

RULES AND REGULATIONS

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 147]

Annual Financial Reporting Requirements

The Insurance Department (Department) amends Chapter 147 (relating to annual financial reporting requirements) to read as set forth in Annex A. This final-form rulemaking is made under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412), regarding the general rulemaking authority of the Department, sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967 and 991.2452), regarding the authority of the Insurance Commissioner (Commissioner) to require insurance companies, associations, exchanges, fraternal benefit societies and preferred provider organizations to file statements concerning their affairs and financial condition, sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205 and 1600.206), section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731), 40 Pa.C.S. §§ 6125, 6331 and 6701 (relating to reports and examinations; reports and examinations; and regulation), sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564) and sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225), regarding the specific regulatory and rulemaking authority of the Department as to financial reporting by the Pennsylvania Fair Plan, the Pennsylvania Professional Liability Joint Underwriting Association, hospital plan corporations, professional health service corporations, beneficial associations, health maintenance organizations and continuing care providers, respectively.

Purpose

The purpose of this final-form rulemaking is to update Chapter 147, commonly referred to as the “CPA Audit Rule.” Chapter 147 was initially adopted in 1979 and requires insurers to have annual audits of their year-end statutory financial statements performed by independent certified public accountants. It is based on a model regulation developed by the National Association of Insurance Commissioners (NAIC) and included in the NAIC’s Financial Regulation Standards and Accreditation Program.

This final-form rulemaking is based on changes to NAIC Model Regulation # 205 adopted by the NAIC in 2014, which were developed as a result of the NAIC’s determination that it was necessary for insurers to maintain an effective internal audit function capable of providing the insurer’s audit committee with independent assurance regarding the insurer’s governance, risk management and internal controls. As such, the NAIC determined that the best way to implement an internal audit requirement would be to place the requirement within the NAIC’s existing Annual Financial Reporting Model Regulation (# 205). Model Regulation # 205 currently includes a requirement for insurers to receive an annual financial statement audit, as well as requirements related to the establishment of audit committees and maintenance of effective internal controls over financial reporting. This final-form rulemaking adds corporate governance-related functions to the audit committee’s responsibilities.

The Department expects that the amendments to Chapter 147 will be required for the Department to maintain accreditation by the NAIC.

Comments and Responses

Notice of proposed rulemaking was published at 46 Pa.B. 458 (January 23, 2016), with a 30-day public comment period. Comments were received from the Pennsylvania Association of Mutual Insurance Companies (PAMIC), the Insurance Federation of Pennsylvania (IFP) and the Pennsylvania Institute of Certified Public Accountants (PICPA).

PAMIC and IFP expressed support for the proposed rulemaking as drafted.

Although the comment letter from PICPA expressed general support for the rulemaking, the comments made by PICPA were not responsive to the rulemaking as proposed by the Department. Instead, the comments focused on provisions of the NAIC model and provisions of Chapter 147 that the Department is not amending as part of this final-form rulemaking. The comment letter, does, however, recognize that the comments made are more appropriately directed to the NAIC. As such, because the PICPA comments were not relevant to the amendments to Chapter 147, the Department declines to make revisions to this final-form rulemaking based upon the comments from PICPA.

IRRC submitted comments to the proposed rulemaking on March 23, 2016. IRRC noted that § 147.8a(f) contained nonregulatory language which was inappropriate. In response to IRRC’s comments, the Department deleted proposed § 147.8a(f). The Department intends to include this information in a policy statement as suggested.

Additionally, IRRC requested the Department clarify the date of compliance for insurers that no longer qualify for an exemption. In response to IRRC’s comment, the Department added language to clarify that the period to attain compliance with § 147.8a (relating to internal audit function requirements) as referenced in § 147.13(j) (relating to effective date and exemption) is 1 calendar year after the threshold is exceeded, as shown on the insurer’s annual statement. As stated in § 147.8a(a), the exemption is determined by the amount of company’s “annual direct written and unaffiliated assumed premium” (emphasis added). These numbers are reported on an insurer’s annual statement, which is filed on March 1 but is based upon the previous year’s data. See section 320 of The Insurance Company Law of 1921, which requires a company to file “a statement which shall exhibit its financial condition on the thirty-first day of December of the previous year.” For example, if a company’s annual premium exceeds the threshold on December 31, 2017, and the insurer reports accordingly on its annual statement due on March 1, 2018, it will have until December 31, 2018, to come into compliance with the requirements of this final-form rulemaking.

