

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF FUNERAL DIRECTORS

[49 PA. CODE CH. 13]

Forms Review

The State Board of Funeral Directors (Board) amends §§ 13.204 and 13.224 (relating to written agreement; and funding and reporting of prepaid burial contracts) to read as set forth in Annex A.

Description and Need for the Rulemaking

Currently, §§ 13.204 and 13.224 set forth requirements for contracts typically used by licensees in providing, or agreeing to provide, funeral goods and services. Under § 13.204(a), a licensee must use a form agreement or statement of funeral goods and services that has been reviewed and approved by the Board. Likewise, § 13.224(f) requires a licensee to use a form prepaid burial contract or preneed contract form that has been reviewed and approved by the Board. However, the existing provisions do not state the basis upon which the Board may disapprove a form submitted to it. In implementing the existing sections, the Board has refused to approve form contracts or agreements that include a term prohibited by the Funeral Director Law (act) (63 P. S. §§ 479.1—479.20) or Board regulations, or form contracts or agreements that do not include a term required by the act or Board regulations. However, in the absence of express language in its regulations, the Board has not questioned whether the enforcement of any contractual provision of the form would lead to a violation of a provision of the act or Board regulations and accordingly has not disapproved any form agreements on that basis.

By this final-form rulemaking, the Board makes clear that it will refuse to approve a form that does not comply with the act or Board regulations or if the enforcement of any of terms of the form would result in a violation of the act or the regulations.

Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 37 Pa.B. 1867 (April 21, 2007) with a 30-day public comment period. The Board received written comments from the following members of the public: James J. Kutz, Esquire, on behalf of AmeriServe Trust and Financial Services Co. and others; and John Eirkson, executive director of the Pennsylvania Funeral Directors Association (PFDA).

On June 6, 2007, the House Professional Licensure Committee (HPLC), as part of its review of proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12a), notified the Board that the HPLC had no comments and would take no formal action on the proposed rulemaking until final promulgation. The Board received no comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) as part of its review of proposed rulemaking under the Regulatory Review Act. On June 20, 2007, the Independent Regulatory Review Commission (IRRC), as part of

its review of proposed rulemaking under the Regulatory Review Act, notified the Board that IRRC had no objection, comments or recommendations to offer on the proposed rulemaking.

James Kutz first commented that he saw no reason, let alone a compelling reason, to promulgate a regulation which informs the licensee that the Board will not approve any prepaid burial contract or statement of funeral goods and services that violates the act or Board regulations. According to James Kutz, it should go without saying that the Board is not in the business of approving illegal agreements. As a corollary, James Kutz also questioned whether the Board “has had a policy of approving agreements that violate the law and if so, what is the explanation for that troublesome fact?” As indicated previously, in the absence of regulatory language on this point, in reviewing form agreements the Board has not looked beyond those terms required or permitted by the existing regulations. The Board could simply delete from its regulations the obligation to review and approve form agreements, thereby avoiding any questions of estoppel and trusting its licensees to comply with the licensure law until shown otherwise. However, doing so would simply be abdicating the important consumer protection function of verifying in advance that the form agreements the licensee presents to a customer comply with the act and regulations. James Kutz next suggested that the proposed amendments would “create more confusion than clarity” by not further addressing who will make any determination of whether the form agreement violated the act or regulations. The regulatory amendments place licensees on notice of what the Board will consider in reviewing the licensees’ form agreements. It goes without saying that the Board will conduct that review in a way that fully comports with the licensee’s procedural due process rights. Also, James Kutz asserts that, because the Board is separately proposing additional regulations also related to preneed funeral arrangements, these proposed amendments were “simply the forerunner for anticipated prosecution by the Board in the event it is successful in securing approval of its more comprehensive regulations [that James Kutz believes] are intended to effectively blunt the affect (sic) of the Federal court decision in *Walker v. Flitton*,” 364 F. Supp. 2d 503 (U.S.D.C. M.D. Pa. 2005). While the merits of any other proposed rulemaking will be addressed in that rulemaking, these regulatory amendments simply set forth the scope of Board review of form agreements and do not set forth the basis for any prosecution. Finally, James Kutz went on to opine that the industry would be better served by a single comprehensive statutory proposal to modernize the law applicable to the funeral industry. The Board can only promulgate regulations that are authorized by the act, that is, regulations needed to implement and enforce the act; the Board cannot act outside the scope of its authority under the act and cannot revise or repeal the act.

PFDA first noted its agreement with the proposed amendments. However, PFDA suggested that the Board go further in reviewing not just the licensee’s form agreement with the customer, but also the licensee’s master trust agreement with the financial institution in which the licensee will place the customer’s prepaid funds. The Board has neither the expertise nor the statutory authority to consider terms of banking arrangements. Section 13(c) of the act (63 P. S. § 479.13(c)) requires a funeral director who has received preneed

money to “either deposit the same in an escrow account in, or transfer the same in trust to, a banking institution in this Commonwealth.” By enacting this requirement, the General Assembly made clear that the Department of Banking, though its authority to regulate banking institutions, would assure the integrity of that money. The Board’s obligation was only to assure that the money would be held by a banking institution. Subsequent to the close of the public comment period, PFDA additionally commented that, in addition to the Board, the Department of Banking, the Insurance Department and the State Securities Commission should review form agreements of funeral directors. While that additional review may be beneficial and authorized in the other agencies’ enabling statutes, the Board through its rulemaking cannot obligate these other agencies to review licensee forms.

In conclusion, the Board has not revised its proposed rulemaking in response to the comments that it received.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Effective date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The final-form rulemaking is authorized under section 16(a) of the act (63 P. S. § 479.16(a)).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 11, 2007, the Board submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 1867, 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 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 Board has considered all comments received 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 April 7, 2008, the HPLC approved the final-form rulemaking. On June 4, 2008, the SCP/PLC was deemed to have approved the final-form rulemaking. Under section 5(g) of the Regulatory Review Act (71 P. S. § 845.5(g)), the final-form rulemaking was deemed approved by IRRC effective June 4, 2008.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Heidi Weirich, Administrator, State Board of Funeral Directors, P. O. Box 2649, Harrisburg, PA 17105-2649, or st-funeral@state.pa.us.

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) and 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) There are no amendments to this final-form rulemaking that would enlarge the scope of proposed rulemaking published at 37 Pa.B. 1867.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 13, are amended, by amending §§ 13.204 and 13.224 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval 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) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

MICHAEL J. YEOSOCK,
Chairperson

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 3461 (June 21, 2008).)

Fiscal Note: Fiscal Note 16A-4813 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 13. STATE BOARD OF FUNERAL DIRECTORS

STANDARDS OF PRACTICE AND CONDUCT

§ 13.204. Written agreement.

(a) A written agreement form, either for at need or preneed, statement of funeral goods and services approved by the Board, containing the name and address of the funeral director, the date the arrangements were made, the name of the deceased and the date of death, a specific listing of professional services, merchandise, facilities and equipment to be supplied by the funeral director for the preparation and burial, cremation or other disposition of the deceased as outlined in subsection (c); an itemized statement of cash advances and expenditures as explained in subsection (d); and the total cost, signed by the funeral director, shall be given to the family representative or agency official arranging for the funeral at the time of arrangements which must be prior to the disposition of the deceased. The forms or statements used by licensees in this Commonwealth must conform with the requirements imposed by the Federal Trade Commission under 16 CFR Part 453 (relating to funeral industry practices).

(b) A specific listing of professional services, merchandise, facilities and equipment to be supplied by the funeral director for the preparation and burial, cremation or other disposition of the deceased as specified in

subsection (a) shall be completely spelled out as to what is included. Examples are as follows:

(1) Professional services include, if provided, funeral counseling, available on a 24-hour basis; arrangements for funerals and interments; preparation and local removal; obituary information to newspapers; filing of necessary forms; handling of flowers; direction of the funeral service; and presence at cemetery for interment services.

(2) Merchandise includes, if provided, a casket, including space for a description; an outer case or vault, including space for a description; memorial cards, prayer cards and acknowledgement cards, indicating the amount; candles; a register book; temporary grave marker; and pallbearer gloves.

(3) Facilities and equipment shall include, if provided, reposing rooms, chapel facilities, lounges, reception areas, parking, drape decoration or fern decoration, necessary religious equipment such as prayer rails and mass card holder, hearse (local), vehicle for removal (local), family car, flower transportation vehicle, clergy vehicle and pallbearer vehicle, if applicable.

(c) The written agreement form shall include a specific listing of cash advances paid for by the funeral director as a convenience to the family when the advances are dollar-for-dollar exchanges and not a part of the normal services and merchandise rendered by the licensee.

(d) The written agreement form must also include a specific listing of additional items of service and merchandise not covered by subsection (c) and differing from cash advances as explained in subsection (d).

(e) Interest on delinquent accounts, if charged, shall be listed and conform with State and Federal laws and regulations.

(f) A copy of the written agreement, signed by the family representative or agency official as well as the funeral director, shall be retained by the funeral director along with the records of the transaction for 6 years.

(g) If a family member or representative is located where a signature on an agreement is impossible, a fax, a telex, a telegram or a mailgram authorizing the procedure or arrangements will be acceptable. For the purpose of this subsection, the fax, telex, telegram or mailgram is to be used for "ship in" or "ship out" accommodations.

(h) The Board will not approve a form statement of funeral goods and services that does not comply with the act or this chapter, or the enforcement of any term of which would result in the violation of the act or this chapter.

PREPAID BURIAL CONTRACTS

§ 13.224. Funding and reporting of prepaid burial contracts.

(a) A funeral director shall deposit in escrow or transfer in trust to a banking institution in this Commonwealth, the entire amount of monies received by the funeral director under a prepaid contract for funeral services or merchandise, including additional service fees or arrangement fees.

(b) In regard to prepaid contracts entered into by funeral directors after November 4, 1989, a funeral director shall file a report with the Board within 90 days containing the information specified in subsection (c) with respect to each prepaid contract for funeral services and merchandise. Forms for the reports, including the report required under subsection (d), will be provided by the Board.

(c) A funeral director shall file a report with the Board on a form provided by the Board, certifying as true and correct, the following information with respect to each prepaid contract for funeral services and merchandise entered into:

(1) The date of the prepaid contract and the name and address of the purchasers under the contract.

(2) The name and address of the banking institution in which 100% of the money received by the funeral director on account of the contract has been deposited.

(3) The account number, account registration title—name and persons for whom the account is established—and the date the account was established.

(4) In installment contracts, if the entire amount of the contract has not been paid, the report must expressly indicate the fact that an installment contract is involved, and the total amount of installments received by the funeral director and deposited in escrow or in trust.

(d) A funeral director shall report within 30 days all fulfilled prepaid contracts, including the following:

(1) The name of the deceased.

(2) The date of the death.

(3) The account number.

(4) The name of the banking institution.

(e) The report required in subsection (c) is not a public record under the act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. §§ 66.1—66.4), known as the Right-to-Know Law. The report will be available to the following:

(1) Parties privy to the contract.

(2) Heirs of the deceased.

(3) Executors or administrators of the estate of the deceased.

(4) Courts of competent jurisdiction.

(5) The Board.

(f) Form prepaid burial contracts or form preneed contracts to be used by a funeral director shall be reviewed and approved by the Board and should reflect whether or not an additional service fee or arrangement fee is charged. Form prepaid burial contracts or form preneed contracts used by a funeral director may not incorporate a contract for funeral merchandise entered into by a person or entity other than a funeral director. The Board will not approve a form prepaid burial contract or preneed contract that does not comply with the act or this chapter, or the enforcement of any term of which would result in the violation of the act or this chapter.

[Pa.B. Doc. No. 08-1288. Filed for public inspection July 11, 2008, 9:00 a.m.]

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

Continuing Education for Professional Nurses

The State Board of Nursing (Board) adopts §§ 21.1, 21.5 and 21.131—21.134, regarding continuing education for professional nurses (RNs), to read as set forth in Annex A.

Notice of proposed rulemaking was published at 37 Pa.B. 1980 (April 28, 2007). Publication was followed

by a 30-day public comment period during which the Board received approximately 100 comments from the regulated community (licensees) and numerous comments from stakeholder groups. On June 17, 2007, the House Professional Licensure Committee (HPLC) submitted its comments. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) made no comments. The Independent Regulatory Review Commission (IRRC) submitted comments to the proposed rulemaking on June 28, 2007.

Statutory Authority

The final-form rulemaking is authorized under section 12 of The Professional Nursing Law (act) (63 P. S. § 212), which mandates continuing education for all professional nurses. In addition, section 2.1(k) of the act (63 P. S. § 212.1(k)) authorizes the Board to promulgate regulations for the administration of the act.

Summary of Comments and Responses to Proposed Rulemaking

Comments from the Public

The Board received approximately 100 comments from the licensees. The most prevalent concern of licensees related to the \$75 fee to be charged to those continuing education providers that were not preapproved by the Board for approval of a continuing education course. In addition, many school nurses requested that the Board clarify, in its regulation, how school nurses were to submit proof that they had complied with the continuing education requirement. Finally, a few licensees and other stakeholders expressed their belief that the civil penalties to be imposed for failure to complete statutorily-mandated continuing education were too high.

