experience that because these activities are not intended to provide continuing education, they are not planned or structured to provide effective continuing education. The Board notes that the purpose of the community, professional and health-care activities is to promote the interests of the organizations sponsoring them. These organizations do not share the Board's purpose which is to protect the citizens of this Commonwealth from incompetent or unscrupulous nursing home administrators, or both. The Board has determined that participating in community, professional and health-care activities is not a relevant and effective method to obtain continuing education clock hours and that clock hours should not be awarded for participation in these activities. Therefore, the Board declines to eliminate the deletion of § 39.61(b)(2) in final rulemaking.

5. *§ 39.61. Reasonableness and need.*

IRRC noted that section 9(b) of the act requires licensees to attend "not less than 24 hours" of continuing education biennially. IRRC stated that the Board increased the requirement to 48 hours, and that though the Board has the authority to increase the minimum requirement, the Board should "explain the need and rationale for restricting licensees' ability to meet the requirement."

Section 39.61 which established the requirement of 48-credit hours of continuing education, was adopted at 13 Pa.B. 834 (February 25, 1983), and was effective March 1, 1983. The practice of nursing home administration has become increasingly demanding and complex. The Board does not believe that reducing the credit hour requirement would be prudent or appropriate. Additionally, by only accepting relevant and effective continuing education programs and courses for continuing education credit hours, the Board believes that maintaining the current 48-credit hour requirement is appropriate to obtain and maintain the knowledge and skills regarding the operation, management and financial accountability of long-term care facilities in this increasingly complex environment.

6. *§ 39.72. Cost effectiveness.*

HAP, Douds, Fine and Grandview questioned whether the proposed changes would be cost effective. The Board believes that the proposed changes will increase cost effectiveness. The Board notes that these amendments will delete the continuing education individual program application fee in § 39.72. The Board further notes that program approval has always been a requirement and that whether the approval was done before or after the program was offered has had no impact on the costs for the licensees or providers. The Board believes that by requiring preapproval, licensees will benefit by the assurance that their money and time spent will meet the requirements for renewal. Providers will recognize savings by a streamlined approval process, in addition to the savings realized through the elimination of the individual program application.

E. *Compliance with Executive Order 1996-1, Regulatory Review and Promulgation*

In accordance with Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the amendments, the Board solicited input and suggestions from the regulated community by providing drafts to interested associations and organizations, which represent the professions, educational institutions and interested individuals. The Board reviewed and considered comments and suggestions by interested parties received during the regulatory development process. The final-form regulations address a compelling public interest as described in this preamble and otherwise comply with Executive Order 1996-1.

F. *Fiscal Impact and Paperwork Requirements*

There should be no adverse fiscal impact or additional paperwork requirements incurred by the Board, political subdivisions or the private sector.

G. *Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking on January 27, 1999, published at

29 Pa.B. 662, to IRRC and to the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documents. In preparing these final form regulations, the Board has considered the comments received from the HPLC, IRRC and the public. No comments were received from the Senate Consumer Protection and Professional Licensure Committee.

These final-form regulations were approved by the HPLC on November 13, 2000, and deemed approved by the Senate Committee on November 20, 2000. IRRC met on December 14, 2000, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

I. Contact Person

Interested persons may obtain information regarding the amendments by writing to Martha H. Brown, Board Counsel, State Board of Examiners of Nursing Home Administrators, P. O. Box 2649, 116 Pine Street, Harrisburg, PA 17105-2649.

J. Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated in 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) This rulemaking does not enlarge the purpose of proposed rulemaking published at 29 Pa. B. 662.
- (4) These amendments are necessary and appropriate for administration and enforcement of the authorizing act.

K. Order

The Board, acting under its authorizing statutes, orders that:

- (a) The regulations of the Board, 49 Pa. Code Chapter 39, are amended by amending §§ 39.1, 39.11, 39.14, 39.41, 39.43, 39.51—39.54, 39.61 and 39.72; adding §§ 39.44 and 39.65; and deleting §§ 39.31, 39.32, 39.42 and 39.62— 39.64 to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ROBERT H. MORROW,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 6964 (December 30, 2000).)

Fiscal Note: Fiscal Note 16A-623 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 39. STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

§ 39.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Nursing Home Administrators License Act (63 P. S. §§ 1101—1114.2).

Board—The State Board of Examiners of Nursing Home Administrators, a departmental administrative board in the Department of State.