Affected Parties

This final-form rulemaking applies to insurers licensed to transact business in this Commonwealth that are not exempt under § 147.8a(a).

*Fiscal Impact**State government*

This final-form rulemaking will strengthen and clarify existing regulatory requirements. There will not be a material increase in cost to the Department as a result of this final-form rulemaking.

General public

The public will benefit to the extent this final-form rulemaking strengthens financial solvency regulatory requirements for insurers, thereby promoting the ability of the insurance industry to meet obligations under insurance policies.

Political subdivisions

This final-form rulemaking will not impose additional costs on political subdivisions.

Private sector

This final-form rulemaking may impose additional costs on insurers that have not yet established an internal audit function. However, the strengthened requirements are consistent with National standards to be adopted by all states participating in the NAIC Financial Regulation Standards and Accreditation Program. This final-form rulemaking minimizes costs by including a number of exemptions for smaller insurers.

Paperwork

This final-form rulemaking will not impose additional paperwork on the Department, as no filing is required to be made by insurers regarding this new requirement. To the extent that insurers document internal audit function requirements in written format, the amendments may impose additional paperwork on insurers.

Effectiveness Date and Sunset Date

This final-form rulemaking will become effective on January 17, 2017. The Department continues to monitor the effectiveness of regulations on a triennial basis. Therefore, a sunset date has not been assigned.

Contact Person

Questions or comments regarding this final-form rulemaking may be addressed in writing to Bridget Burke, Regulatory Coordinator, Insurance Department, 1341 Strawberry Square, Harrisburg, PA 17120, fax (717) 772-1969, briburke@pa.gov.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 11, 2016, the Department submitted a copy of the notice of proposed rulemaking, published at 46 Pa.B. 458, to IRRC and the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department shall submit to IRRC and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on November 16, 2016, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 17, 2016, and approved the final-form rulemaking.

Findings

The Commissioner finds that:

(1) Public notice of intention to adopt this final-form 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Department, 31 Pa. Code Chapter 147, are amended by adding § 147.8a and amending §§ 147.2, 147.3a and 147.13 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Department shall submit this order and Annex A to IRRC and the House and Senate Committees as required by law.

(c) The Department shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(d) The Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect on January 17, 2017.

TERESA D. MILLER,
Insurance Commissioner

(Editor's Note: See 46 Pa.B. 7603 (December 3, 2016) for IRRC's approval order.)

Fiscal Note: Fiscal Note 11-254 remains valid for the final adoption of the subject regulations.

Annex A**TITLE 31. INSURANCE****PART VIII. MISCELLANEOUS PROVISIONS****CHAPTER 147. ANNUAL FINANCIAL REPORTING REQUIREMENTS****§ 147.2. Definitions.**

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

Affiliate—As defined in section 1401 of The Insurance Company Law of 1921 (40 P.S. § 991.1401).

Assumed premiums—Total premiums assumed by an insurer from nonaffiliated insurers.

Audit committee—

(i) A committee or equivalent body established by the board of directors or equivalent body of an entity for the purpose of overseeing the following functions of an insurer or insurer group:

- (A) Accounting and financial reporting processes.
- (B) Internal audit function.
- (C) External audits of financial statements.
- (D) Internal control structure.

(ii) The term includes a committee established under section 1405(c)(4) or (5) of The Insurance Company Law of 1921 (40 P.S. § 991.1405(c)(4) and (5)).

* * * * *

Insurer group—Two or more affiliated insurers identified by a controlling entity for the purpose of evaluating the effectiveness of internal control over financial reporting.

Internal audit function—The role of a person or persons in providing independent, objective and reasonable assurances that add value to and improve upon the organization's operations and assist the organization in accomplishing its objectives by employing a systematic, disciplined approach to evaluate and improve the effectiveness of the risk management, control and governance processes.