Fee for Approval of Continuing Education Activities.

There appeared to be significant confusion regarding the \$75 fee to be charged to continuing education providers who request that the Board review and approve a continuing education activity. Many licensees believed that the \$75 fee would be imposed on each licensee for each of the 30 hours of statutorily-mandated continuing education, resulting in additional biennial renewal costs to each licensee of \$2,250. In most instances, the fee is not charged to licensees; the fee is charged to a provider of continuing education that is not on the list of preapproved providers of continuing education. The Board's list of preapproved providers is extensive; the Board does not anticipate that many continuing education providers will need to apply to the Board for approval.

It is possible that the \$75 per credit hour fee could be imposed on an individual licensee. The only instance when the fee would be imposed on an individual licensee is if the individual licensee requested that the Board review and approve a continuing education activity that was not sponsored by a preapproved provider, and when the provider itself did not request approval of the activity. However, because the Board's list of preapproved providers of continuing education is so extensive, and because most, if not all, other providers will apply directly to the Board for approval of their continuing education activities, the Board does not anticipate that any individual licensee will be required to apply to the Board for review and approval of a nonpreapproved continuing education activity.

To make the regulation more clear, the Board has amended § 21.5 (relating to fees) to specify that the \$75 per credit hour fee is based on the request submitted under § 21.134(b) (relating to continuing education

sources) for approval of a continuing education activity offered by a continuing education provider that is not listed in § 21.134(a).

Under these regulations, a provider needing approval of a continuing education activity would have the option of requesting approval from the Board or from one of the preapproved credentialing organizations, such as the Pennsylvania State Nurses Association (PSNA) or the American Nurses Credentialing Center (ANCC), as set forth in § 21.134(a)(8).

Submission of Continuing Education Information by School Nurses.

Section 12.1 of the act (63 P. S. § 212.1) sets forth the requirement that RNs complete at least 30 hours of continuing education in each biennial renewal period. Section 12.1(g) of the act provides that "[i]n lieu of meeting the requirements of this section . . . school nurses who as certified education specialists are required to obtain continuing professional education under section 1205.2 of the act of March 10, 1949 (Pub. L. 30, No. 14), known as the 'Public School Code of 1949,' and under this act shall be permitted to submit evidence of the completion of education courses approved for their certification by the school district."

The Board agrees with the commentators that its regulation should instruct licensees subject to this provision how to submit evidence that they completed education courses approved for their certification by the school district. Therefore, the Board has amended § 21.29(c)(3) (relating to expiration and renewal of license) to provide that school nurses verify on their biennial renewal application that they have complied with the continuing education requirements for certification by the school district. If the school nurse's renewal is selected for a compliance audit, the nurse would submit proof of current certification by the Department of Education, as set forth in § 21.131(c)(5) (relating to continuing education).

Civil Penalty for Failure to Complete Mandatory Continuing Education.

Several individuals expressed the opinion that the schedule of civil penalties for nurses who fail to complete mandatory continuing education is too harsh. In addition, the Pennsylvania State Education Association (PSEA) commented that there did not appear to be any due process provisions in the regulations to allow the nurse to appeal the imposition of a fine. The schedule of civil penalties published separately by the Commissioner of Professional and Occupational Affairs at 37 Pa.B. 1986 (April 28, 2007) calls for a civil penalty of \$250 for a nurse who fails to complete 1 to 10 hours of continuing education, a civil penalty of \$500 for a nurse who fails to complete 11 to 20 hours of continuing education, and a civil penalty of \$1,000 for a nurse who fails to complete 21 to 30 hours of continuing education over the biennial renewal period.

The Board does not believe that these fines are excessive; in fact, the fines are significantly lower than the fines imposed by other licensing boards in the Bureau of Professional and Occupational Affairs for violations of the continuing education regulations. For example, some boards routinely impose civil penalties of \$50 to \$100 per deficient credit hour. For ease of administration and due to the significantly larger licensee population of the Board, the Board determined it should impose the civil penalty in blocks of credits deficient rather than per credit hour. The Board believes that the proposed civil

penalty schedule will act as a sufficient deterrent to prevent nurses from neglecting their mandatory continuing education requirement.

The procedures for appealing a civil penalty imposed by citation are set forth in § 43b.3 (relating to procedures). A nurse who wishes to dispute the imposition of a civil penalty imposed by citation simply declares this intention and mails the citation form back to the Bureau. A hearing is then scheduled before a hearing examiner, for which the nurse is notified by first class mail. If the nurse disagrees with the decision of the hearing examiner, the nurse may appeal it to the Board. If the Board ultimately determines that the nurse has violated the regulations and is subject to the civil penalty, the nurse may appeal the Board's decision to the Commonwealth Court of Pennsylvania. The nurse's due process rights are fully protected by these procedures.

The PSEA noted that § 21.131(g)(2) requires a nurse who has failed to complete 30 hours of continuing education in a biennial period to make up the deficiency within 6 months and that § 21.131(g)(3) imposes a higher level of discipline for a nurse who does not make up the deficiency within 6 months. PSEA expressed concern that nurses would not know whether the Board had accepted their credits until months after the 6-month deadline had passed. The Board disagrees. A nurse would know, by virtue of the list of preapproved providers, whether the Board approves the activity at the time the nurse enrolls in a continuing education activity. When the nurse receives the certificate of attendance, the nurse can determine how many hours the nurse has completed toward the 30-hour minimum required biennially. A nurse does not need notice from the Board to discern whether he has complied with the act and the regulations.

Calculation of Time for a Continuing Education Activity.

Three commentators questioned how the Board determined to use a 50-minute hour instead of a 60-minute hour for calculating continuing education credit. The Board based its decision on the standard academic hour, which is 50 minutes, because it will be much easier for continuing education providers that are not educational institutions to adjust their continuing education courses than to require all schools of nursing to adjust their classes. In addition, the 50-minute hour is already used for continuing education for CRNPs.

PSEA commented that a three-credit course in a semester program should be considered equal to 30 continuing education hours. The Board has determined that it is appropriate to limit the number of continuing education hours that may be obtained from a single source and will, therefore, retain its 15 credit hour limit.

Preapproved Continuing Education.

One commentator asked if "standard CEU providers" such as "the California Nurses Association" and "the numerous small companies who give CEUs" would be included. National and state nursing organizations are included as preapproved providers under § 21.134(a)(6). The Board is unsure what the commentator means by "numerous small companies who give CEUs." A Pennsylvania nurse may obtain continuing education that is creditable toward the biennial requirement from any company or organization that has obtained accreditation of its continuing education offerings from a preapproved credentialing organization as set forth in § 21.134(a)(8).

Another commenter suggested that the Board apply the requirements of § 21.133 (relating to continuing education content) to all approved continuing education, includ-

ing continuing education offered by a preapproved provider. The Board intended the continuing education content provisions to apply to all continuing education for professional nurses and has amended § 21.134(a) to clarify this intent.

Villanova University College of Nursing (College) submitted several comments. First, the College suggested that the Board limit the ability of a nurse to obtain continuing education credit for research to the principal and/or co-investigator, or both, on a research project. The Board agrees that this is an appropriate limit to place on the use of research for continuing education credit and has amended § 21.133(d) in accordance with this suggestion. The College opined that the list of preapproved providers of continuing education was overly broad and that all continuing education programs should meet standards such as those used by ANCC. The Board has amended § 21.134(a) to clarify that the criteria of § 21.133 apply to all continuing education programs. Even those continuing education activities offered by preapproved providers must meet the content restrictions of § 21.133.

The continuing education department of the College questioned the approval of hospitals and health care facilities licensed by the Department of Health as providers of continuing education. Hospitals and health care facilities have been educating their staff for many years and have a vested interest in a well-educated and competent workforce. The Board is confident that hospitals and health care facilities will provide high quality continuing education. In addition, preapproval of these entities will lessen the impact on the workforce because nurses will not have to take as much time off to travel to continuing education courses. In addition, the inclusion of National pharmaceutical organizations was questioned. The Board believes that RNs are aware of the potential interest that pharmaceutical organizations may have and can discern the objective information offered about pharmaceutical products. Although RNs do not prescribe drugs, RNs administer drugs and monitor patients receiving drug therapies. It is important for RNs to understand the pharmacological and pharmacotherapeutic characteristics of drugs. The Board disagrees that continuing education offered by national pharmaceutical organizations should not be creditable.

Geisinger Health System commented that editors and section editors for nursing journals should be able to acquire continuing education hours per credited publication. The Board declines to make this amendment, believing that serving as a journal editor does not have a close enough link to nursing practice or patient care to be creditable. Additionally, it is the job of a journal editor to edit journal articles and the Board believes that continuing education activities should be activities undertaken in addition to the individual's work assignments.

The Pennsylvania Health Care Association (PHCA) identified itself as a provider of continuing education for nursing home administrators and asked whether some of their programs, which would be appropriate for RNs, would be within the ambit of preapproved providers. The Board has amended the list of preapproved providers in accordance with a suggestion from the Hospital and Healthsystem Association of Pennsylvania (HAP) so that PHCA's courses with relevant nursing content would be preapproved under § 21.134(a)(6).

Time for Submission of Information to the Board.

Several commenters expressed concerns about the Board's 120-day submission requirements for waiver requests and for approval of continuing education activities under § 21.134(b). The Board has amended §§ 21.131(f) and 21.134(c) to reduce the time to 90 days. Because of the size of the Board's licensee population (approximately 225,000 RNs), the Board does not believe it is feasible to use the same time frames adopted by the State Board of Examiners of Nursing Home Administrators (licensee population of 1,919 NHAs).

Continuing Education Content.

The PSNA submitted comments, some of which have been addressed previously. In addition, the PSNA suggested that courses relating to self-improvement should be considered valid continuing education. The PSNA suggested that "courses on stress management, interpersonal relationships, humor in nursing, etc. provide health promotion strategies for nurses that lead to better care of the citizens of Pennsylvania and retaining nurses in the profession." Although the Board agrees that some courses related to self-improvement may lead to better care of the citizens of this Commonwealth, the Board believes that the intent of the General Assembly was to require continuing education more closely related to the provision of care to patients and therefore declines to amend its proposed rulemaking as suggested by the PSNA.

The PSEA noted that § 21.133(e) does not permit nurses to receive credit for courses that are designed for laypeople, and commented that this restriction is too severe. The PSEA gave as an example university biology and pharmaceutical courses. These courses would be considered approved under § 21.134(a)(5). The PSEA also commented that a foreign language course offered at a university would not count for credit. These courses would also be considered approved under § 21.134(a)(5). Finally, the PSEA commented that courses on "preventing professional burnout" should be allowed for continuing education credit because they should not be included in the statutory prohibition that does not permit nurses to obtain credit for courses in "office management." Further, the PSEA opined that the Board's regulation is neither "reasonable" nor "acceptable."

The Board respectfully disagrees and believes that the intent of the General Assembly in requiring continuing education for nurses is to improve nursing practice and ensure the competency of Pennsylvania's nursing workforce. While the Board agrees with the PSEA and other commentators that courses in self-improvement or preventing professional burnout may be beneficial to nurses and ultimately to patients, the Board is charged with effectuating the statute and believes that to be credited as continuing professional education, courses should have a close link to patient care. The Board does not believe that courses designed to "prevent professional burnout" have a close enough relation to the provision of quality patient care to be credited for biennial license renewal. Moreover, nothing in the statute or this rulemaking restricts a nurse from taking more than the minimum 30 hours of continuing education in a biennial period. If an individual nurse finds a course beneficial, the nurse may take the course in addition to the courses taken for license renewal.

Retired Nurses.

The PSNA asked whether retired nurses would need to attain 30 hours of biennial continuing education to retain an active license. The statute requires that all nurses

attain 30 hours of biennial continuing education to retain an active license; no exception is made for retired nurses. The Board is aware that many institutions invite retirees to attend continuing education at no cost. However, the Board does not have statutory authority to exempt retired nurses from the continuing education requirement. A nurse who is retired from practice may place a license on inactive status, obviating the need to complete biennial continuing education.

Miscellaneous comments.

PSNA noted that "the nurses of Pennsylvania are expressing frustration at having to maintain their personal records for 5 years, rather than for the license renewal period 2 years." The Board does not believe that any hardship is created by requiring that documentation of continuing education be retained for 5 years, and notes that much more extensive documentation is required to be retained for 7 years for Income Tax purposes. PSNA also requested that the Board offer an online continuing education tracking system. The Board does not have the funds to create an online continuing education tracking system.

The Pennsylvania Association of County Affiliated Homes (PACAH) objected to the requirement, in § 21.134(e), that a continuing education provider submit a separate application and fee whenever a change is made to any of the program content and speakers. First, the Board notes that its list of preapproved continuing education providers and accrediting bodies is vast and that very few applications from additional continuing education providers are anticipated. PACAH is a preapproved provider under § 21.134(a)(6). Preapproved continuing education providers will not be required to submit initial or amended programs to the Board. Second, the Board notes that the content of a continuing education program and the speakers providing information to program attendees are the most important items that the Board, or an accrediting body, approves when it reviews a continuing education program proposal. For these reasons, the Board declines to amend the rulemaking as proposed by PACAH.