Continuing education record—A document issued by the provider to the participant which contains the title of the program, the hours of education and the dates attended or completed.

Clock hour—A minimum unit of education consisting of 60 minutes of instruction. Programs longer than 60 minutes will be credited in 30 minute increments.

Examiner—A member of the Board.

Full-time—A minimum of 4 days per week comprising a minimum of 35 hours.

Governing authority—The board of directors for a not-for-profit nursing home, the county commissioners for a county public nursing home, the licensee for an operated-for-profit nursing home and the Office of Medical Services and Facilities of the Department of Public Welfare for a Commonwealth restoration center.

Individual study—A continuing education course which does not have an instructor or other interactive learning methodologies and which requires a passing grade on a written examination or workbook.

License—Certification of an applicant who has met the requirements of the act and of this chapter that entitle the applicant to serve, act, practice and otherwise hold himself out as a licensed nursing home administrator.

NAB—The National Association of Boards of Examiners of Long-Term Care Administrators.

Nursing home—An institution or facility in which nursing care and related medical or other health services are provided for a period exceeding 24 hours, for two or more individuals, who are not relatives of the administrator, who are not acutely ill and not in need of hospitalization, but who, because of age, illness, disease, injury, convalescence or physical or medical infirmity, need care.

Nursing home administrator—An individual licensed under the act who is charged with the general administration of a nursing home whether or not the individual has an ownership interest in the home and whether or not the individual's functions and duties are shared with one or more other individuals.

Practice of nursing home administration—The planning, organizing, directing and control of the operation of a nursing home.

Related health facility—An intermediate care facility for the mentally retarded (ICF/MR) licensed by the Department of Public Welfare or a public or private

institution licensed by the Department of Health or operated by the Federal government, for profit or not-for-profit, organized to provide professional services for the diagnosis, treatment or care of illness, injury or disease, which is limited to skilled and intermediate care nursing homes, special and general hospitals or other institutions of a similar nature that provide professional nursing and other professional health services to patients admitted for at least a 24-hour period. The term includes an institution or facility licensed by the Department of Health in which health services are provided on a regular basis to resident individuals who do not require the degree of care and treatment that a hospital or skilled nursing facility, as defined in section 802a of the Health Care Facilities Act (35 P. S. § 448.802a), is designed to provide but who, because of the individuals' mental or physical condition, require health services above the level of room and board.

Supervision—The act of overseeing or directing a license applicant during the period of qualifying work experience.

Supervisor—An individual who is present in a nursing home or related health facility on a full-time basis and who is charged with the responsibility of overseeing a specific department in a nursing home or related health facility; that is, nursing, housekeeping, dietary, laundry, pharmaceutical services, social service, business office, recreation, medical records, admitting, physical therapy, occupational therapy or medical and dental services.

Supervisory experience—Knowledge gained from having acted as a supervisor in the administration of a nursing home, 1,000 of which service shall have been under the supervision of a full-time licensed nursing home administrator. See § 39.5(c) (relating to for admission to licensing examination; examination procedures).

Temporary permit—A permit which may be issued by the Board for up to 1 year in the event of unusual circumstances affecting the administration of a nursing home, such as the death, disability, resignation or dismissal of the licensed administrator or other emergency as determined by the Board.

§ 39.11. Biennial renewal.

(a) Licenses are renewable each biennium, in the even-numbered years.

(b) Applications for renewal will be forwarded to each active licensee at the licensee's address of record with the Board prior to the expiration of the current biennial period.

(c) As a condition of biennial renewal, licensees shall complete 48 clock hours of continuing education during the preceding biennial period as required in § 39.61 (relating to requirements).

(d) Renewal applications shall be completed and returned to the Board office accompanied by the required renewal fee. Upon approval of each application, the applicant shall receive a certificate of registration for the current renewal period.

(e) An application for the renewal of a license which has expired shall be accompanied by a late fee or a verification of nonpractice, the renewal fee and documentation evidencing the satisfactory completion of the continuing education requirement for the preceding biennial period.

§ 39.14. Approval of programs of study.