Internal control over financial reporting—The process effected by the board of directors, management and other personnel of an insurer or insurer group, which provides reasonable assurances regarding the reliability of the financial statements in accordance with § 147.9a (relating to establishment and communication of internal control over financial reporting).

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§ 147.3a. Requirements for audit committees.

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(f) The audit committee shall retain an independent certified public accountant to conduct the annual audit and issue an audited financial report under this chapter in accordance with the following requirements:

(1) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of the independent certified public accountant and resolve disagreements between management and the independent certified public accountant relating to financial reporting for the purpose of preparing or issuing the audited financial report or related work under this chapter.

(2) The independent certified public accountant retained to conduct the annual audit under this chapter shall report directly to the audit committee. The audit committee shall require the independent certified public accountant to report to the audit committee in sufficient time to enable the committee to take appropriate action as required by Statement on Auditing Standards 114 (SAS 114), *The Auditor's Communication with Those Charged With Governance*, or successor publication and all of the following requirements:

(i) All significant accounting policies and material permitted practices.

(ii) All material alternative treatments of financial information within statutory accounting principles that have been discussed with the management of the insurer, ramifications of the use of alternative disclosures and treatments, and the treatment preferred by the independent certified public accountant.

(iii) Other material written communications between the independent certified public accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(3) The report required under paragraph (2) may be provided to the audit committee on an aggregate basis for

insurers in an insurer group, if the report identifies any substantial differences in reported items among the insurers in the group.

(g) The audit committee is responsible for overseeing the insurer's internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities as required under § 147.8a (relating to internal audit function requirements).

(h) Exemptions are as follows.

(1) The requirements of subsections (b), (c), (e) and (f) do not apply to an insurer with direct written and assumed premiums less than \$500,000,000, excluding premiums reinsured with the Federal Crop Insurance Corporation and the Federal Flood Program, which has been granted an exemption by the Department on the basis of financial or organizational hardship under § 147.13(g) (relating to effective date and exemption).

(2) This section does not apply to continuing care providers.

(3) The requirements of subsections (b)–(e) do not apply to insurers subject to section 1405(c)(4) and (5) of The Insurance Company Law of 1921 (40 P.S. § 991.1405(c)(4) and (5)), Sarbanes Oxley compliant entities or direct or indirect wholly owned subsidiaries of Sarbanes Oxley compliant entities.

(i) This section may not be interpreted to limit the Department's authority to require an insurer to take specific corrective action relating to the independence of audit committee members under sections 501–563, 501-A–515-A and 501-B–515-B of The Insurance Department Act of 1921 (40 P.S. §§ 221.1–221.63, 221.1-A–221.15-A and 221.1-B–221.15-B), regarding suspension of business and risk-based capital requirements, Chapter 160 (relating to standards to define insurers deemed to be in hazardous financial condition) or other provisions of law.

§ 147.8a. Internal audit function requirements.

(a) *Exemption.* An insurer is exempt from the requirements of this section if:

(1) The insurer meets the following requirements:

(i) Has annual direct written and unaffiliated assumed premium, including international direct and assumed premium excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500 million.

(ii) If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium including international direct and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1 billion.

(2) It is a continuing care provider licensed to transact business in this Commonwealth under the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3201–3225).

(b) *Function.* The insurer or group of insurers shall establish an internal audit function that provides independent, objective and reasonable assurance to the audit committee and the insurer's management regarding the insurer's governance, risk management and internal controls. This function includes the performance of general and specific audits, reviews and tests and employ other techniques deemed necessary to protect assets, evaluate

control effectiveness and efficiency, and evaluate compliance with policies and regulations.

(c) *Independence.* To ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function may not defer ultimate judgment on audit matters to others, and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

(d) *Reporting.* The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

(e) *Additional requirements.* If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements in this section at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level.

§ 147.13. Effective date and exemption.

* * * * *

(i) In the case of insurers organized in Canada or the United Kingdom of Great Britain and Northern Ireland, the annual audited financial report is defined as the annual statement of total business on the form filed by the insurers with their domiciliary supervision authority, audited by an independent chartered accountant. For these insurers, the letter required in § 147.6a (relating to letter of qualifications of independent certified public accountant) must state that the independent certified public accountant is aware of the requirements relating to the annual audited financial report filed with the Commissioner under § 147.3 (relating to filing and extensions for filing required reports and communications) and affirm that the opinion expressed is in conformity with those requirements.