The PSEA requested that the Board send notice of biennial renewal to nurses 120 days prior to the expiration date of the licensees' licenses so that nurses may "correct shortfalls in their continuing education." The Bureau of Professional and Occupational Affairs currently sends renewal notices to licensees across all licensing boards approximately 90 days in advance of the expiration date of the licensees' licenses. The Board does not believe that the responsibility to remind nurses of the expiration date of the nurses' licenses or to ensure that nurses have completed statutorily mandated continuing education rests with the Board. Nurses, like many other professional licensees under the Bureau, have 2 years to complete their continuing education requirement and should not be waiting until the last minute to comply. Moreover, it is unclear to the Board whether PSEA anticipates that nurses would be excused from statutorily mandated continuing education if the Board should fail to meet the 120-day deadline. Therefore, the Board declines to set a certain time that notices must be sent to licensees.

Comments from HAP.

HAP submitted extensive comments. In general, HAP found the Board's proposed rulemaking to be flexible and comprehensive and supported the overall direction taken by the Board. HAP suggested that the Board strike part

of § 21.131(b), so that any nurse applying for initial licensure by examination would be exempt from the continuing education requirement for the first biennial renewal period, regardless of when the nurses' education was completed. The Board has not amended its regulation as suggested. The Board believes that if a nurse's education was completed more than 2 years prior to initial licensure in this Commonwealth, the nurse should not be excluded from the continuing education requirement during the first biennial renewal period. HAP also suggested that the Board add an exception for nurses applying for licensure by endorsement. The Board believes that § 21.131(a) adequately specifies that continuing education need be completed only upon renewal of a nursing license, not for initial licensure. Therefore, the Board declines to add the suggested language.

HAP asked for clarification of § 21.131(g), regarding to disciplinary action for failure to complete mandatory continuing education. HAP asked if an RN would be subject to a civil penalty when the RN reported, on the renewal application, that the RN had not completed at least 30 hours of continuing education. The nurse would be subject to the schedule of civil penalties at the time the nurse reported that he did not complete the mandatory continuing education. This is reflected in § 21.131(g)(1), which states that "failure to complete a minimum of 30 hours of continuing education in a biennial period will subject the nurse to discipline under section 13(b) of the act . . . in accordance with the schedule of civil penalties." HAP also asked what the status of the nurse's license would be during the 6-month period that the nurse is given to make up the deficiency in continuing education hours. The nurse's license would remain on active status.

HAP also requested clarification of whether the nurse who failed to make up the deficiency during the 6-month period would be subject to additional disciplinary action. Section 21.131(g)(3) addresses this situation, stating that "notwithstanding any civil penalty assessed under paragraph (1), failure to provide the Board with documentation supporting completion of 30 hours of approved continuing education within 6 months after the end of the biennial period in which the professional nurse was deficient will subject the licensee to discipline under section 14(a)(3) of the act." This further violation of the act will subject the nurse to formal prosecution under section 14(a)(3) of the act and could result in additional civil penalties, reprimand or suspension of the nurse's license until the deficiency has been made up.

HAP also asked what action the Board would take if it learned that a nurse intentionally falsified a license renewal application. The intentional falsification of a renewal application has always subjected a nurse to disciplinary action under section 14(a)(4) of the act (63 P. S. § 224(a)(4)), which prohibits fraud or deceit in securing admission to practice. HAP asked if the action would be different from when a licensee honestly indicated that he failed to complete the requirement. A licensee who honestly reports the failure to complete the continuing education requirement is not subject to discipline under section 14(a)(4) of the act. HAP also asked how the Board plans to deal with honest discrepancies in the reporting of continuing education. A nurse charged with violating the continuing education provisions is afforded the opportunity to attend a hearing and explain the discrepancy to the Board. The Board always considers the nature of the offense and any evidence offered in mitigation when determining the appropriate sanction, if any, to impose in a disciplinary proceeding.

HAP suggested clarification to § 21.132(b) regarding the calculation of contact hours based on credit hours earned in an academic institution. The Board has amended the rulemaking for clarity and to provide for academic institutions that operate on the trimester system.

HAP suggested that the Board consider limiting continuing education activities to those that are at least 30 minutes in length. The Board agrees with this suggestion and has amended § 21.132(a) accordingly.

HAP suggested that the Board create a list of acceptable continuing education content, including risk management and legal issues, quality and performance improvement, patient safety, infection prevention and control, case management, utilization review, nursing/clinical informatics, customer relations, accreditation and regulatory compliance, finance and reimbursement, disruptive behavior, behavioral norms and codes of conduct, and health care ethics. The Board chose to define the content of continuing education broadly to encompass information "relevant to professional nursing in a general or specialty area," "course in areas related to nursing" and "courses in nursing administration, management, education and diagnostic and procedural coding." The Board believes that all of the topics listed by HAP are included within its general language. The Board does not wish to enumerate content topics, as this is limiting.

HAP suggested that the Board consider broadening activities for which continuing education contact hours could be awarded, including teaching, publication, development of patient and family education materials, research and clinical preceptorship. Section 21.133(d) already approves group or individual research for up to 15 hours of continuing education credit. The Board believes that continuing education should be something that requires the participants to go beyond what they already do as part of their jobs or for compensation. Therefore, the Board declines to award continuing education credit for teaching, developing educational materials and preceptorship.

HAP suggested that the Board more fully define the documentation that a nurse would have to submit, if audited. The Board had deleted the definition of certificate of attendance and has expanded § 21.131(c) to include the types of documentation that a nurse will be required to maintain as proof of continuing education credit.

HAP also recommended that the Board expand the list of activities that will not be credited for continuing education credit. The Board has added some of HAP's suggested exclusions to § 21.133(e), and finds that some of HAP's suggested exclusions are already covered in the rulemaking.

HAP recommended that the Board expand the eligible health care facilities that may offer approved continuing education in § 21.134(a)(3) and (4). The Board has adopted HAP's suggestion and amended these sections. HAP also suggested amendments to the list of preapproved providers that would allow nurses to obtain continuing education from National organizations in fields related to nursing, such as patient safety and quality; to include health care professionals organizations, such as the American Health Information Management Association, other state and regulatory agencies, and the like. The Board's goal was to make the list of preapproved providers as broad as possible while assuring a level of quality. The Board agrees with HAP's suggested language and has amended § 21.134(a) accordingly.

HAP noted that the fee schedule for approval of continuing education courses set by the Board was higher than the fee schedule for approval of continuing education courses set by the PSNA. The Board is not aware of the resources that PSNA has to devote to the approval of continuing education courses. The fee set by the Board is intended to cover the Board's cost in approving continuing education. If a provider or individual nurse prefers to have continuing education approved by the PSNA, the Board would accept PSNA's approval under its regulation because the PSNA is recognized as a pre-approved credentialing organization for continuing education.

Finally, HAP questioned the need for a certificate of attendance to include faculty and other information listed in § 21.123(b)(4) and (5) (relating to access and use of records). The Board agrees and has amended § 21.134(f) accordingly.

HPLC Comments

The HPLC met on June 6, 2007, and submitted seven comments for the Board's consideration. Some of the HPLC's comments, such as those related to provisions for school nurses and whether the \$75 fee per credit hour is applied to all nurses, have been addressed previously.

In addition, the HPLC asked for an explanation of "peer-reviewed journals" in § 21.1 (relating to definitions), which defines distance learning continuing education as continuing education in which the individual participates in the educational activity through peer-reviewed journals. A peer-reviewed journal is a professional nursing journal that has an editorial board of health care professionals, such as physicians and nurses, who review the articles submitted for publication and ensure that the articles are medically accurate and timely. For those articles, which include tests that are mailed back to the journal for continuing education credit, the professional editorial board also reviews the questions and answers provided by the author of the article. By limiting continuing education sources to peer-reviewed journals, the Board ensures the quality of the educational experience. The Board notes that its continuing education regulations for CRNPs refer to "refered" journals; therefore, the Board has amended § 21.1 for consistency with the CRNP regulatory provisions.

The HPLC sought clarification on whether the fee for approval of a continuing education course applied only to continuing education program providers. The fee applies only to those continuing education program providers who have not been granted preapproved status.

Regarding § 21.29(c)(1) (relating to expiration and renewal of licenses), the HPLC asked whether the licensure renewal application included a question regarding disclosure of whether the licensee was licensed to practice in any other state. The question is on the licensure renewal application. Additionally, the HPLC asked for clarification of the terminology in § 21.29(d), which requires a licensee to "retain" the wallet size licensure document. A licensee is not required to carry the license, but only to have access to it.

The HPLC noted that § 21.131(b) allows for an exemption for continuing education for the first 2 years of licensure for a licensee who has completed an approved nursing education program within 2 years of the date of the initial application. However, the HPLC stated that the exemption does not include nurses who are employed by school districts. The Board has addressed school nurses in §§ 21.29(c)(3) and 21.131(c)(5). The Board does not need to exempt school nurses from the continuing

education requirements in § 21.131 because school nurses are already exempt from the Board's continuing education requirements, as set forth in section 12.1(g)(2) of the act (63 P. S. § 222(g)(2)), so long as they are in compliance with the continuing education requirements of the Public School Code (24 P. S. §§ 1-101—27-2702).

The HPLC asked for additional clarification of the award of one continuing education credit for every 3 hours of academic course-related clinical practice. The Board had decided to remove this provision and provide credit only for didactic educational programs.

Finally, the HPLC requested the Board review its use of the terms "program," "sources" and "courses" in § 21.134. The Board has made appropriate amendments.

IRRC Comments

IRRC asked why, in § 21.134(b), the fee for approval of a continuing education activity is based on each hour of continuing education. The reason is that each hour segment of a continuing education program is usually taught by different faculty and on a different subject, requiring additional time for review. The Board does not have sufficient staff to review a large number of continuing education activities; however, there are several other state and national accrediting bodies that approve continuing education that are recognized by the Board (for example, PSNA and ANCC).

IRRC asked how a licensee verifies compliance with the continuing education requirement. A licensee verifies compliance by the licensee's signature on the renewal application under a statement that the licensee has complied with the requirement. If the licensee renews online, the online document provides a means for verification.

IRRC noted that school nurses were confused over the impact of the rulemaking. These concerns were addressed previously.

IRRC requested clarification regarding the basis for awarding continuing education credit for 3 hours of course-related clinical practice. The Board has omitted this provision.

IRRC asked for clarification of the term "institutional review board" and suggested that the term reference the sponsoring facility. An institutional review board is a group of professional and community individuals that approve research, and that are generally certified to review and approve research. The Board has made an amendment to § 21.133(d) to refer to the sponsoring facility.

IRRC noted that § 21.134(a) is confusing with references to providers, programs and credentialing organizations. The Board has amended the section for clarity. In addition, the Board has amended the list of approved providers as suggested by HAP.

IRRC requested that the Board add a provision to § 21.134(b) to provide that the Board would request additional information, if necessary, in writing. The Board has made this amendment.

IRRC asked how the Board would determine the number of continuing education hours awarded for an activity under § 21.134(d). The Board will make the determination based on the content of the proposed program and qualifications of the faculty. The Board has added a provision to notify applicants that the Board will award no more than the number of hours requested. Thus, if a provider presents a 4-hour continuing education proposal, the Board may approve only 3 hours for continuing

education credit. The Board will not refund the \$75 fee because the fee covers the Board's expense in reviewing the proposal for the hour that was ultimately denied.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The Board is self-supporting and the fee charged for approval of continuing education courses will satisfy the cost to the Board of reviewing applications for continuing education course approval. The final-form rulemaking will impose only minimal additional paperwork requirements upon the Board, and none upon any political subdivisions. The private sector, to the extent that it seeks to provide continuing education programs for professional nurses, will incur costs in submitting information to the Board or another credentialing organization for approval. The regulated community will incur costs associated with complying with the continuing education requirements.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 18, 2007, the Board submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 1980 (April 28, 2007) 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 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 Board 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 May 14, 2008, the final-form rulemaking was approved by the HPLC. On June 4, 2008, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 5, 2008, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings of the Board

The Board finds that:

(1) Public notice of intention to adopt this final-form rulemaking was given under 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 under those sections at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

(3) The amendments made to the final-form rulemaking do not enlarge the original purpose of the proposed rulemaking as published at 37 Pa.B. 1980.

(4) The regulations of the Board are necessary and appropriate for the regulation of the practice of professional nurses in this Commonwealth.

Order

The Board therefore orders that:

(a) The regulations of the Board, 49 Pa. Code, Chapter 21, are amended by amending §§ 21.1, 21.5, 21.29 and by adding §§ 21.131—21.134 to read as set forth in Annex A.

(b) The Board shall submit a copy of this order and Annex A to the Office of the Attorney General and the Office of General Counsel for approval 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) The final-form rulemaking shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

MARY E. BOWEN, RN, DNS, CNAA,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 3461 (June 21, 2008).)

Fiscal Note: Fiscal Note 16A-5130 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 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES

GENERAL PROVISIONS

§ 21.1. Definitions.

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

Act—The Professional Nursing Law (63 P. S. §§ 211—225.5), which establishes standards for nursing schools and the conduct of nursing programs.

Approved—Approved by the Board.