(a) A program of study designated to educate and qualify an applicant for licensure as a nursing home

administrator offered by an accredited university or college shall be deemed acceptable and approved for the purpose, if the program:

- (1) Is registered with the Board.
- (2) Includes a minimum of 7½ clock hours in the following subject areas, appropriate to long-term care:
 - (i) Administration, organization and management.
 - (ii) Gerontology, diseases of aging, death and dying.
 - (iii) The role of government in health policy and regulation.
 - (iv) Fiscal management, budgeting and accounting.
 - (v) Personnel management and labor relations.
 - (vi) Government and third-party reimbursement.
 - (vii) Preparing for licensure/certification/accreditation surveys and meeting other regulatory requirements.
 - (viii) Understanding regulations, deficiencies, plans of correction and quality assurance.
 - (ix) The nursing department and resident care management.
 - (x) Rehabilitation services and special care services.
 - (xi) Health support services: pharmacy, medical records and diagnostic services.
 - (xii) Facility support services: building/grounds, housekeeping, laundry and central supply.
 - (xiii) Dietary department and resident nutrition.
 - (xiv) Social services, family and community relationships and resident rights.
 - (xv) Risk management, safety and insurance.
 - (xvi) Strategic planning, marketing and public relations.
- (b) Upon completion of an approved program of study, the sponsors of the program shall issue certificates of attendance or other evidence of attendance satisfactory to the Board.

CONTINUING EDUCATION FOR NURSING HOME ADMINISTRATORS

§ 39.31. (Reserved).

§ 39.32. (Reserved).

APPROVAL PROCESS—PROVIDERS

§ 39.41. Provider registration.

Anyone, to include colleges, universities, associations, professional societies and organizations, seeking to offer a program for continuing education shall:

- (1) Apply for approval as a provider on forms provided by the Board.
- (2) File the application at least 60 days prior to the first scheduled date of the program.
- (3) Register biennially outlining major changes in the information previously submitted.

§ 39.42. (Reserved).

§ 39.43. Standards for provider approval.

Prospective providers shall document the following on their applications:

- (1) The mechanism measuring the quality of the program being offered.

(2) The criteria for selecting and evaluating faculty instructors, subject matter and instructional materials.

(3) The criteria for evaluating each program to determine its effectiveness.

(4) A clear statement of educational objectives.

(5) The subjects in which proposed programs will be offered.

§ 39.44. Provider responsibilities.

For each program, providers shall:

(1) Disclose the objectives, content, teaching method and number of clock hours in advance to prospective participants.

(2) Open each program to licensees.

(3) Provide adequate physical facilities for the number of anticipated participants and the teaching methods to be used.

(4) Provide accurate instructional materials.

(5) Employ qualified instructors who are knowledgeable in the subject matter.

(6) Evaluate the program through the use of questionnaires of the participants and instructors.

(7) Issue continuing education records.

(8) Retain attendance records, written outlines and a summary of evaluations for a 5-year period.

APPROVAL PROCESS—PROGRAMS

§ 39.51. Standards for continuing education programs.

(a) A program shall consist of the subjects listed in § 39.14(a)(2) (relating to approval of programs of study).

(b) The Board does not deem the following programs acceptable:

(1) Inservice programs which are not open to licensees.

(2) Programs limited to the organization and operation of the employer.

§ 39.52. Program registration.

(a) All programs require preapproval, except as in § 39.61(b)(4) and (5) (relating to requirements).

(b) An application for program approval shall be submitted at least 60 days before the scheduled starting date. The Board may consider an application submitted within 30 days if the program is limited to significant changes in State or Federal law or regulations which will be implemented within 60 days of their publication.

(c) The provider number shall appear on the program application.

(d) An applicant for program approval shall provide the following information:

(1) The full name and address of the eligible provider.

(2) The title of the program.

(3) The dates and location of the program.

(4) Faculty names, and biographical sketches, including curriculum vitae.

(5) A schedule of program—title of subject, lecturer, time allotted and the like.

(6) The total number of clock hours requested.

(7) An attendance certification method.

(8) A provider number.

(9) Objectives

(10) Core subjects.

(11) The program coordinator.

(e) A program number will be issued on approval of program.

§ 39.53. Revocation or suspension of approval.

(a) A provider may not indicate in any manner that approval has been granted until notification has been received from the Board.

(b) Approval will be granted to a provider as a registered sponsor of continuing education programs until it is revoked or suspended for cause after a full and fair hearing on the merits. Failure to comply with this section, §§ 39.41—39.43 and 39.51—39.54 or to meet standards, or refusal to allow reasonable inspection or to supply information upon request of the Board or its representatives are cause for revocation or suspension of approval.

§ 39.54. Review.