(j) If an insurer or group of insurers exempt from the requirements of § 147.8a (relating to internal audit function requirements) no longer qualifies for that exemption, it shall have until December 31 of the year in which the annual statement was filed showing the threshold is exceeded to comply with the requirements of § 147.8a.

[Pa.B. Doc. No. 16-2193. Filed for public inspection December 16, 2016, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

General Revisions

The State Board of Nursing (Board) amends Chapter 21 to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The amendments regarding registered nurses and licensed dietitian-nutritionists are authorized under section 2.1(k) of The Professional Nursing Law (RN Law) (63 P.S. § 212.1(k)), which provides the Board with the general authority to establish rules and regulations for the practice of professional nursing, the practice of dietetics-nutrition and the administration of the RN Law. The amendments regarding practical nurses are authorized under section 17.6 of the Practical Nurse Law (PN Law) (63 P.S. § 667.6), which authorizes the Board to establish rules and regulations for the practice of practical nursing and the administration of the PN Law.

Background and Purpose

This final-form rulemaking accomplishes three goals: (1) establishes time frames within which candidates for licensure as registered nurses, practical nurses and dietitian-nutritionists shall first take the applicable licensure examinations; (2) updates and makes uniform application and examination provisions for registered nurses, practical nurses and dietitian-nutritionists, when applicable; and (3) deletes references to the National Council Licensure Examination and the Commission on Graduates of Foreign Nursing Schools and replaces them with generic references.

From October 1, 2014, through September 30, 2015, 7,524 graduates of registered nurse education programs and 2,456 graduates of practical nurse education programs took the licensure examinations in this Commonwealth. Of those taking the exams, 87.17% of the registered nurse candidates and 82.08% of the practical nurse candidates passed. One year earlier, 7,164 registered nurse candidates and 2,512 practical nurse candidates took the licensure examinations. At that time, 82.82% of the registered nurse candidates and 85.75% of the practical nurse candidates passed. Nationally, from October 1, 2014, through September 30, 2015, the pass rate for registered nurses was 84.18% and the pass rate for practical nurses was 81.18%. The previous year, the pass rate Nationally for registered nurses was 81.74% and the pass rate for practical nurses was 82.81%.

From January 1, 2015, through December 30, 2015, 5,944 dietitian-nutritionist candidates took the dietitian-nutritionist examination Nationwide. Seventy percent of total test takers passed; excluding repeat test takers, 85% of first time test takers passed. The previous year, 5,475 dietitian-nutritionist candidates took the examinations. Seventy-four percent of total test takers passed; excluding repeat test takers, 85% of first time test takers passed. Because the Board does not prequalify applicants to take the dietitian-nutritionist examination, State-specific pass rates are unavailable.

Sections 21.33b and 21.162b (relating to minimum rate for graduates of nursing education programs to pass the National licensure examination) tie a nursing education program's approval status to the pass rate of its first time test taker graduates. Under these regulations, since October 1, 2010, a nursing education program must achieve a minimum pass rate of 80%. Currently 31 of the 141 approved nursing education programs (11 of the 84 registered nurse programs and 20 of the 57 practical nurse programs) are on provisional approval due to their pass rates which did not reach the 80% threshold.