Board—The State Board of Nursing of the Commonwealth.

Continuing education—An activity approved by the Board as a condition for renewal of licensure or certification for which proof of completion can be provided to the Board.

Diagnosing—Identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen.

Distance learning continuing education—Continuing education in which the individual participates in the educational activity by means of electronic media or through refereed journals, rather than in a classroom, laboratory or clinical setting where the faculty and participant are physically located in the same room.

Graduate registered nurse—An individual who has graduated from an approved program of professional nursing in this Commonwealth or a comparable program in another state.

Human responses—Those signs, symptoms and processes which denote the interaction of the individual with an actual or potential health problem.

Patient (includes residents and clients)—A person, other than a spouse or immediate family member, who receives professional services from a registered nurse, regardless of whether the nurse receives remuneration for the services.

Practice of professional nursing—

(i) Diagnosing and treating human responses to actual or potential health problems through such services as case findings, health teaching, health counseling, provision of care supportive to or restorative of life and well-being, and executing medical regimens as prescribed by a licensed physician or dentist.

(ii) The term does not include acts of medical diagnosis or prescription of medical therapeutic or corrective measures, except as may be authorized by rules and regulations jointly promulgated by the State Board of Medicine and the Board, which rules and regulations will be implemented by the Board.

Professional relationship—

(i) For a registered nurse not involved in providing mental health services, the relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a registered nurse and a patient and ending with the patient's discharge from or discontinuance of services by the nurse or by the nurse's employer. The administration of emergency medical treatment or transitory trauma care will not be deemed to establish a professional relationship.

(ii) For a registered nurse involved in providing mental health services, the relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between the nurse and patient and ending 2 years after discharge from or discontinuance of services. For a patient who is a minor, a professional relationship shall be deemed to exist for 2 years or until 1 year after the age of majority, whichever is longer, after discharge from or discontinuance of services.

Registered nurse—A nurse licensed under this subchapter to practice in this Commonwealth.

Sexual impropriety—The term includes the following offenses:

(i) Making sexually demeaning or sexually suggestive comments about or to a patient, including comments about a patient's body or undergarments.

(ii) Unnecessarily exposing a patient's body or watching a patient dress or undress, unless for therapeutic purposes or the patient specifically requests assistance.

(iii) Examining or touching genitals without the use of gloves when performing an otherwise appropriate examination.

(iv) Discussing or commenting on a patient's potential sexual performance or requesting details of a patient's sexual history or preferences during an examination or consultation, except when the examination or consultation is pertinent to the issue of sexual function or dysfunction or reproductive health care. Discussion of a patient's sexual practices and preferences shall be fully documented in the patient's chart.

(v) Soliciting a date from a patient.

(vi) Volunteering information to a patient about one's sexual problems, preferences or fantasies.

Sexual violation—The term includes the following offenses:

(i) Sexual intercourse between a registered nurse and a patient during the professional relationship.

(ii) Genital to genital contact between a nurse and a patient during the professional relationship.

(iii) Oral to genital contact between a nurse and a patient during the professional relationship.

(iv) Touching breasts, genitals, or any other body part for any purpose other than appropriate examination or treatment, or using prolonged or improper examination techniques, or after the patient has refused or withdrawn consent.

(v) Encouraging a patient to masturbate in the presence of the nurse or masturbating while a patient is present.

(vi) Providing or offering to provide drugs or treatment in exchange for sexual favors.

(vii) Using or causing the use of anesthesia or any other drug affecting consciousness for the purpose of engaging in conduct that would constitute a sexual impropriety or sexual violation.

Treating—Selection and performance of those therapeutic measures essential to the effective execution and management of the nursing regimen and execution of the prescribed medical regimen.

§ 21.5. Fees.

(a) The following fees are charged by the Board:

Examination and licensure	\$35
Reexamination	\$30
Licensure by endorsement	\$100
Temporary permit	\$35
Extension of temporary permit	\$60
Application for approval of new nursing program ..	\$935
Fee for review and challenge of RN exams	\$170
Application fee for out-of-State graduates	\$100
Biennial renewal of license	\$45
Verification of licensure	\$15
Reactivation of license (after 5 years or longer)	\$50
Restoration after suspension or revocation	\$50
Certification of scores	\$25
Certification of license history	\$40
Request under § 21.134(b) by a provider of a continuing education activity not listed in § 21.134(a) or an individual seeking credit for a continuing education activity not preapproved by the Board for approval of each hour of continuing education for which credit is requested	\$75

(b) In addition to the examination and licensure fee of \$35 prescribed in subsection (a), which is payable directly to the Board, a candidate for the registered nurse licensing examination shall also pay a fee of \$40 to the National Council of the State Boards of Nursing to cover costs associated with the preparation and administration of the registered nurse licensing examination. Effective April 1994, or upon implementation of the computer adaptive examination, the fee paid directly to the National Council of the State Boards of Nursing or its designated agent is \$88.

LICENSES

§ 21.29. Expiration and renewal of license.

(a) The Board will assign registered nurses to one of the following license expiration dates:

- (1) April 30 in the even-numbered years.
- (2) October 31 in the even-numbered years.

- (3) April 30 in the odd-numbered years.
- (4) October 31 in the odd-numbered years.
- (b) Notice of the renewal period of a license will be sent to each active licensee prior to the expiration date of the licensee's license.
- (c) The applicant for license renewal may complete and submit an application online or may mail a completed application form to the Board's administrative office. When applying for licensure renewal, a professional nurse shall:
 - (1) Complete and submit the renewal application form, including disclosing any license to practice nursing or any allied health profession in any other state, territory, possession or country.

(2) Pay the biennial renewal of licensure fee in § 21.5 (relating to fees).

(3) Beginning with the license period commencing on July 12, 2010, verify that the professional nurse has complied with the continuing education requirements mandated by section 12 of the act (63 P. S. § 222) during the biennial period immediately preceding the application for renewal in accordance with §§ 21.131—21.134 (relating to continuing education). School nurses, who as certified education specialists are required to obtain continuing professional education under the Public School Code of 1949 (24 P. S. §§ 1-100—27-2702), shall verify by signed statement that the school nurse has complied with the continuing education requirements for certification by the Department of Education.

(4) Disclose any discipline imposed by a state licensing board on any nursing or allied health profession license or certificate in the previous biennial period and any criminal charges pending or criminal conviction, plea of guilty or nolo contendere, or admission into a probation without verdict or accelerated rehabilitative disposition during the previous biennial period.

(d) When communicating with the Board, licensees shall identify themselves by full name, current address and license number.

CONTINUING EDUCATION

§ 21.131. Continuing education.

(a) *Requirement of continuing education.* Beginning with the license period commencing on July 12, 2010, an applicant for renewal of a professional nursing license shall complete 30 hours of continuing education approved by the Board during the biennial period immediately preceding the application for renewal in accordance with section 12 of the act (63 P. S. § 222) and this subchapter.

(b) *Exception.* An applicant applying for initial licensure by examination in this Commonwealth will not be required to meet the continuing education requirement on the first renewal immediately following licensure if the applicant completed an approved nursing education program within 2 years of the date of application for initial licensure by examination.

(c) *Board audits; proof of completion.* The Board may perform audits on professional nurses to determine compliance with the continuing education requirements. A professional nurse shall retain documentation of the nurse's completion of continuing education for at least 5 years. A professional nurse shall comply with a request for submission of documents verifying the nurse's completion of continuing education. The following documents shall be retained and submitted upon request:

(1) For attendance at continuing education programs or courses, the nurse shall retain the certificate of attendance provided by the program or course provider.

(2) For academic courses taken from an accredited college or university, the nurse shall retain the official transcript issued by the educational institution.

(3) For publication of a textbook or article, the nurse shall retain a copy of the published item, including the date of publication.

(4) For a research project, the nurse shall retain a copy of the research abstract, letter from the institutional review board granting approval for the research project and list of primary and co-investigators.

(5) For school nurses, evidence that the nurse's certification by the Department of Education is current.

(d) *Reinstatement of lapsed license or reactivation of inactive license.* A licensee seeking to reinstate a lapsed license or reactivate an inactive license shall submit documentation to demonstrate that the licensee completed 30 hours of continuing education within the biennial period immediately preceding application for reinstatement. A refresher or reactivation course at an accredited school of nursing will be credited toward the 30-hour continuing education requirement as set forth in § 21.132 (relating to continuing education hours).

(e) *Reinstatement of suspended license.* A licensee seeking to reinstate a suspended license shall submit documentation to demonstrate that the licensee completed 30 hours of continuing education within the biennial period immediately preceding application for reinstatement.

(f) *Waiver.* A licensee may request a waiver of the continuing education requirement because of serious illness, military service or other demonstrated hardship. The licensee shall submit the request and any supporting documentation to the Board in writing at least 90 days prior to the licensee's license expiration date. The Board will grant, deny or grant in part the request for waiver.

(g) *Disciplinary action authorized.*

(1) Failure to complete a minimum of 30 hours of continuing education in a biennial period will subject the professional nurse to discipline under section 13(b) of the act (63 P. S. § 223(b)) in accordance with the schedule of civil penalties in § 43b.18 (relating to schedule of civil penalties—nurses). A second or subsequent violation will subject the professional nurse to discipline under section 14(a)(3) of the act (63 P. S. § 224(a)(3)).

(2) A professional nurse who has not completed a minimum of 30 hours of continuing education shall report the number of continuing education hours completed on the biennial renewal application and shall make up the deficiency within 6 months of the expiration date of the nurse's license. The licensee shall provide documentation demonstrating the completion of the entire 30-hour requirement to the Board immediately upon completion, but no later than 6 months after the end of the biennial renewal period.

(3) Notwithstanding any civil penalty assessed under paragraph (1), failure to provide the Board with documentation demonstrating the completion of 30 hours of approved continuing education within 6 months after the end of the biennial period in which the professional nurse was deficient will subject the licensee to discipline under section 14(a)(3) of the act.

§ 21.132. Continuing education hours.

(a) The Board will accept hours of continuing education as designated by an approved provider, so long as each

hour is at least 50 minutes of activity and each 1/2 hour is at least 30 minutes of activity.

(b) For purposes of determining acceptable hours of continuing education for academic coursework, the following apply:

- (1) One academic trimester unit is equivalent to 12 continuing education hours.
- (2) One academic quarter unit is equivalent to 10 continuing education hours.
- (3) One academic semester unit is equivalent to 15 continuing education hours.

§ 21.133. Continuing education content.

(a) Continuing education must be relevant to patient care or professional nursing in a general or specialty area and enhance the knowledge and application of the physical, social, biological and behavioral sciences.

(b) Courses in areas related to nursing such as the following are acceptable:

- (1) Human sexuality.
- (2) Death, dying and grief.
- (3) Foreign language relevant to health care.
- (4) Therapeutic interpersonal relationship skills.
- (5) Patient rights.
- (6) Pharmacology.

(c) Courses in areas impacting nursing practice, such as nursing administration, management, education and diagnostic and procedural coding are acceptable.

(d) Group or individual research, as the principal or co-principal investigator, if approved by the institutional review board of the sponsoring institution, is acceptable and will be credited as 15 hours of continuing education.

(e) Nonprofessional course content not directly related to patient care, such as courses in self-improvement, changes in attitude, financial gain, courses designed for lay people, basic life support or cardiopulmonary resuscitation, mandatory annual education on facility specific policies unrelated to nursing practice (such as facility leave policies) and employment orientation programs are not acceptable for meeting requirements for license renewal.

§ 21.134. Continuing education sources.

(a) The following continuing education activities that meet the requirements of § 21.133 (relating to continuing education content) for professional nurses are approved:

- (1) Activities sponsored by a Board-approved professional nursing or CRNP education program.
- (2) Activities sponsored by an accredited professional nursing, CRNP, Certified Registered Nurse Anesthetist, Clinical Nurse Specialist or Nurse Midwifery education program.
- (3) Activities sponsored by accredited hospitals and health care facilities.
- (4) Activities sponsored by hospitals and health care facilities licensed by the Department of Health or the Department of Public Welfare.
- (5) Activities sponsored by regionally-accredited institutions of higher education.
- (6) Activities sponsored by National nursing, medical, osteopathic and other health care professional organizations and their state and regional affiliates.

(7) Activities sponsored by National trade organizations, associations and their affiliated groups and state and regional affiliates.

(8) Activities approved by National nursing, risk management, health care quality and patient safety organizations.

(9) Activities sponsored by Federal and state agencies.

(10) Activities approved by a Board in another jurisdiction.

(b) The Board may approve other sources of continuing education on a case-by-case basis after the provider or professional nurse seeking approval submits the following:

- (1) Full name and address of the provider.
- (2) Title of the activity.
- (3) Date and location of the activity.
- (4) Faculty qualifications.
- (5) Schedule of the activity, including, for activities with multiple presenters, the title of each subject, lecturer and time allotted.
- (6) Hours of continuing education.
- (7) Method of certifying and assuring attendance, and draft of certificate of attendance to be provided to course participants, as applicable.
- (8) Course objectives.
- (9) Curriculum.
- (10) Target audience.
- (11) Program coordinator.
- (12) Instruction methods.
- (13) Evaluation methods, including participant evaluation and activity evaluation.
- (14) Other information requested in writing by the Board.