(a) Approved providers shall be subject to onsite and offsite review of the program being presented by representatives of the Board.

(b) Ongoing review of a provider will be on a selected basis subject to the physical presence of Board members or appointed representatives selected by the Board to evaluate program content, relevancy and acceptability.

CLOCK HOURS REQUIREMENT

§ 39.61. Requirements.

(a) A licensee shall complete at least 48 clock hours during the preceding biennial period.

(b) Of the 48 hours required, the following applies:

(1) At least 24 hours shall be taken in lecture or computer interactive courses approved by NAB or the Board.

(2) Up to 24 clock hours may be taken through college or university courses, including distance learning, approved by NAB or the Board.

(3) A maximum of 12 clock hours may be taken in the following categories:

(i) Individual study using NAB or Board approved correspondence courses.

(ii) Serving as an instructor of a NAB or board approved continuing education program or a college or university course. Instructors earn 1 clock hour for each hour of instruction up to 12 clock hours.

(4) Authoring an article on long-term care. Authors whose articles relating to long-term care are published in professional journals may earn 3 clock hours per article, up to a maximum of 12 clock hours per biennium. Additional credit per article, up to 12 of the required clock hours, may be awarded based on the complexity of the subject matter or work. In exceptional circumstances, when the article is published in a refereed journal, and the subject matter or work is complex, a licensee may be awarded up to 24 clock hours. All published articles used for continuing education credit shall be submitted to the Board within 30 days of publication. Upon review of the published article, the Board will determine the approximate number of credit hours to be awarded based upon the complexity of the subject matter or work.

(5) A maximum of 6 credit hours may be awarded retroactively for attending programs, to include lectures,

and college or university courses, which have not been preapproved. The attendee shall submit a written request for approval within 30 days of attending the program and document attendance. The attendee shall demonstrate to the Board's satisfaction that the programs meet the requirements of §§ 39.14(a)(2) and 39.51 (relating to approval of programs of study; and standards for continuing education programs).

(c) A licensee who obtains a license after the biennial period begins shall complete a prorated amount of clock hours equal to 2 clock hours per month through the end of the biennial period. For the purpose of calculating the number of credit hours required, partial months shall count as whole months.

(d) A licensee suspended for disciplinary reasons is not exempt from the continuing education requirements in subsection (a).

(e) A licensee who cannot meet the continuing education requirement due to illness, emergency or hardship may apply to the Board in writing prior to the end of the renewal period for a waiver. The request shall explain why compliance is impossible, and include appropriate documentation. Waiver requests will be evaluated by the Board on a case-by-case basis.

(f) A licensee will not be credited for repeating a program in the same renewal period unless the subject matter has substantially changed during that period.

§ 39.62. (Reserved).

§ 39.63. (Reserved).

§ 39.64. (Reserved).

§ 39.65. Reporting continuing education clock hours.

(a) Licensees shall provide a copy of the required documentation supporting the completion of the required hours when requested to do so by the Board.

(b) Acceptable documentation consists of:

(1) A continuing education certificate or sponsor-generated printout.

(2) A certified transcript of courses taken for credit in an accredited university or college. For noncredit courses taken, a statement of hours of attendance, signed by the instructor.

(3) Evidence of publication for published articles, books or continuing education programs.

(4) Evidence obtained from the provider of having been an instructor, including an agenda and time schedule.

(c) A licensee is responsible for documenting the continuing education requirements. Required documentation shall be maintained for 4 years after the completion of the program.

(d) Failure to comply with this section shall constitute grounds for disciplinary action under section 9(d) of the act (63 P. S. § 1109(d)).

RENEWAL

§ 39.72. Fees.

The following is the schedule of fees charged by the Board:

Biennial renewal of nursing home administrators license	\$108
License application fee	\$40
N.A.B. examination fee.....	\$235

State rules and regulations examination	\$87
Complete nursing home administration examination.....	\$322
Temporary permit fee	\$145
Certification of examination scores.....	\$25
Verification of licensure or temporary permit	\$15
Continuing education provider application fee	\$40
Continuing education program application fee per clock hour.....	\$10

[Pa.B. Doc. No. 01-400. Filed for public inspection March 9, 2001, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Exclusive Fishing Areas

The Fish and Boat Commission (Commission) by this order amends Chapter 65 (relating to special fishing regulations). The Commission is adopting this amendment under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendment relates to fishing.