The Board's examination statistics from January 2015 to June 2016 reflect that the more times a candidate takes the registered nurse or practical nurse licensure examination, the less likely the candidate is to pass the examination. During this 18-month period, 2,762 registered nurse candidates and 1,166 practical nurse candidates retook the licensure examinations. The numbers of repeats range from 1 to 40 for registered nurse candidates and from 1 to 50 for practical nurse candidates. First time repeaters (those taking the examination a second time) formed the largest group of the repeaters and passed at the highest rate with 56.80% of the registered nurse candidates and 48.00% of the practical nurse candidates passing. Thereafter, the pass rate dropped precipitously. For registered nurse candidates, the percentage of pass rates for 2nd through 12th time repeaters (those having taken the test 3 to 13 times) decreased as follows: 45.40%, 39.00%, 29.60%, 22.80%, 17.80%, 19.10%, 27.60%, 15.80%, 30.80%, 8.30%, 20.00%. Beginning with the 14th retake and extending through 40 retakes, 100% of registered nurse candidates examined failed. The distinction between the number of retakes and pass rates is similar for practical nurse candidates. The percentage of pass rates for 2nd through 12th time repeaters (those having taken the test 3 to 13 times) decreased as follows: 32.90%, 24.10%, 16.70%, 25.00%, 9.10% and 20.80%, 0.00%, 0.00%, 10.00%, 0.00%, 20.00%. Beginning with the 14th and continuing through the 50th retake, except for 1 candidate who passed on the 18th retake, 100% of the practical nurse candidates examined failed.

The statistics regarding pass rates for first time and repeat test takers is similar for dietitian-nutritionist examinees. Although there are no statistical breakdowns by the number of times the examination was taken by a particular candidate, from January 1, 2015, through December 30, 2015, 5,944 dietitian-nutritionist candidates took the dietitian-nutritionist examination Nationwide. Seventy percent of total test takers passed; excluding repeat test takers, 85% of first time test takers passed. The previous year, 5,475 dietitian-nutritionist candidates took the examinations. Seventy-four percent of total test takers passed; excluding repeat test takers, 85% of first time test takers passed.

Summary and Responses to Comments

Notice of proposed rulemaking was published at 44 Pa.B. 6934 (November 1, 2014), with a 30-day public comment period. The Board received the following public comments: Paula A. Bussard, Senior Vice President, Policy and Regulatory Services, The Hospital & Healthsystem Association of Pennsylvania; Aaron M. Shenck, Executive Director, Pennsylvania Association of Private School Administrators; Margaret Cybularz, MSN, RN, PRISM Career Institute; and Eileen Chopnick, MA, RD, LDN, Michele Rager, MS, RDN, LDN, CNSC, Meg Rowe, MS, RD, LDN, FAND, Jule Anne Henstenberg, MS, RDN, LDN, FAND, and Doris Piccinin, MS, RD, CDE, CD, on behalf of the Pennsylvania Academy of Nutrition and Dietetics (PAND). The Independent Regulatory Review Commission (IRRC) also submitted comments. Neither the House Professional Licensure Committee (HPLC) nor the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) submitted comments.

Generally

Margaret Cybularz commented in favor of the proposed rulemaking.

§§ 21.2 and 21.142. Scope

Section 21.2 (relating to scope) delineates the Board's scope regarding registered nurses and the practice of professional nursing. Subsection (e) identifies who may provide professional nursing education. In the proposed rulemaking, the Board limited those providers to hospitals, colleges and universities. IRRC and Aaron M. Shenck asked the Board to consider including other post-secondary institutions. During discussions at its January 22, 2015, meeting, Aaron M. Shenck and the Board noted that "post-secondary institutions" would include those who offer specialized technology programs, providing training in computers, electrical systems and HVAC, and specialized business programs such as legal assistants, computer management, medical assistants and executive assistants. Based upon those discussions, Aaron M. Shenck recommended and the Board considered limiting post-secondary schools to those that award academic degrees similar to the requirement for expanded function dental assistants in § 33.102 (relating to professional education). The Board finds this recommendation to be reasonable. IRRC asked the Board to consider a similar revision regarding post-secondary institutions that award academic degrees for practical nursing education programs in § 21.142 (relating to scope). Accordingly, the lists of providers in §§ 21.2(e) and 21.142(d) are expanded to include post-secondary institutions that award academic degrees.

IRRC also questioned how and where the Board would make the list of approved programs available as required by subsection (e). The Board intends to include this list on its web site so that the public has ready access to the information. The Board revises § 21.2(e) to be consistent with § 21.142 and clarifies that the list will be made available on the Board's web site.