(c) Requests for approval of a continuing education activity under subsection (b) shall be submitted at least 90 days prior to commencement of the activity and shall be accompanied by the fee in § 21.5 (relating to fees).

(d) Upon approval of a continuing education activity under subsection (b), the Board will determine the number of continuing education hours awarded for the activity.

(e) A separate application and fee, as set forth in § 21.5, shall be submitted whenever a change is made to information submitted under subsection (b), except for information related to a change in date or location, or both, of the activity under subsection (b)(3).

(f) A continuing education provider shall award a certificate of attendance to professional nurses who complete the continuing education activity. The certificate must contain the information listed in subsection (b)(1)—(3) and (6) and the name of the individual to whom the certificate is awarded.

(g) Distance learning continuing education is acceptable for completion of all 30 continuing education hours required for license renewal.

[Pa.B. Doc. No. 08-1289. Filed for public inspection July 11, 2008, 9:00 a.m.]

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

Faculty Requirements for Nursing Education Programs

The State Board of Nursing (Board) amends §§ 21.1, 21.71, 21.72, 21.75 and 21.124 and rescinds § 21.74 (relating to faculty and staff requirements for diploma programs) to read as set forth in Annex A.

Notice of proposed rulemaking was published at 37 Pa.B. 4649 (August 25, 2007). The publication was followed by a 30-day public comment period during which the Board received comments from the public and stakeholders, including the Pennsylvania State Nurses Association, the Hospital and Healthsystem Association of Pennsylvania, various nursing education programs and individual licensees. On September 26, 2007, the House Professional Licensure Committee (HPLC) submitted its comments. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) made no comments. The Independent Regulatory Review Commission (IRRC) submitted comments to the proposed rulemaking on October 24, 2007.

Summary of Comments and Responses to Proposed Rulemaking

Public/Stakeholder Comments

Harrisburg Area Community College (HACC) expressed concerns that the requirement that faculty assistants teach for a cumulative maximum period of 5 years without completing a graduate degree in nursing would exacerbate the nursing faculty shortage. HACC also expressed concern about what it perceived as "the large gap in minimum qualifications between the faculty assistant and the clinical preceptor." HACC commented that these amendments will favor programs relying more on preceptor supervised experiences and will encourage programs to decrease instructor supervised clinical experiences in favor of clinical experiences supervised by preceptors.

Alvernia College (Alvernia) also expressed concern about what it perceived to be "the expanded enforcement of the 5 year timeline on faculty assistants." Alvernia noted that bachelor's prepared faculty assistants are typically highly competent and suggested that enforcement of the existing regulation would exacerbate faculty shortages. Alvernia suggested that the Board distinguish between faculty who teach didactic courses and faculty who teach clinical courses, noting that it is more difficult for programs to find part-time clinical instructors and that clinical instructors will be most affected by the 5-year deadline.

The 5-year limitation was adopted 32 years ago (See 6 Pa.B. 2677 (October 22, 1976) at 2682)). The Board has enforced this regulation throughout its existence. The Board does not know of any evidence compiled over this 32-year history that supports a conclusion that the regulation has caused or exacerbated the current nursing faculty shortage. Nevertheless, under 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations), the Board has entertained requests for waiver of the regulations to grant additional time to a faculty assistant who has been unable to complete master's preparation in 5 years. The amendments will not affect the ability of individuals to request a waiver from the Board under 1 Pa. Code § 35.18.

Alvernia did not dispute that the master's degree in nursing is the optimal preparation for nursing faculty, but

suggested that the Board provide incentives for nurses to try teaching and persist in Master's education. The Board must operate within its statutorily defined duties. The Board is not aware of any incentive that it could provide to its licensees to try teaching. Alvernia could pursue legislative incentives to encourage individuals to pursue teaching while attaining a Master's degree in nursing similar to existing legislative incentives for individuals pursuing education for entry into the practice of nursing.

The director of the St. Luke's School of Nursing (St. Luke's), a diploma nursing education program, expressed concerns about the elimination of § 21.74 (relating to faculty and staff requirements for diploma programs). The Board is eliminating § 21.74 because with the amendments to § 21.71 (relating to nurse administrator, faculty and staff requirements), § 21.71 now applies to all nursing education programs, including diploma programs. As amended, § 21.71 sets the same standards for faculty and staff in diploma, baccalaureate degree and associate degree programs. Therefore, § 21.74 is no longer necessary.

St. Luke's also commented that the amended § 21.71(5) is vague, and suggested that the Board should require "no less than one full-time secretary and a full-time librarian." The Board is amending § 21.71(5) to reference a wider range of student support services that should be in place in all schools of nursing. The Board declines to provide the specific support personnel requirements as suggested by the commentator in favor of leaving the details of the administrative decisions to the educational program and sponsoring institution. The Board's approach provides needed flexibility should, for example, one or more full-time librarians staff a hospital library with adequate time to assist nursing students using the library, or when a program's students may use the financial aid office of the controlling institution.

The Pennsylvania State Nurses Association (PSNA) noted its overall support of the proposed amendments, and specifically approved of the Board's retention of the requirement that faculty assistants obtain a graduate degree in nursing within 5 years.

The PSNA noted three areas of concern. First, PSNA proposed that the Board add educational requirements for clinical preceptors, requiring that they have the same educational background as the nursing faculty. There are currently no educational or experiential requirements for clinical preceptors. For many years, nursing education programs have been enhancing student learning experiences with clinical preceptors who do not hold a Master's degree in nursing; there is no evidence to suggest that clinical preceptors should now be required to hold a Master's degree in nursing. Section 21.71(c)(5) requires that the nursing faculty have involvement in the selection of preceptors and retain responsibility for planning and evaluating student learning experiences. This section has been reorganized for clarity. The selection and employment of clinical preceptors is left to the sound judgment of the nursing education program. The Board declines to set minimum educational requirements for clinical preceptors.

Second, PSNA suggested that the Board provide a specific number of students who could be supervised by a clinical preceptor. Clinical preceptors have been used for many years without problems arising from preceptor-student ratios. The ratio may be set by the nursing education program, the preceptors (through their contract with the program) or the facility or agency when the clinical experience takes place. The Board does not find it

necessary or advisable to set a specific ratio to govern the wide variety of settings where a student would work with a preceptor.

Third, PSNA requested clarification on the difference between a clinical preceptor and a faculty assistant. Section 21.71(c)(2) provides that a faculty assistant may teach nursing education courses, which would include both didactic and clinical courses, under the direct guidance of a faculty member when fully qualified faculty are not available. Section 21.71(c)(5) provides that a clinical preceptor may be used to enhance faculty-directed clinical learning experiences by guiding selected clinical activities. Therefore, clinical preceptors differ from faculty assistants in that clinical preceptors do not teach courses; clinical preceptors supervise nursing students in selected clinical learning experiences. Full-time faculty remains responsible for planning and evaluating the learning experiences.

A licensee commented that the Board should set forth guidelines regarding faculty responsibility for planning and evaluating student learning experiences when the student is with a clinical preceptor, and should require that nursing faculty be available by page. For many years, nursing education programs have utilized clinical preceptors to enhance the clinical learning experiences of nursing students. The Board has never set forth specific guidelines regarding faculty responsibility; the faculty is responsible for the student and this has been sufficient to ensure proper utilization of clinical preceptor experiences. The Board declines to set forth guidelines directing faculty how to plan and evaluate the wide variety of student learning experiences that occur when a student is with a clinical preceptor.

Regarding the availability of nursing faculty during a clinical preceptor experience, the Board has always required, when it approves a proposed clinical agency for use by a nursing education program, that whenever a faculty member is not physically present in the area in which students are practicing, that the faculty member be immediately available by telephone or some other means of telecommunication. The Board has added this requirement to § 21.71(c)(5).

The licensee also suggested that the Board require nursing education programs to employ a financial aid counselor. The Board declines to adopt this suggestion because some nursing education programs may have no need to employ a financial aid counselor as this service may be provided to all students through the controlling institution (university or college).

Finally, the licensee expressed concern that the Board's regulation would allow governing hospitals to require faculty to carry out duties unrelated to student experiences, nursing education or research for the benefit of furthering nursing education and noted that the National League for Nursing Accrediting Commission (NLNAC), a Nationally recognized specialized accrediting agency for all types of nursing education programs, limits other duties to 10% of job requirements. The Board has not made any amendment to its regulations that would have the effect suggested by the licensee. The Board believes that the nursing faculty is capable of negotiating, through the employment contract, their duties and job requirements and declines to set a specific limitation. The Board is confident that additional duties will be limited to meet the goals of the program.

Another licensee raised questions about the educational/experiential requirements for being a clinical

preceptor and whether a clinical preceptor could have a lower degree than the students to whom the preceptor is assigned. The licensee suggested that clinical preceptors be required to hold at least a bachelor's degree in nursing and have at least 2 years of clinical experience in the area they will be supervising. Section 21.71(c)(5) requires that nursing faculty have input into the selection of preceptors. No other educational/experiential requirements are set; therefore, it is possible that a nurse with an associate's degree in nursing might act as a preceptor for a student in a baccalaureate degree program. In that case, it would be expected that the preceptor have significant experience in preceptor's clinical area to merit appointment as a preceptor. The Board declines to set specific educational/experiential requirements for clinical preceptors.

The licensee asked whether there would be continuing education required for clinical preceptors. All RNs are required to complete a minimum of 30 hours of continuing education biennially. No additional continuing education is required for clinical preceptors.

The Hospital and Healthsystem Association of Pennsylvania (HAP) provided extensive comments and noted its appreciation of the Board's efforts to develop the most flexible and comprehensive regulations in response to the need for additional nurse educators. HAP commented that the Board should flesh out the responsibilities of the nurse administrator and require that the nurse administrator have sufficient time to devote to the operations of the nursing program. Each controlling institution and program defines the role of the nurse administrator to meet the needs of the specific institution and program; the duties of the nurse administrator are defined by the employment contract. The Board prefers to leave the specifics of the nurse administrator's duties to each individual program and administrator, which provides needed flexibility in meeting the broad goals defined by the Board.

HAP recommended additional detail be added to § 21.71(a)(5), related to support services in a nursing education program. The Board has adopted this suggestion, which was made in several of the comments received.

Regarding faculty qualifications, HAP commented that the reference to "clinical nursing education courses" in § 21.71(c)(1) and (2) was confusing and suggested dropping the word "clinical." The Board agrees that this terminology was confusing and that the intent was to reference both didactic and clinical content. The Board has deleted the word "clinical."

HAP asked for clarification on when there might be a person other than a nurse with a graduate degree in nursing teaching a specialized area of nursing practice. The primary purpose of the Board's rulemaking is to allow nursing education programs to expand their faculty complement to meet the demand for nursing education and produce more qualified nurses. To this end, the Board will allow nursing education programs, at their discretion, to employ persons other than a nurse with a graduate degree in nursing to teach a specialized area of health care practice. Some examples of subjects that might be taught by a person with a graduate degree in a major area other than nursing include pharmacology, genetics, informatics, clinical psychology, genomics, biotechnology, epidemiology and disaster planning.

HAP questioned to what extent a nursing education program that does not employ allied faculty would be

accountable for ensuring that allied faculty members used to teach nutrition meet the education and licensure requirements in the regulations. For those programs that send students to another institution for some courses, the review process of the Board includes review of the agreements between a nursing education program and other institutions where students take courses. The agreement should include a clause specifying that instructors who meet the Board's qualifications teach these courses.

HAP commented that it appreciated the Board's restraint in not developing overly prescriptive regulations regarding how preceptor programs are implemented, but expressed concern over the inappropriate overuse of preceptor experiences, including the substitution of these experiences because of the lack of sufficient numbers of nurse faculty. HAP recommended that the Board engage in dialogue with the field to develop more specific guidance with respect to the use of preceptor programs. The Board intends to conduct an informational meeting related to preceptor programs and develop guidelines, which will be promulgated in a future rulemaking, related to preceptor programs in nursing education.

HPLC Comments

The HPLC met on September 26, 2007, and submitted comments for the Board's consideration. The HPLC asked if the term "director of the program" had a different meaning than the term "nurse administrator." The term does not have a different meaning; the regulations are being modified to conform to current terminology in nursing education. The HPLC questioned the use of the term "sufficient number" in § 21.71(a) and asked how this would be quantified. The Board has amended the section to refer to the objectives of the nursing education program's curriculum and systematic evaluation plan. These are terms used in nursing education by, for example, the National League of Nursing. The term "systematic evaluation plan" is now defined in § 21.1 (relating to definitions) as an "organized, continuous analysis of all nursing education program components, such as curriculum, faculty, facilities, policies and outcome measures. Education programs use systematic evaluation plans to address standards or benchmarks to be achieved and to establish an action plan if those standards or benchmarks are not achieved." The Board's addition of these terms clarifies its intent. Additionally, the use of broad terminology is supported by the model practice act of the National Council of State Boards of Nursing for use by all State nursing boards.

The HPLC suggested that § 21.71(a)(5) be amended to refer to persons to make it consistent with the other subsections. The Board has made this amendment, and expanded the list of support services covered by the section to include financial aid personnel, as suggested by another commentator.

