

# RULES AND REGULATIONS

## Title 22—EDUCATION

STATE BOARD OF EDUCATION  
[22 PA. CODE CHS. 7 AND 12]

### Students and Student Services

The State Board of Education has submitted a revised version of the regulatory review language for a rule-making which appeared at 35 Pa.B. 6510, 6515 (December 3, 2005). The correct version is as follows:

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 30, 2003, the Board submitted a copy of this proposed rulemaking (published at 33 Pa.B. 5735) for review and comment by IRRC and the House and Senate Committees on Education.

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 documentation. In preparing the final-form rule-making, the Board considered the comments received from IRRC, the Committees and the public.

In accordance with section 5.1(a) of the Regulatory Review Act (71 P. S. § 745a(a)), the Board submitted the final-form rulemaking to IRRC and the Committees for review as provided by section 5.1 of the Regulatory Review Act.

In accordance with section 5.1 of the Regulatory Review Act, these final-form regulations were deemed approved by the Senate Education Committee on October 4, 2005, disapproved by the House Education Committee on September 28, 2005, and approved by IRRC on October 6, 2005. The House Education Committee did not, within 14 days after the date of IRRC's order of approval, take action on the regulation under sections 5.1(j.2) and 7(d) of the Regulatory Review Act (71 P. S. §§ 745.5a(j.2) and 745.7(d)).

#### *Contact Person*

The official responsible for information on these final-form regulations is Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, telephone (717) 787-3787 or TDD (717) 787-7367.

JIM BUCKHEIT,  
*Executive Director*

[Pa.B. Doc. No. 05-2269. Filed for public inspection December 9, 2005, 9:00 a.m.]

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF NURSING  
[49 PA. CODE CH. 21]

### Prescriptive Authority Fees

The State Board of Nursing (Board) amends § 21.253 (relating to fees) by establishing certain application and renewal fees for certified registered nurse practitioners (CRNPs) who wish to prescribe and dispense drugs to read as set forth in Annex A.

#### *Statutory Authority*

The final-form rulemaking is authorized under section 11.2(a) and (d) of the Professional Nursing Law (act) (63 P. S. § 221.2(a) and (d)).

#### *Background and Purpose*

Under final-form rulemaking jointly promulgated by the State Boards of Medicine and Nursing published at 30 Pa.B. 5943 (November 18, 2000) and continued under the amendment of section 2.1 of the act (63 P. S. § 212.1) by the act of December 9, 2002 (P. L. 1567, No. 206), qualified CRNPs may prescribe and dispense drugs under section 8.3 of the Professional Nursing Law (63 P. S. § 218.3) and §§ 21.283—21.287 (relating to CRNP practice). CRNPs wishing to prescribe drugs are required to apply for prescriptive authority approval by submitting an application to the Board demonstrating successful completion of not less than 45 hours of coursework in advanced pharmacology and a signed, written collaborative agreement between the prescribing CRNP and a supervising physician. See §§ 21.283(2) and 21.285 (relating to prescribing and dispensing drugs; and collaborative agreement). Successful applicants are issued prescriptive authority approval.

Section 11.2(a) and (d) of the act requires the Board to set fees by regulation so that revenues meet or exceed expenditures over a biennial period. General operating expenses of the Board are funded through biennial license renewal fees. Expenses related to applications or services which are provided directly to individual licensees or applicants are excluded from general operating revenues and are funded through fees in which the actual cost of providing the service forms the basis for the fee.

By this final-form rulemaking, the Board amends § 21.253 to add the follow fees for CRNPs: (1) a \$50 fee to accompany the application for prescriptive authority; (2) a \$ 30 fee for approval of each additional collaborative agreement; and (3) a \$25 biennial renewal fee. As more fully explained in the response to notice of proposed rulemaking, this final-form rulemaking substantially reduces the fees as proposed.