§§ 21.21 and 21.151. Application for examination

Subsection (c) requires candidates who graduate from nursing education programs outside of this Commonwealth to provide a copy of the transcript validating program completion. Formerly the transcripts were required to be provided within 2 weeks prior to the candidate's testing. IRRC questioned if the Board intended to delete the 2-week time frame. Although the preamble to the proposed rulemaking was unclear on this point, the Board did intend to delete the 2-week time frame for applicants. The Board will not authorize a candidate to take the examination unless the candidate has satisfied the requirements of the act necessary for eligibility, including confirmation of completion of an approved professional nursing program. Therefore, an applicant cannot schedule the exam until after the Board has received and reviewed the transcript. On average, nursing programs within this Commonwealth provide this information to the Board within 1 to 2 weeks of a request. Similarly, out-of-State programs provide transcripts to the states where their graduates apply for licensure quickly as not to delay their graduates' ability to pass the licensing examinations, obtain licensure and begin working. For these reasons, the 2-week time frame is unnecessary for both in-State and out-of-State applicants.

§ 21.23. Qualifications of applicant for examination

Final-form § 21.23(a) (relating to qualifications of applicant for examination) requires applicants to demonstrate proficiency in English. IRRC noted that the proposed subsection contained a typographical error in that "be" was used in place of "being" and the citation to § 21.7(b) (relating to temporary practice permits) did not

specifically identify paragraph (2) in reference to temporary practice permits. The Board made these revisions in this final-form rulemaking.

Final-form § 21.23(b) institutes current Board procedure of requiring graduates of nursing education programs outside of the United States and Canada to have their education evaluated by Board-approved foreign credentials evaluators. These evaluations assure that professional nursing education programs completed outside of the United States and Canada are equivalent to programs of study required in this Commonwealth at the time the programs were completed as set forth in section 5(b) of the RN Law (63 P.S. § 215(b)). The requirement to have this education evaluated by a Board-approved foreign credentials evaluator has also been added to §§ 21.28(c) and 21.155(d) (relating to licensure by endorsement).

Final-form § 21.23(c) requires candidates for the registered nurse licensing examinations to take the examinations for the first time within 1 year of completing their professional nursing education programs unless prevented by emergency, illness or military service. This provision was added at the behest of nursing education program administrators who highlighted decreasing pass rates as the time between completing the education program and taking the examination increases. The Board added an additional exclusion in this final-form rulemaking to the 1-year requirement for candidates who hold licensure in other states. Without the addition of this exclusion, applicants who hold a license in another state and are required to take the licensing examinations in this Commonwealth would not be able to comply with the requirement if it is beyond 1 year from the completion of their professional nursing programs. The Board also added "other good cause shown" as grounds for a waiver of the 1-year requirement in recognition that there may be other excusable reasons for failing to take the exam for the first time within 1 year.

IRRC questioned if there is a correlation between the nursing education programs on provisional status and the pass rates on the examinations. The simple answer is yes. Under the current regulatory scheme, the programs that are and have been on provisional status have received that status solely due to the examination scores of its graduates. The National Council of State Boards of Nursing as well as the State Boards of Nursing in Oklahoma and California each studied the National Council Licensure Examination pass rates and the factors that contributed to those rates. They concluded that pass rate results inversely relate to the amount of time candidates wait to take the NCLEX as candidates were less likely to pass the NCLEX as lag time increased. The Board is currently reviewing the nursing education program regulations with an eye toward further improving nursing education.

§§ 21.25 and 21.153. *Re-examination*

§ 21.722. *Education, examination and re-examination of applicants*

Proposed §§ 21.25(c), 21.153(c) and 21.722(c) (relating to re-examination; re-examination; and education, examination and re-examination of applicants) required a candidate to pass the licensure examination within 2 years of completing the nursing or dietitian-nutritionist education program. In the event that a candidate did not pass within the 2-year time frame, the proposed amendments would have required the candidate to complete a plan of remediation developed by a nursing or dietetics/nutrition education program.

IRRC questioned the Board's statutory authority under section 5(a) of the RN Law and section 6(a) of the RN Law (63 P.S. § 216(a)) and sections 4 and 5.1 of the PN Law (63 P.S. §§ 654 and 655.1) to both require that the examination be passed within a pre-set time frame and that candidate complete a remediation plan to be re-examined after a certain number of failures. Because statistical data reflects that the more times an applicant takes the licensure examinations, the less likely the applicant is to pass the examinations, the Board proposed that applicants complete additional education prior to being re-examined. Additionally, Paula A. Bussard expressed concerns with the remediation requirement. As a result of the commentators concerns, the Board deleted the remedial education and 2-year completion requirements in their entirety.