The HPLC suggested that the Board provide specific experiential requirements for the nurse administrator. The Board believes that each nursing education program should be permitted to hire a nurse administrator, within the general guidelines set forth by the Board, who has the experience the program seeks to implement the program's educational objectives. Because the Board's regulations apply to a variety of types of nursing education programs with different administrative needs, the Board does not believe it would be advantageous to substitute its judgment as to the particular experiential background of a potential administrator for that of the

institution conducting the program. Therefore, the Board declines to provide specific experiential requirements for the nurse administrator.

The HPLC questioned the adequacy of the 5-year time limit for a faculty assistant to teach, set forth in § 21.71(c)(2), and further suggested a mechanism whereby a faculty assistant could suspend the calculation of the 5-year period if the faculty assistant is no longer teaching for a period of time. The Board's use of the word "cumulative" is intended to indicate that the calculation is based on the periods that the faculty assistant is teaching and does not include a sabbatical or leave of absence.

Finally, the HPLC stated the following: "The Committee also notes the overall lowering of standards for a nursing teacher and questions if the result of the change in regulations would create substandard nurses." The Board strongly disagrees that its regulation lowers the standards for nursing educators in this Commonwealth. As to full-time faculty, the Board sees no lowering of standards by permitting an individual who holds an earned doctorate degree in nursing to teach in a nursing education program as opposed to the current regulation which only permits an individual who holds a master's degree in nursing to teach in a nursing education program. As to faculty assistants, the 5-year limitation on individuals who do not hold at least a master's degree in nursing has been in place for 32 years; the Board's regulation does not change this limitation. Quality would be compromised if the Board were to abandon the 5-year limitation as suggested by some commentators. As to allied faculty members, for those teaching basic sciences, the Board does not see it as a lowering of standards for an individual with a master's or doctoral degree in chemistry to teach basic chemistry to nursing students rather than having the basic chemistry course taught by an individual with a master's degree in nursing; and for individuals teaching specialized areas of nursing practice, the Board does not see it as a lowering of standards for an individual with a doctoral degree in genetics to teach genetics, a doctoral degree in pharmacy to teach pharmacology, or a master's degree in clinical psychology to teach that subject in place of individual with a master's degree in nursing. As to clinical preceptors, nursing education programs have utilized clinical preceptors to enhance faculty-directed clinical learning experiences since the beginning of nursing education. There is no change made by this regulation that lowers the standards for nursing education.

IRRC Comments

In addition to questions raised by the HPLC, IRRC asked "if the nursing program is a school or college, . . . is the nurse administrator also the head of the school or college?" Under § 21.51 (relating to establishment), a nursing education program may be developed under the authority of a regionally accredited university or college or under the authority of a hospital. Because the nursing education program is developed under the authority of an accredited university or college, it is unlikely that the nurse administrator will also be the head of the school or college.

IRRC questioned the amendment to § 21.71(a)(3), specifically the deletion of the reference to additional faculty members being employed as needed "to insure an educationally effective student-faculty ratio." The Board believes the amendment to § 21.71(a), which requires the nursing education program to employ sufficient personnel to accomplish the objectives of the curriculum and systematic evaluation plan, addresses this concern.

IRRC also requested that the final-form rulemaking address student-faculty ratios and, if the Board does not wish to set a minimum ratio, that the Board should require programs to document their rationale for, and effectiveness of, their student-faculty ratio. This information is already required to be submitted to the Board by any school whose NCLEX performance approaches the minimum standard in § 21.26 (relating to failing rate of a school in examination). The Board does not believe it is effective to manage schools at the level of a required student-faculty ratio. The Board has always taken an outcome-based approach with minimal intervention by the Board so long as the school's graduates are performing at acceptable levels on the NCLEX examination. In addition, the optimum student-faculty ratio will vary depending on the course content, format and presentation strategy.

IRRC commented that the Board should specify that allied faculty members are not required to hold a degree in nursing or a professional nursing license. The Board finds that the statement in § 21.71(c)(3), that allied faculty members must hold at least one graduate degree in a subject pertinent to their area of teaching sufficiently explains that allied faculty members are not required to hold a degree in nursing. In addition, the statement in § 21.71(c)(1), that faculty members teaching required nursing education courses shall be currently licensed, and in § 21.71(c)(2), that faculty assistants must be currently licensed, is sufficiently clear to indicate that allied faculty members are not required to hold a professional nursing license. Also regarding allied faculty members, IRRC questioned what was meant by "as needed." As with all faculty, the number of faculty and their qualifications must be sufficient to meet the objectives of the curriculum and the systematic evaluation plan, as set forth in § 21.71(a).

IRRC also suggested that the Board specify which areas of the curriculum must be taught by faculty with RN licenses and which areas may be taught by others. The Board has already indicated, in § 21.71(c)(3), that allied faculty may teach basic sciences or specialized areas of nursing practice and that faculty members and faculty assistants may teach required nursing education courses. The Board finds that no additional clarification is needed.

IRRC noted that two commentators from nursing education programs "expressed grave concern and warn that strict enforcement of the '5-year rule' will only exacerbate the shortages in faculty and new licensees." IRRC asked why, if a person was content as a faculty assistant, he or she should be "forced to enroll for additional degrees?" The Board is not aware of any other academic discipline where the faculty is not required to hold at least a master's degree in the area in which they teach. At both the associate's degree level and baccalaureate degree levels, a review of college and university catalogs demonstrates that faculty across disciplines hold at least a master's degree. Nursing is no different. The Board is not alone in its thinking: the National Council of State Boards of Nursing Model Practice Act requires nursing faculty to hold a minimum of a master's degree in nursing and the NLNAC requires nursing faculty to hold a minimum of a master's degree in nursing for national accreditation of the nursing education program.

IRRC next questioned the use of the term preceptor. The term preceptor is well-established in nursing education and, as set forth in § 21.71(c)(5), is an individual who is utilized by a nursing education program to enhance the clinical experiences of nursing students. A

clinical preceptor is directly responsible for patient care in a setting; the nursing education program is directly responsible for the nursing student; and nursing faculty must be available to the student during the experience. Nursing faculty is involved in the selection of preceptors and sets the overall goals for the experience. Faculty is also responsible for the evaluation of the student. As noted, the Board will meet with interested parties to determine whether further amendments more fully delineating the use of preceptors in nursing education are needed.

IRRC also asked about the reference to out-of-State preceptor experiences, and wondered if programs could hire out-of-State nurses to be preceptors. For many, many years, nursing education programs have utilized both in-State and out-of-State sites to provide clinical experiences for nursing students. For example, nursing students enrolled in a program in this Commonwealth may participate in a clinical experience with a preceptor in another state. The Board's regulation requires that the clinical preceptor be licensed to practice nursing in the state where the clinical practice occurs. These individuals do not need temporary practice permits in this Commonwealth because they are not practicing nursing in this Commonwealth.

Finally, IRRC noted that the Board had failed to update other sections that refer to the director of the school with the new term "nurse administrator," specifically §§ 21.75(e) and 21.124(b) (relating to faculty policies; and custody of records). The Board made the change to § 21.124(b) as suggested. The Board did not make the suggested change to § 21.75(e) because this section should have been removed. This rulemaking standardizes the faculty and staff requirements for diploma, baccalaureate and associate degree programs in nursing. Section 21.72 (relating to faculty policies; additional responsibilities of faculty and faculty assistants) was the section that set forth faculty policies for baccalaureate and associate degree programs; § 21.75 was the section that set forth faculty policies for diploma programs. Because the regulation standardizes faculty and staff requirements across programs by renaming § 21.71 to apply to all programs and deleting § 21.74, which had applied to diploma programs, § 21.75 is now duplicative. The Board has removed § 21.75 in final rulemaking.

Amendments by the Board

In addition to the amendments discussed previously, the Board made formatting amendments to § 21.71(c)(3) and (5) to make these paragraphs consistent with the formatting of §§ 21.71(c)(1) and (2). The Board added subparagraphs (i)—(iii) to § 21.71(c)(5) for added clarity. The Board also added a new subsection (d) to § 21.71 to address qualifications of support personnel. Finally, the Board amended § 21.72(g) to loosen the requirement set forth in the proposed rulemaking for faculty assistants to provide documentation of their activities leading to the completion of a graduate degree in nursing. The Board currently requires that all nursing education programs submit this information with the compliance review, which occurs every 3 years. The Board will inquire of only those individuals who have not demonstrated any progress toward completing the requirement, rather than require all individuals to submit documentation of their progress toward the degree.

Statutory Authority

Section 6.1 of the act (63 P. S. § 216.1) authorizes the Board to establish standards for the operation and approval of nursing education programs. Section 2.1(k) of

the act (63 P. S. § 212.1(k)) authorizes the Board to establish regulations to implement the standards established by the Board.

Fiscal Impact and Paperwork Requirements

The rulemaking will not have an adverse fiscal impact on the Commonwealth or its political subdivisions and will not impose additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 15, 2007, the Board submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 4649, to IRRC and 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 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 Board 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 May 14, 2008, the final-form rulemaking was approved by the HPLC. On June 4, 2008, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 5, 2008, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Board finds that:

(1) Public notice of intention to adopt the amendment in 49 Pa. Code Chapter 21, 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 under at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

(3) The amendments made to the final-form rulemaking do not enlarge the original purpose of the proposed rulemaking as published under section 201 of the act of July 31, 1968.

(4) These amendments to the regulations of the Board are necessary and appropriate for the regulation of the practice of professional nurses in this Commonwealth.

Order

The Board therefore orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by amending §§ 21.1, 21.71, 21.72 and 21.124 and by deleting §§ 21.74 and 21.75 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit a copy of Annex A to the Office of the Attorney General and the Office of General Counsel for approval 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) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

MARY E. BOWEN, RN, CRNP, DNP,
Chairperson

(Editor's Note: The amendment of §§ 21.1 and 21.124 and the rescission of § 21.75 were not included in the proposed rulemaking at 37 Pa.B. 4649.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 3461 (June 21, 2008).)

Fiscal Note: Fiscal Note 16A-5131 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 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES

GENERAL PROVISIONS

§ 21.1. Definitions.

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

* * * * *

Systematic evaluation plan—An organized, continuous analysis of all nursing education program components, such as curriculum, faculty, facilities, policies and outcome measures, that addresses standards or benchmarks to be achieved and establishes an action plan if those standards or benchmarks are not achieved.

* * * * *

**ADMINISTRATIVE AND INSTRUCTIONAL
PERSONNEL**

§ 21.71. Nurse administrator, faculty and staff requirements.

(a) A nursing education program shall employ a sufficient number of qualified faculty, faculty assistants, allied faculty and staff to accomplish the objectives of the curriculum and the systematic evaluation plan. The minimum faculty and staff requirements are as follows:

- (1) Full-time nurse administrator.
- (2) Full-time faculty members in the areas of practice encompassed within the curriculum.
- (3) Additional faculty members as needed.
- (4) Allied faculty members as needed.
- (5) Adequate personnel to provide program support services, including administrative, clerical, library, admissions, financial aid and student services.

(b) The nurse administrator's credentials shall be submitted to the Board for approval. The nurse administrator's qualifications are as follows:

- (1) The nurse administrator of a baccalaureate degree nursing education program shall hold at least one graduate degree in nursing. The nurse administrator shall hold

an earned doctoral degree or have a specific plan for completing doctoral preparation within 5 years of appointment. The nurse administrator shall have experience in nursing practice, nursing education and administration. A professional nurse who does not hold at least one graduate degree in nursing, but who has experience in nursing practice, nursing education and administration may be considered on an individual basis.

(2) The nurse administrator of an associate degree or diploma program shall hold at least one graduate degree in nursing. The nurse administrator shall have experience in nursing practice, nursing education and administration. A professional nurse who does not hold at least one graduate degree in nursing, but who has experience in nursing practice, nursing education and administration may be considered on an individual basis.

(3) The length of appointment of an interim or acting nurse administrator of a nursing education program may not exceed 1 year.

(4) The nurse administrator shall hold either a temporary practice permit to practice professional nursing or be currently licensed as a professional nurse in this Commonwealth.

(c) Faculty qualifications are as follows:

(1) Faculty members teaching required nursing education courses shall hold at least one graduate degree in nursing, shall be currently licensed as professional nurses in this Commonwealth, and shall have expertise in their areas of instruction.

(2) Faculty members without a graduate degree in nursing shall be designated faculty assistants. Faculty assistants shall be currently licensed as professional nurses in this Commonwealth. Faculty assistants may teach required nursing education courses only when fully qualified faculty are not available and shall teach under the direct guidance of a faculty member qualified as set forth in paragraph (1). Faculty assistants shall have a baccalaureate degree in nursing and shall give evidence of a plan for obtaining a graduate degree in nursing. A person may teach as a faculty assistant in a nursing education program in this Commonwealth for a maximum cumulative period of 5 years.

(3) Faculty members without a degree in nursing, but who hold at least one graduate degree in a subject area pertinent to their area of teaching, shall be designated as allied faculty members. Allied faculty members may teach basic sciences or specialized areas of health care practice.

(4) Faculty employed to teach dietetics-nutrition shall be currently licensed to practice dietetics-nutrition in this Commonwealth.