A. Effective Date

The amendment will go into effect upon publication of an order adopting the amendment in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the amendment, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This final-form rulemaking is available electronically through the Commission's website at <http://www.fish.state.pa.us>.

C. Statutory Authority

The amendment is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

The amendment is designed to update, modify and improve the Commission's fishing regulations. The specific purpose of the amendment is described in more detail under the summary of changes.

E. Summary of Changes

The Commission received a request to consider revising the definition of "special populations" in § 65.21 (relating to waters limited to specific purposes—exclusive use fishing areas). Under current regulations, persons who are exempt from the fishing license requirement by section 2709(b) of the code (relating to exemptions from license requirements) or persons permanently deprived of the full use of a leg or both legs are permitted to fish in exclusive use fishing areas.

Section 2709(b) of the code requires that a person be "totally blind" to qualify for an exemption from the license requirements. The Commission received a request for regulations stating that although the requester agrees that this standard is appropriate for free fishing licenses, it is too restrictive for use of exclusive use fishing areas. This criterion excludes individuals who are "legally blind" but not "totally blind" from fishing in exclusive use areas.

The requester pointed out that exclusive use areas often have characteristics that would make them better for persons whose vision meets State and Federal standards for legal blindness. For example, in his experience, exclusive use areas often are somewhat clearer of overhanging branches that pose a particular issue for persons with visual disabilities.

The Commission reviewed other Commonwealth regulations, including those of the Department of Public Welfare and the Department of Military and Veterans Affairs. These regulations use a definition for "legal" blindness that would permit more people with vision disabilities to use the Commission's exclusive use areas. Accordingly, the Commission amended § 65.21(b) as proposed.

F. Paperwork

The amendment will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendment will impose no new costs on the private sector or the general public.

H. Public Involvement

A notice of proposed rulemaking was published at 30 Pa.B. 4818 (September 16, 2000). The Commission did not receive any public comments regarding the proposed amendment.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and no comments were received.

(3) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 65, are amended by amending § 65.21 to read as set forth at 30 Pa.B. 4818.

(b) The Executive Director will submit this order and 30 Pa.B. 4818 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 30 Pa.B. 4818 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-110 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 01-401. Filed for public inspection March 9, 2001, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

Special Boating Counties

The Fish and Boat Commission (Commission) by this order amends Chapter 111 (relating to special regulations counties). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments relate to boating.

A. Effective Date

The amendments will go into effect upon publication of this order adopting the amendments in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This final-form rulemaking is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. Statutory Authority

The amendments are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. Purpose and Background

The amendments are designed to update, modify and improve the Commission's special boating regulations. The specific purpose of the amendments is described in more detail under the summary of changes. The Commission's Boating Advisory Board (Board) considered the amendments and recommended that the Commission adopt them on final rulemaking.

E. Summary of Changes

(1) *Sections 111.3, 111.20, 111.24, 111.26, 111.27, 111.32, 111.42, 111.43, 111.56, 111.62 and 111.65.* At a recent meeting, the Board recommended that the Commission adopt regulations to require the wearing of personal flotation devices by persons on board boats on Pittsburgh District Corps of Engineers lakes. The Corps of Engineers put this requirement in place in 1990 to address a concern they had with the safety of boaters in small boats. The Commission did not adopt concurrent regulations, thus leaving enforcement up to Corps of Engineers rangers. This disparity has caused some confusion for the boaters, although compliance has been high and enforcement has not been a significant problem. The Commission believes that incorporating these regulations will enhance public understanding and assist enforcement and compliance, thus improving safety. Accordingly, the Commission amended these sections as proposed.

(2) *Sections 111.52 and 111.64 (relating to Pike County; and Wayne County).* During 1999, the Commission considered amendments to the regulations governing the operation of boats on the Upper Delaware Scenic and Recreational River (UDSRR) that were intended to bring the regulations in substantial compliance with Federal regulations for enforcement purposes. The Commission adopted these changes at its September 1999 meeting. The Superintendent of the UDSRR has recently informed the Commission that the Interior Department has banned the operation of personal watercraft from all waters under the jurisdiction of the National Park Service. Consequently, the recently enacted regulations no longer are in conformance with the Federal requirements.