*Summary of Comments and Responses to Proposed Rule-making*

Notice of proposed rulemaking was published at 33 Pa.B. 4462 (September 6, 2003). Publication was followed by a 30-day public comment period during which the Board received comments from seven public commentators. On October 1, 2003, the House Professional Licensure Committee (HPLC) and on November 5, 2003, the Independent Regulatory Review Commission (IRRC) sent comments and suggestions to the Board. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment. Responses to these comments are organized by subject as follows:

*Rationale and statutory authority for retroactive collection of fees*

IRRC questioned the authority of the Board to require a CRNP who has been granted approval to prescribe to pay the initial application fee upon promulgation of the regulation. IRRC expressed the view that this construction would constitute a constitutionally impermissible retroactive application of the regulation. IRRC also suggested that to so apply the regulation would require express statutory authority. The Board's intent to apply the fees retroactively was explained to the regulated community on each of the at least 3,200 applications for prescriptive authority completed since November 2000. In consideration of IRRC's objections and comment, the Board has reviewed its fee structure and determined that all fees imposed by this final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

*Costs to CRNPs*

As described in the preamble to the proposed rulemaking, fees for application and additional collaborative agreements were based upon calculation of actual costs to process applications and approvals. The biennial renewal fee was estimated to ensure that required enforcement efforts were met.

Public comments from the Pennsylvania Coalition of Nurse Practitioners (Coalition) and Senator Mary Jo White asserted that the proposed fees are among the highest in the country. Senator White and the Coalition urged the Board to reevaluate its fee schedule and eliminate the fee for additional collaborative agreements.

In response, the Board first notes that since promulgation of the proposed rulemaking, it has instituted a more streamlined process, including a letter application form to reduce the staff time needed to review prescriptive authority applications. The Board has also attempted to achieve economies in reducing the costs associated with approval of additional collaborative agreements. Finally, the Board has adjusted downward the cost estimates of enforcement efforts to reduce the biennial fee as proposed.

With regard to comparative fees of other states, the Board responds as follows. Because application and approval fees established by the proposed rulemaking represent the Board's actual costs in providing the services requested, it is difficult to compare the fees with those of other states. However, a survey of the surrounding states indicates that initial and renewal fees for prescriptive authority approval in West Virginia are both \$125, while Ohio requires an initial application (approval and prescriptive authority) fee of \$100, with biennial renewal of the certificate to prescribe costing \$50. These fees are in addition to certification or licensure fees to become a nurse practitioner. The four other surrounding

states combine nurse practitioner certification/licensure fees with prescriptive authority fees. In Maryland, the initial nurse practitioner certification is \$82 and the annual renewal fee \$67—there is no distinct fee for prescriptive authority. The fee for nurse practitioner certification covers approval of the collaborative agreement needed to prescribe. If the nurse practitioner wishes to prescribe controlled substances, there is a \$60 biennial fee for registration with the Office of Maryland Drug Control. New York has a similar scheme, in which the initial nurse practitioner certification and registration fee are \$80. The triennial certification renewal fee is \$80. If the individual satisfies all requirements for certification as a nurse practitioner, the individual will be authorized to issue prescriptions—there is no distinct fee for prescriptive authority. New Jersey also has no separate prescriptive authority approval fee; however, the nurse practitioner application fee is \$100, initial certification fee is \$100 and biennial renewal of certification costs \$100. A written joint protocol for prescriptive practice with a collaborating physician is needed to apply for controlled dangerous substance registration with the State of New Jersey Drug Control Unit. This registration is available for a fee of \$20 for both the application and annual renewal. Delaware nurse practitioners pay a \$67 fee for advanced practice certification and renew biennially for \$67. Those wishing to prescribe noncontrolled substances complete a separate application, for which there is no fee. Delaware nurse practitioners who wish to prescribe controlled substances must register biennially with the Delaware Office of Narcotics and Dangerous Drugs, for a fee of \$20 for both initial registration and annual renewal. Based on the foregoing data, the regulation should not put this Commonwealth at a competitive disadvantage with other states.

Several individual nurse practitioners expressed concern about the procedure and fee for additional collaborative agreements, while Senator White and the others urged the Board to eliminate the additional collaborative agreement fee. The HPLC noted the Coalition's concerns regarding the fee for additional collaborative agreements. The HPLC requested a detailed explanation as to the rationale for charging a fee for additional collaborative agreements and whether or not the amount of the fee should be reevaluated.

The collaborative agreement is the document that sets forth the limits of an individual CRNP's authority to prescribe drugs. Each collaborative agreement may set forth different limits in terms of the drugs that the CRNP may prescribe and the level of supervision that will be required in order for the CRNP to prescribe. The Board is charged with reviewing collaborative agreements to ensure the agreements are authorized by law and consistent with the scope of practice of a CRNP. The Board cannot fulfill this function unless it reviews additional collaborative agreements. Since publication of proposed rulemaking, the Board has streamlined all of its practices related to its review of prescriptive authority privileges for CRNPs. As a result of this process, the fee adopted in this final-form rulemaking for review of additional collaborative agreements has been decreased from \$75 to \$30. The Board will reevaluate the process and procedures for prescriptive authority, including review of additional collaborative agreements, after it has several years of data available. The Board will reconsider the fee for additional collaborative agreements at that time.