(5) An individual who enhances faculty-directed clinical learning experiences by guiding selected clinical activities shall be designated as a clinical preceptor. A clinical preceptor shall hold a current license to practice professional nursing in the state of the clinical experience.

(i) Faculty shall have input into the selection of preceptors.

(ii) Faculty shall retain responsibility for planning and evaluating student learning experiences when students are engaged in clinical activities with a preceptor.

(iii) If a faculty member is not physically present in the area in which students are practicing, a faculty member shall be immediately available by telephone or other means of telecommunication when students are engaged in clinical activities with a preceptor.

(d) Program support personnel shall be qualified by education and experience to serve in the capacity in which they are employed.

§ 21.72. Faculty policies; additional responsibilities of faculty and faculty assistants.

(a) The faculty shall be employed by and responsible to the controlling institution.

(b) Policies, including personnel policies in effect for nursing faculty, must be those in effect for faculty members throughout the controlling institution except where specified otherwise in this chapter.

(c) Functions and responsibilities of each faculty member must be defined in writing.

(d) Teaching hours and additional duties of nurse faculty must be consistent with the policies of the controlling institution.

(e) The nurse administrator and nursing faculty shall be afforded the time and opportunity to engage in leadership activities within their profession commensurate with their responsibilities.

(f) There shall be a planned and active faculty development program designed to meet the needs of the faculty. Faculty members shall maintain a record of participation in continuing education, professional self-development and other activities that promote the maintenance of expertise in their respective areas of teaching.

(g) Faculty assistants shall maintain a record of their activities leading to the completion of a graduate degree in nursing which shall be submitted to the Board upon request.

§ 21.74. (Reserved).

§ 21.75. (Reserved).

RECORDS

§ 21.124. Records to be filed with Board.

(a) An annual report of the school of nursing shall be sent to the Board using the form supplied by the Board.

(b) Upon completion of the entire program, a transcript or photocopy of the final record of the student shall be submitted along with the application for admission to the licensing examination. The transcript must bear the impression of the school seal and signature of the nurse administrator or authorized representative.

[Pa.B. Doc. No. 08-1290. Filed for public inspection July 11, 2008, 9:00 a.m.]

**STATE BOARD OF EXAMINERS OF NURSING
HOME ADMINISTRATORS**

[49 PA. CODE CH. 39]

Administrator-in-Training Program

The State Board of Examiners of Nursing Home Administrators (Board) hereby amends §§ 39.1, 39.5, 39.61 and 39.72 and adds §§ 39.101—39.103 (relating to AIT Program), to read as set forth in Annex A.

Effective Date

The final-form rulemaking will be effective on publication in the *Pennsylvania Bulletin*.

Statutory Authority

Under section 4(c) of the Nursing Home Administrators Licensing Act (act) (63 P.S. § 1104(c)), the Board is authorized to make rules and regulations as may be necessary for the proper performance of its duties. Under section 4(a)(1) of the act, the Board is authorized to develop, impose and enforce standards that must be met by individuals to receive a license as a nursing home administrator (NHA). These standards must be designed to ensure that NHAs will be individuals who are of good character and are otherwise suitable and qualified by training or experience in the field of institutional administration to serve as NHAs. Section 4(a)(1) further provides that these standards “may include a requirement for supervised experience prior to licensure.” This rule-making creates an alternate method by which individuals may receive that supervised experience.

Background and Purpose

In a profession that has seen a significant decline of licensees over the past 5 years, the institution of an administrator-in-training program (AIT), as adopted by this rulemaking, will give candidates who do not meet the experience requirements of existing § 39.5(b) (relating to requirements for admission to licensing examination; examination procedures) an incentive and an alternative option to become licensed NHAs. The Board believes that, by offering candidates who meet the rigid standards of higher education an additional means of gaining supervised experience to qualify to sit for the examination, more candidates would be encouraged to enter the field of nursing home administration.

Description of the Amendments

The final-form rulemaking amends § 39.1 (relating to definitions) to define AIT and the AIT program. It further amends § 39.5 to establish the AIT program as an alternative method of obtaining required supervised experience for admission to the licensing examination.

The final-form rulemaking amends § 39.61(b)(5) (relating to requirements) pertaining to continuing education clock hour requirements to allow a supervisor for the AIT program to receive credits for continuing education, and amends § 39.72 (relating to fees) to establish a \$50 fee for an AIT application. Finally, the amendments adopt §§ 39.101—39.103 to implement the AIT program.

Response to Public Comment and Regulatory Review of Proposed Rulemaking

Publication of proposed rulemaking at 37 Pa.B. 1494 (April 7, 2007) was followed by a 30-day public comment period during which the Board received favorable comments from the Pennsylvania Association of County Affiliated Homes (PACAH) and the Pennsylvania Health Care Association (PHCA). The PACAH indicated its support of the rulemaking, stating, “As the shortage of qualified Nursing Home Administrators continues to worsen, the AIT program offers a practical approach to address the issue, and PACAH encourages the adoption of these rules as final.” PHCA congratulated the Board on proposing the AIT program and asked the Board to seek to finalize the regulations as quickly as possible, noting that “the current fiscal constraints in many cases make it nearly impossible to afford the salaries of assistant administrators thus making it difficult for interested individuals to obtain the required experience to become nursing home administrators. This is precisely the wrong time, with the growing demographics of older Pennsylvanians who will require care and services in our nursing homes, to have

regulatory roadblocks in the way of fine individuals who have a desire to become nursing home administrators.”

Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). The following represents a summary of the comments received from the HPLC and IRRC, and the Board’s response.

General Comments

The HPLC questioned the Board’s authority to promulgate regulations to create an AIT program and requested further explanation. As noted previously, under section 4(a)(1) of the act, the Board is authorized to develop, impose and enforce standards that must be met by individuals to receive a license as an NHA. These standards must be designed to ensure that NHAs will be individuals who are of good character and are otherwise suitable and qualified by training or experience in the field of institutional administration to serve as NHAs. Section 4(a)(1) of the act also provides that these standards “may include a requirement for supervised experience prior to licensure.” Under that authority, the Board had previously adopted the supervised experience requirements in § 39.5, which require candidates for licensure to gain experience by serving as a full-time assistant administrator, or by serving as a full-time supervisor in a nursing home or related health facility. In recent years, the profession has seen a significant decline in the number of NHAs. Additionally, many nursing homes cannot afford to employ full-time assistant administrators or supervisors. Therefore, under the authority granted in section 4(a)(1) of the act, the Board is recognizing an additional way for individuals, who cannot find employment either as an assistant administrator or supervisor in a nursing home, to gain the experience needed to qualify for licensure.

The HPLC also noted the requirement for criminal background checks to be completed upon employees of a nursing home under the Older Adults Protective Services Act (35 P.S. §§ 10225.101—10225.708). The HPLC also noted the absence of any provision which would apply this same standard to an AIT. The HPLC, therefore, requests that the AIT be required to also have a criminal background check.

While the act does not explicitly require applicants to obtain a criminal background check, the act does require an applicant to submit “evidence of good character and suitability prescribed by the board . . .” (63 P.S. § 1106(a)). In addition, the Criminal History Record Information Act gives all boards and commissions the authority to deny a license if an applicant has been convicted of any felony or a misdemeanor related to the profession. 18 Pa.C.S.A. § 9124 (relating to use of records by licensing agencies). The HPLC pointed out, all employees of nursing homes are already subject to criminal background checks under the Older Adults Protective Services Act. Currently, all applicants for licensure are required to submit criminal background checks to the Board. Therefore, the Board has sufficient implicit authority to require criminal background checks of AITs and the AIT application will also require criminal background checks of all AIT program applicants.

§ 39.5. Requirements for admission to licensing examination; examination procedures.

The HPLC noted that under the proposed amendments in § 39.5(b)(3)(ii), the burden is on the candidate to

demonstrate that the candidate's degree is equivalent to one in nursing home administration and suggested that the Board provide minimum criteria for the candidate to do so. In determining equivalence, the Board will review the transcripts and course descriptions submitted by the candidate in comparison to the educational criteria in § 39.14(a)(2)(i)—(xvi) (relating to approval of programs of study) to make that determination. Similarly, IRRC questioned the criteria the Board will use under subsection (b)(3)(ii), which requires the Board to evaluate the transcripts and course descriptions of the candidate to determine if the 120-hour program was successfully completed as part of the baccalaureate curriculum. In general, the Board will use the breakdown of subjects required in § 39.14(a)(2) to determine if a candidate has successfully completed the requirements of the 120-hour program. If a candidate is deficient in subject areas, the candidate will be permitted to complete the remaining hours/courses through a 120-hour program. The candidate will not be required to complete the full 120-hour program. In the final-form rulemaking, the Board has complied with IRRC's suggestion that § 39.14(a)(2) be cross-referenced.

IRRC also noted that subsection (b)(3)(iii)(C) adds language that the candidate have 1,000 hours of experience working with an NHA licensed in this Commonwealth "or in another state whose licensing standards are equal to those of the Commonwealth." IRRC noted a similar concern applies to subsection (b)(4)(ii)(B), and asked if the Board will publish a list of states whose licensing standards are "equal" to the Commonwealth's or if the information would be made available on the Board's web site. Currently, almost every state has licensing standards that are equal to or greater than the Pennsylvania requirements. In fact, the Commonwealth is one of the few states that will license a NHA without a college degree. The Board would encourage the General Assembly to amend the licensing statute to require a minimum of a baccalaureate degree. However, for purposes of determining whether the AIT supervisor qualifies under these regulations, the Board will be able to look at the other states' current licensing standards to determine whether those standards are equal to the standards of the Commonwealth. As licensing standards change periodically, the Board does not intend to publish or make available on its web site a list of the states whose licensing standards are "equal" to the Commonwealth.

§ 39.101. AIT.

The HPLC noted that, under § 39.101(b)(1) (relating to AIT), an AIT applicant may be enrolled in the final year of a baccalaureate or master's degree program at an accredited college or university. The HPLC requested further information on whether the Board plans to coordinate the efforts of this program with colleges and universities and how the Board would facilitate this. The Board will encourage colleges and universities to establish relationships with local nursing homes to provide students who are in their final year of school opportunities to work as AITs at the local facilities. Provided the 120-hour program is included in the 4-year baccalaureate curriculum, the graduating individual who served as an AIT during the individual's final year of school would be able to sit for the nursing home examination immediately after graduation.

§ 39.102. AIT program.

IRRC noted that § 39.102(a)(1) (relating to AIT program) requires the AIT and the AIT supervisor to jointly make a "pretraining assessment" of certain aspects of the AIT's background and training and asked what criteria

will be required to be used to ensure that uniform assessments are made. As noted in § 39.102(a)(1), the assessments will be based on the AIT's educational level, experience, motivation and initiative. The AIT and AIT supervisor will then develop a training plan, under § 39.102(a)(2), the training plan will include educational objectives, subject areas, training sites, estimated number of hours needed for mastering each objective and the total number of hours in the training plan. Each training plan will be submitted to the Board for approval as required under § 39.102(a)(4). Each training plan will be individualized, according to the AIT's background. However, the Board will be able to determine, according to each individualized assessment, whether the proposed training program will enable the AIT to gain sufficient experience to become a licensed NHA.

IRRC and the HPLC questioned what kind of "agencies" the Board is referring to in § 39.102(a)(2)(iii), which requires that the training plan include "training sites or agencies involved." Because the required experience must be attained by working in nursing homes under the supervision of a NHAs, the Board has deleted the reference to "agencies" in the final-form rulemaking.

Both the HPLC and IRRC questioned § 39.102(d)(4), which provides that only one discontinuance of an AIT program will be permitted. The HPLC asked for clarification. IRRC asked if this provision was intended to apply to those individuals who may have two or more discontinuances of their program due to involuntary military service. As a result of the comments, the Board has reconsidered this provision and has deleted subsection (d)(4) from the final-form rulemaking.

The HPLC requested information regarding an AIT's remedy for discontinuance by a supervisor or inadequate supervision, under § 39.102(d)(3). The AIT should inform the Board that the supervisor has discontinued supervision of the AIT or that the supervision is inadequate. Depending on the individual circumstances, the Board may permit the AIT to obtain a new supervisor and receive credits for the amount of training the AIT already received.

The HPLC also requested information regarding how the Board will monitor a supervisor or an AIT. Section 39.102(b) gives the Board "the right to monitor and call for conference any AIT or AIT supervisor during the course of the AIT program." This will be determined by individual circumstances that require more direct Board involvement. For example, if the Board receives information pertaining to inadequate supervision by an AIT supervisor or an AIT who is not abiding by the training plan, the Board has the authority to schedule a conference with the parties involved.

§ 39.103. AIT program reports.

Relating to program reports required at the completion of the AIT program, IRRC pointed out that § 39.103(2) and (3) (relating to AIT program reports), regarding training site and subjects covered during the training is redundant because this information is required in the pretraining assessment required by § 39.102(a)(2) and (3). The Board agrees and has deleted paragraphs (2) and (3) in the final-form rulemaking and renumbered the remaining items accordingly.