In a letter dated April 12, 2000, the Superintendent requested that the Commission further amend its regulations to ban the operation of personal watercraft from all Delaware River waters within the boundaries of the UDSRR. In the spirit of cooperation with the National Park Service, the Commission proposed to amend these sections. The Commission, on final rulemaking, simplified the amendments to § 111.52 in light of the fact that in Pike County, personal watercraft are prohibited on the Delaware River for its entire length with the exception of an 8-mile stretch in the vicinity of Matamoras, Pennsylvania. The Commission, on final rulemaking, also simplified the amendments to § 111.64 in light of the fact that the UDSRR encompasses the entire length of the Delaware River in Wayne County. Accordingly, the Commission amended §§ 111.52 and 111.64 to read as set forth in Annex A.

F. Paperwork

The amendments will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no new costs on the private sector or the general public.

H. Public Involvement

A notice of proposed rulemaking was published at 30 Pa.B. 4819 (September 16, 2000). The Commission received one public comment opposing the proposal that requires the wearing of personal flotation devices by persons on boats less than 16 feet in length and kayaks and canoes on Pittsburgh District Army Corps of Engineer lakes. During the public comment period, the Commission did not receive any comments concerning the proposal to prohibit personal watercraft within the boundaries of the UDSRR. After the public comment period, the Commission received one comment from the Upper Delaware Council that supported the changes. Copies of all public comments were provided to the Commissioners.

Findings

The Commission finds that:

- (1) Public notice of intention to adopt the amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided, and all comments that were received were considered.
- (3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

- (a) The regulations of the Commission, 58 Pa. Code Chapter 111, are amended by amending §§ 111.3, 111.20, 111.24, 111.26, 111.27, 111.32, 111.42, 111.43, 111.56, 111.62 and 111.65 to read as set forth in 30 Pa.B. 4819 and by amending §§ 111.52 and 111.64 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

- (b) The Executive Director will submit this order, Annex A and 30 Pa.B. 4819 to the Office of Attorney General for approval as to legality as required by law.

- (c) The Executive Director shall certify this order, Annex A and 30 Pa.B. 4819 and deposit them with the Legislative Reference Bureau as required by law.

- (d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-109 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

Part II. FISH AND BOAT COMMISSION

Subpart C. BOATING

**CHAPTER 111. SPECIAL REGULATIONS
COUNTIES**

§ 111.52. Pike County.

* * * * *

- (j) *Delaware River.* The operation of personal watercraft is prohibited within the Upper Delaware Scenic and Recreational River upstream from mile 258.4.

* * * * *

§ 111.64. Wayne County.

* * * * *

- (j) *Delaware River.* The operation of personal watercraft is prohibited within the Upper Delaware Scenic and Recreational River.

[Pa.B. Doc. No. 01-402. Filed for public inspection March 9, 2001, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 141]

Special Regulations Areas; Permitted Devices

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 23, 2001, meeting, adopted the following changes:

Amend § 141.1 (relating to special regulations areas) to add language and clear up existing language making it unlawful to hunt with firearms in Philadelphia County, except buckshot with specific authorization of the Director, to hunt deer with buckshot in Allegheny County, except with specific authorization of the Director, and to hunt with modern handguns in any special regulations areas. This amendment will also clear up existing language making it lawful to use buckshot in any county in the Southeast Special regulations areas except Philadelphia with permission.

Amend § 141.18 (relating to permitted devices) to authorize the use of firearms with electronic impulse ignition systems while hunting.

These amendments were adopted under the authority of 34 Pa.C.S. (relating to the Game and Wildlife Code) (code).

Amendment to § 141.1

1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its meeting held on October 12, 2000, proposed, and at its January 23, 2001, meeting finally adopted changes to § 141.1 to make it unlawful to hunt with firearms in Philadelphia County, except buckshot with authorization of the Director; to make it lawful to use buckshot, including semiautomatics, to take deer in the remaining counties in the southeast special regulations area; to make it unlawful to hunt with buckshot in Allegheny County without specific authorization of the Director; and to make it unlawful to hunt with modern handguns in any special regulations area. These changes were adopted under section 2102(d) of the code (relating to regulations).

2. *Purpose and Authority*

Safety is always a concern in the highly developed counties of the special regulations areas. In addition, areas that can be legally hunted in those areas are very limited. Acknowledging these facts, the Commission has eliminated the use of all firearms in Philadelphia County, except buckshot with specific authorization of the Director; eliminated the use of buckshot in Allegheny County except with specific authorization of the Director; and eliminated the use of modern handguns in all special regulations areas.