*Mandatory use of Board-generated collaborative agreement form*

IRRC suggested that the Board should consider adding a provision that all applicants use the Board-generated collaborative agreement form. The Board concurs and made this change as part of its streamlining the application review process. The Board conducted an audit, as previously noted, and has been able to reduce the proposed fees.

*Circumstances requiring the filing of additional collaborative agreements*

IRRC stated that the proposed regulation was unclear on what circumstances require the filing of additional collaborative agreements for prescriptive authority and that the vagueness of this provision may cause applicants to submit additional collaborative agreements to the Board when they are not necessary and thus pay unnecessary fees. The Board requires the filing of additional collaborative agreements only when there is a change in the primary collaborating physician or a change in the categories/drug schedules from which a CRNP may prescribe. This is clearly stated in the application for prescriptive authority approval and in the application for additional collaborative agreement. In addition, Board staff addresses this with licensees on a case-by-case basis. IRRC suggested that the Board add or amend language in § 21.285 to clearly indicate when an additional collaborative agreement for prescriptive authority must be filed. The Board declines to do so based on the notice given to applicants in the applications for prescriptive authority approval and for additional collaborative agreement and because Board staff addresses this with licensees on a case-by-case basis.

*Substitute physicians*

A collaborative agreement may have an unlimited number of substitute physicians and these can be easily added or deleted without cost to the CRNP. IRRC further suggested that the Board amend language in § 21.285(b)(1) to clearly reflect the Board's procedures for making amendments to collaborative agreements regarding substitute physicians. The Board declines to make this change, as notice of the Board's administrative procedures in this regard is provided to the nurse practitioners in the applications for prescriptive authority approval and for additional collaborative agreement, and Board staff addresses this with licensees on a case-by-case basis.

*Change in primary supervising physician only*

When the CRNP is changing only the primary collaborating physician, IRRC suggested that the Board consider reasonable filing alternatives to reduce the financial burden on the regulated community. This is based on the presumption that less information will need to be reviewed with this submission. The Board declines to adopt this suggestion at the present time. A change in the collaborating physician could indicate a radically different scope of the collaboration. The Board cannot make this determination without reviewing the terms of the collaborative agreement. The Board will, however, closely monitor the processes related to prescriptive authority to determine if the prescriptive authority process can be streamlined and if the Board may lower the fee for prescriptive authority approval.

*Fiscal Impact and Paperwork Requirements*

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

The fees will have a modest fiscal impact on those members of the private sector who apply for services from the Board. The final-form rulemaking will impose no additional paperwork requirements upon the Commonwealth or political subdivisions. The application process, which is statutorily mandated, will impose modest paperwork requirements on those members of the private sector who apply for and renew prescriptive authority approval.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 14, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 4462, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on October 18, 2005, the final-form rulemaking was approved by the HPLC. On November 2, 2005, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 3, 2005, and approved the final-form rulemaking.

*Additional Information*

Further information may be obtained by contacting Ann Steffanic, Administrative Assistant, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649, [www.dos.state.pa.us/nurse](http://www.dos.state.pa.us/nurse).

*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 thereunder, 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) The amendments to the final-form rulemaking do not enlarge the purpose of proposed rulemaking published at 33 Pa.B. 4462.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing acts identified in this preamble.

*Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by amending § 21.253 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 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 immediately upon publication in the *Pennsylvania Bulletin*.

JANET HUNTER SHIELDS, MSN, CRNP, CS,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 6390 (November 19, 2005).)*

**Fiscal Note:** Fiscal Note 16A-5116 remains valid for the final adoption of the subject regulation.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 21. STATE BOARD OF NURSING**

**Subchapter C. CERTIFIED REGISTERED NURSE PRACTITIONERS**

**GENERAL PROVISIONS**

**§ 21.253. Fees.**

The following fees are charged by the Board:

Certification.....	\$100
Biennial renewal of certification .....	\$50
Verification of certification.....	\$15
Application for prescriptive authority .....	\$50
Each additional collaborative agreement for prescriptive authority .....	\$30
Biennial renewal of prescriptive authority.....	\$25

[Pa.B. Doc. No. 05-2270. Filed for public inspection December 9, 2005, 9:00 a.m.]

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