IRRC also questioned how the AIT and supervisor will know if the Board requests other information under § 39.103(8) after the conclusion of the AIT program. IRRC also asked what type of "other information" would be included. Section 39.103 has been amended in the

final-form rulemaking by breaking it down into two subsections. Subsection (a) lists all the information required in the report at the conclusion of the training program. Subsection (b) will be added, which will give the Board the option to request additional information after the report is submitted. Other information could include clarification of training the AIT received during the program.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have a limited fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking establishes a new fee associated with the AIT program application. However, this fee is intended to defray a portion of the Board's operational costs. There are no other costs or savings to the State government associated with implementation of the rulemaking.

The final-form rulemaking will require the Board to alter some of its forms to reflect the new fee and to create applications for AITs. The Board will further provide a detailed training plan to NHAs who supervise AITs. Further, the rulemaking will create additional paperwork for AITs and supervisors, who will be responsible for submitting a detailed, individualized AIT framework for each AIT and documentation of progress and completion of the AIT program.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 28, 2007, the Board submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 1494, 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 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 Board 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 May 14, 2008, the final-form rulemaking was approved by the HPLC. On June 4, 2008, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 5, 2008, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Christina Stuckey, Administrator, State Board of Examiners of Nursing Home Administrators, P. O. Box 2649, Harrisburg, PA 17105-2649, cstuckey@state.pa.us.

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) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 37 Pa.B. 1494.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for administering and enforcing the authorizing act identified in Part B of this Preamble.

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, 39.5, 39.61 and 39.72; and by adding §§ 39.101—39.103 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General for approval 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 on publication in the *Pennsylvania Bulletin*.

BARRY S. RAMPER, II,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 38 Pa.B. 3461 (June 21, 2008).)

Fiscal Note: Fiscal Note 16A-627 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

GENERAL

§ 39.1. Definitions.

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

AIT—Administrator-in-training—An individual registered with the Board under § 39.101 (relating to AIT) to serve a period of practical training and experience under the supervision of a licensed nursing home administrator.

AIT program—A program established by the Board as a means for an applicant for licensure as a nursing home administrator to obtain practical training and experience under the supervision of a licensed nursing home administrator.

* * * * *

§ 39.5. Requirements for admission to licensing examination; examination procedures.

(a) A candidate who seeks admission to the licensing examination shall meet the following requirements. The candidate shall:

(1) Be at least 21 years of age.

(2) Submit evidence of good moral character and suitability as prescribed by the Board in the examination application.

(3) Pay the required fee for examination and licensure.

(b) A candidate who seeks admission to the licensing examination shall also meet one of the following sets of education and experience requirements. The candidate shall:

(1) Have:

(i) Successfully completed 120 clock hours in a program of study approved by the Board as prescribed in § 39.14(a)(2) (relating to approval of programs of study).

(ii) Successfully completed 2 academic years of college-level study, 30 semester hours each year, in an accredited institution of higher learning.

(iii) Done one of the following:

(A) During the 18 months immediately preceding the date of application, acquired experience in the practice of nursing home administration by having served satisfactorily in a nursing home or related health facility as a full-time assistant administrator under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth.

(B) During 3 of the 5 years immediately preceding the date of application, served satisfactorily as a full-time supervisor in a nursing home or related health facility, 1,000 hours of which service shall have been in the practice of nursing home administration under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth.

(2) Have:

(i) Successfully completed 120 clock hours in a program of study approved by the Board as prescribed in § 39.14(a)(2).

(ii) Been issued a registered nurse license in this Commonwealth which is currently renewed.

(iii) Done one of the following:

(A) During the 18 months immediately preceding the date of the application, served satisfactorily as a full-time director of nursing for 6 months and, during the 12 months immediately preceding the date of application, but not concurrent with the service as a director of nursing, acquired experience in the practice of nursing home administration by having served satisfactorily as a full-time assistant administrator in a nursing home or related health facility under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth.

(B) During 2 of the 5 years immediately preceding the date of application, served satisfactorily as a full-time director of nursing in a nursing home or related health facility, 1,000 hours of which service shall have been in the practice of nursing home administration under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth.

(3) Have:

(i) Been awarded a baccalaureate degree from an accredited college or university.

(ii) Successfully completed 120 clock hours in a program of study approved by the Board as prescribed in § 39.14(a)(2), unless the candidate has a baccalaureate degree in nursing home administration or a baccalaureate degree in a program equivalent to nursing home administration. The burden is on the candidate to demonstrate that the baccalaureate degree that the candidate has earned is equivalent to a baccalaureate degree in nursing home administration. Baccalaureate degree equivalency will be determined by the Board based upon the applicant's transcripts and course descriptions. Candidates who have successfully completed a baccalaureate curriculum which is not in nursing home administration or equivalent to nursing home administration, but incorporates the 120-hour program as part of the curriculum, are not required to complete the 120-hour program separately. The burden is on the candidate to demonstrate that the 120-hour program is incorporated in the baccalaureate curriculum. The Board will evaluate the transcripts and course descriptions of the candidate and compare them to the requirements of § 39.14(a)(2) to determine if the 120-hour program was successfully completed as part of the baccalaureate curriculum.

(iii) Done one of the following:

(A) During the 9 months immediately preceding the date of application, acquired experience in the practice of nursing home administration by having served satisfactorily in a nursing home or related health facility as a full-time assistant administrator under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth.

(B) During 18 months of the 5 years immediately preceding the date of application, served satisfactorily as a full-time supervisor in a nursing home or related health facility, 1,000 hours of which service shall have been in the practice of nursing home administration under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth.

(C) During the 2 years immediately preceding the date of application, acquired 1,000 hours of experience in the practice of nursing home administration by having served satisfactorily as an AIT in a nursing home under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth, in accordance with §§ 39.101—39.103 (relating to AIT Program).

(4) Have:

(i) Been awarded, from an accredited college or university, a master's degree in nursing home administration, in hospital administration, in public health administration or in another academic area, including social gerontology, in which there is an emphasis in related health facility administration.

(ii) Done one of the following:

(A) During the 5 years immediately preceding the date of application, either acquired 6 months of satisfactory full-time supervisory experience in the administration of a nursing home under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth or acquired 6 months of satisfactory full-time experience in the administration of a related health facility under the supervision

of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth.

(B) During the 2 years immediately preceding the date of application, acquired 800 hours of experience in the practice of nursing home administration by having served satisfactorily as an AIT in a nursing home under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth, in accordance with §§ 39.101—39.103.

(5) Have:

(i) Successfully completed 120 clock hours in a program of study approved by the Board as prescribed in § 39.14(a)(2).

(ii) Acquired 2 years of satisfactory practical experience in the administration of a nursing home or related health facility, 1,000 hours of which practical experience shall have been under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth. A candidate will be required to appear personally before the Board to present documentation of the satisfactory practical experience claimed which includes a general knowledge of each of the following areas that are generally dealt with by a nursing home administrator: budget, hiring and firing, planning, personnel, supervision of staff, psychology of patients, medical and legal terminology, Federal and State rules and regulations governing nursing homes, rights of patients, basic principles of contract and tort law, principles of safety, purchasing, dietetic requirements and patient care.

(iii) Done one of the following:

(A) During the 18 months immediately preceding the date of application, acquired experience in the practice of nursing home administration by having served satisfactorily in a nursing home or related health facility as a full-time assistant administrator under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth.

(B) During 3 of the last 5 years immediately preceding the date of application, served satisfactorily as a full-time supervisor in a nursing home or related health facility, 1,000 hours of which service shall have been in the practice of nursing home administration under the supervision of a full-time nursing home administrator licensed in this Commonwealth or in another state whose licensing standards are equal to those of the Commonwealth.

(c) The hours of experience in the practice of nursing home administration required of a candidate qualifying under subsection (b)(1)(iii)(B), (2)(iii)(B), (3)(iii)(B) or (C), (4)(ii)(B) or (5)(iii)(B) is designed to insure that the candidate has been exposed to hands-on practical application of the areas of educational training required in § 39.14(a)(2). The hours of experience must include a minimum of 300 hours in general administration, a minimum of 250 hours in patient services and care and a minimum of 250 hours in health and social service delivery systems. Any remaining hours may be distributed as needed to obtain the best results for each individual candidate. The nursing home administrator who supervised the candidate shall certify that the candidate has acquired the minimum number of hours for each area.

(d) A candidate shall pass a written examination that comprises two parts. Both parts of the examination are administered by a professional testing organization.

(1) An examination on the general principles of nursing home administration that are common to all jurisdictions that license nursing home administrators, known as the "uniform part."

(2) An examination on the regulations of the Department of Health in 28 Pa. Code Part IV Subpart C (relating to long term care facilities), known as the "State part."

(e) To pass the examination, a candidate shall achieve a passing score on both the uniform and State parts as set by the Board.

(f) Upon a timely request, the Board may allow a candidate to take the examination with the aid of a proctor, if the candidate is unable, because of physical problems, to take the examination under ordinary circumstances.

(g) A candidate who passes one part of the examination and fails the other is required to retake only the part failed. A candidate for reexamination on one or both parts of the examination shall submit an application to the Board and pay the required examination fee. As a condition precedent to reexamination after four failures, the Board may require the candidate to attend Board-approved courses of study in subjects prescribed by the Board.

(h) A special examination will not be given to a candidate except as provided in subsection (f).

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 apply:

(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 may 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. 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 appropri-

ate number of clock hours to be awarded based upon the complexity of the subject matter or work.

(5) Up to 24 clock hours may be obtained by serving as a supervisor in a Board-approved AIT program, when the AIT successfully completes the AIT program.

(6) A maximum of 6 clock 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 clock 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 must 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.

RENEWAL

§ 39.72. Fees.

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

Biennial renewal of nursing home administrators license	\$297
License application fee	\$40
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	\$15
Continuing education individual program application fee	\$20
AIT application fee	\$50

AIT PROGRAM

§ 39.101. AIT.

(a) An applicant seeking to become an AIT shall file an application for approval on a form prescribed by the Board.

(b) To be approved as an AIT, the applicant shall:

(1) Have attained the general education requirements in § 39.5(b)(3)(i) or (b)(4)(i) (relating to requirements for admission to licensing examination; examination proce-

dures) or be enrolled in the final year of a baccalaureate or master's degree program at an accredited college or university.

(2) Verify that if the AIT is employed at the nursing home in any capacity other than that of AIT during the period of practical training and experience, that employment is in addition to the hours required for the AIT program.

§ 39.102. AIT program.

(a) The AIT program must provide documentation that the following requirements have been met:

(1) The AIT and the AIT's supervisor have jointly made a pretraining assessment of the AIT's background in terms of educational level, pertinent experience, maturity, motivation and initiative.

(2) Based on the pretraining assessment, the AIT and the AIT's supervisor jointly have developed a detailed, goal-oriented training plan with supporting documentation which includes:

(i) Educational objectives.

(ii) Subject areas of the core of knowledge as required by §§ 39.5(c) and 39.7 (relating to requirements for admission to licensing examination; examination procedures; and subject matter for examinations).

(iii) Training sites involved.

(iv) Estimated number of hours needed for mastering each objective.

(v) Total of hours in the training plan.

(3) Prior to its implementation, the training plan shall be submitted for approval by the Board on forms provided by the Board. The training plan must include supporting documentation for the training plan, including the allocation of hours to the subject areas required by §§ 39.5(c) and 39.7.

(4) A minimum of 80% of the training must occur from Monday through Friday between 7 a.m. and 7 p.m. An AIT program may not consist of more than 60 hours per week nor less than 20 hours per week.

(b) The Board has the right to monitor and call for conference any AIT or AIT supervisor during the course of the AIT program.

(c) Following the completion of the AIT program and prior to admission to the examination for licensure, the Board will review the report required by § 39.103 (relating to AIT program reports) to determine if the applicant has received training consistent with this section.

(d) If the AIT program is discontinued prior to completion, the following apply:

(1) An AIT program which has been discontinued by a period of full-time military service may be completed within a year after that military service.

(2) An AIT program which has been discontinued for any reason other than military service may not be completed if the absence exceeds 1 year from the date of discontinuance.

(3) If an AIT program has been discontinued before completion for any reason beyond AIT or supervisor control, the AIT and supervisor may apply to the Board for consideration of credit for the period of time completed.

(i) The AIT requesting consideration shall explain why the AIT program was discontinued, how the AIT intends to complete the training and document his progress in the manner required by § 39.103.

(ii) The supervisor requesting consideration shall explain why the AIT program was discontinued and document the hours that the supervisor spent on the training program.

§ 39.103. AIT program reports.

(a) Within 30 days of the completion of the AIT program, the AIT and supervisor shall submit to the Board a report on the AIT's progress on forms provided by the Board. The AIT and supervisor shall sign the report, verifying the accuracy of the information. The report must include, at a minimum:

- (1) The names of the AIT and supervisor.
 - (2) A list of the departments in which the AIT trained, as well as initials of department managers to verify that the AIT trained in those departments.
 - (3) The number of hours the AIT has completed during the program in each subject area.
 - (4) A description of the administrative activities in which the AIT has participated.
 - (5) Suggestions for improvement in the program.
- (b) The Board reserves the right to request additional information from the AIT and the AIT's supervisor on a case-by-case basis.

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