Section 2102(d) of the code directs the Commission to "... promulgate regulations stipulating... the type of firearms and ammunition and other devices which may be used..." The amendment was made under that authority.

3. *Regulatory Requirements*

The adoption will add language and clear up existing language making it unlawful to hunt with firearms in Philadelphia County, except buckshot with specific authorization of the Director, to hunt deer with buckshot in Allegheny County, except with specific authorization of the Director, and to hunt with modern handguns in any special regulations area. The adoption will also clear up existing language making it lawful to use buckshot in any county in the southeast special regulations area except Philadelphia with permission.

4. *Persons Affected*

Individuals wishing to hunt in special regulations areas will be affected by the changes.

Amendment to § 141.18

1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its meeting held on October 12, 2000, proposed, and at its January 23, 2001, meeting finally adopted, adding § 141.18 to authorize the use of firearms with electronic impulse ignition systems while hunting. This change is adopted under section 2102(d) of the code.

2. *Purpose and Authority*

Section 141.6(6) provides that it is unlawful to hunt or take wildlife through the use of an electronic contrivance or device not permitted by Commission regulation. In the spring of 2000, the legality of the use of Remington's Etron-X ignition system was called into question. After review by a standing committee, the Commission staff has concluded that the system does not make a firearm

significantly different from existing lawful firearms. The only difference is that electronic circuitry is used to detonate the special primer.

The section will eliminate any doubt with regard to the legality of using electronic impulse detonating systems. Section 2102(d) of the code directs the Commission to "... promulgate regulations stipulating... the type of firearms and ammunition and other devices which may be used..." to hunt. This provision provides authority for the adopted section.

3. *Regulatory Requirements*

The adopted section will expand what is currently allowed.

4. *Persons Affected*

Individuals wishing to use firearms equipped with electronic ignition systems to hunt will be allowed to do so.

Comment and Response Summary

No official comments were received with regard to the adopted changes.

Cost and Paperwork Requirements

The adopted changes should not result in additional cost or paperwork.

Effective Date

The adopted changes will be effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

Contact Person

For further information on the change contact David E. Overcash, Acting Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations in 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.1, and by adding § 141.18, to read as set forth in Annex A.

(b) The Executive Director of the Commission shall submit this order and Annex A, and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final publication in the *Pennsylvania Bulletin*.

DAVID E. OVERCASH,
Acting Director

Fiscal Note: Fiscal Note 48-125 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART II. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.1. Special regulations areas.

(a) *Name.* The areas shall be known and referred to as special regulations areas.

(b) *Descriptions.*

(1) *Southwest area.* Includes the County of Allegheny.

(2) *Southeast area.* Includes the Counties of Bucks, Montgomery, Chester, Delaware and Philadelphia and also includes Tyler and Ridley Creek State Parks and other publicly-owned lands therein.

(c) *Prohibitions.*

(1) Except as provided in subsection (d), it is unlawful to take, kill or attempt to take or kill wildlife through the use of a firearm of any description which discharges single-projectile ammunition, or, while hunting for wild birds or wild animals, to possess single-projectile ammunition, except for employes of political subdivisions and other persons who have a valid deer control permit issued under the authority of Chapter 29 of the act (relating to special licenses and permits).

(2) It is unlawful to use buckshot in Allegheny or Philadelphia Counties without specific authorization of the Director.

(d) *Permitted acts.* It is lawful to:

(1) Except in Philadelphia County, Ridley Creek State Park, Delaware County and Tyler State Park, Bucks County, hunt and kill deer through the use of a muzzleloading firearm or a shotgun, at least .410 gauge (rifled barrels permitted), including semiautomatics which, upon discharge, propel a single projectile.

(2) Take deer with a shotgun 20 gauge or larger—including semiautomatic—using buckshot in the Southeast area only.

(3) Take small game, furbearing animals, crows or wildlife with a manually operated .22 caliber rimfire rifle or handgun.

(4) Kill an animal legally caught in a trap with a manually operated .22 caliber rimfire rifle or handgun while trapping.

§ 141.18. Permitted devices.

The following devices may be used to hunt or take wildlife:

Any manually operated firearm that uses an electronic impulse to detonate the primer or main powder charge of the cartridge unless manually operated firearms are a specifically prohibited device.

[Pa.B. Doc. No. 01-403. Filed for public inspection March 9, 2001, 9:00 a.m.]