IRRC also asked the Board to reconcile the authorization in subsection (b) for applicants to retake the examinations an unlimited number of times with the statement in the preamble to the proposed rulemaking that within a 2-year period applicants may be examined about 16 times. Taking into account scheduling considerations, the number of seats available for the examinations and the numbers of forms of the examinations, the Board was merely providing anecdotal information about the approximate number of examinations generally offered within a 2-year time frame. While there is no eligibility impediment to re-examination, scheduling examinations and re-examinations are within the purview of an independent third-party contractor. As such, §§ 21.25(b), 21.153(b) and 21.722(c)(1) permit candidates to take the licensing examinations as many times as necessary to pass. However, this final-form rulemaking has been revised to clarify that candidates submitting an application for re-examination 2 years or more after initial examination shall satisfy the administrative and education requirements prevailing at the time of application.

§§ 21.28 and 21.155. *Licensure by endorsement*

Sections 21.28 and 21.155 delineate the requirements for licensure by endorsement. IRRC noted proposed subsections (b) and (d) were not consistent. In response to IRRC's comment, the Board revised these subsections so that they consistently refer to "licensure by endorsement." Additionally, the Board revised the reference to § 21.7(b) in subsection (e) to include paragraph (2). As a result of this comment, the Board realized that the cross-reference to § 21.7(b) pertaining to temporary practice permits for registered nurses in § 21.155(e) was incorrect and should instead cross-reference the comparable section pertaining to temporary practice permits for practical nurses in § 21.149(b)(2). This correction has been made in this final-form rulemaking.

§ 21.151. *Application for examination*

IRRC noted a typographical error in proposed subsection (f) in that the provision referenced "professional nursing" rather than "practical nursing." The Board corrected the reference in this final-form rulemaking.

§ 21.701. *Definitions*

IRRC noted the typographical error in the spelling of the term "Council" in the definition of "ACEND." The Board corrects the misspelling.

§ 21.722. *Education, examination and re-examination of applicants*

IRRC pointed out that, contrary to the Board's assertion in the preamble to the proposed rulemaking, § 21.722(c) is not "identical" to §§ 21.25(b) and (c) and

21.153(b) and (c), and asked that if the Board's intent is that they be identical, to do so. IRRC pointed out that subsection (c) refers to completing the licensure process, whereas the other two sections refer to passing the licensure examination. The Board made these sections consistent in this final-form rulemaking. However, these sections cannot be made identical because, as PAND explained in its comment, while the Board is required to pre-approve nursing applicants to take the NCLEX examinations, dietitian-nutritionist applicants do not apply to the Board for approval to take the licensure examinations. Applicants apply directly to the test vendor and, once the examination is passed, apply to the Board for licensure. As such, the language within the licensure provisions for registered nurses, practical nurses and licensed dietitian-nutritionists may differ. Nonetheless, the requirement that applicants take the required examination for the first time within 1 year of completing their education unless prevented by emergency, illness, military service or other good cause, or for those who hold a license in another state, applies to each licensure class equally. This section has been revised consistent with the amendments to §§ 21.25 and 21.153.

Regulatory Analysis Form question 4—short title

IRRC questioned whether the Board intended the short title of this rulemaking package to be “general revisions” since the heading of Subchapter A is “general provisions.” The heading of Subchapter A is “registered nurses.” The Board uses undesignated center headings to group related sections within a subchapter. The first group of sections in Subchapters A, B and G (relating to registered nurses; practical nurses; and dietitian-nutritionists) are identified as “general provisions.” However, this rulemaking package addresses both the sections identified as “general provisions” as well as other sections in Subchapters A, B and G generally regarding licensure requirements for registered nurses, practical nurses and dietitian-nutritionists. Therefore, the Board assigned the short title “general revisions” to this rulemaking package.

Fiscal Impact and Paperwork Requirements

This final-form rulemaking should have a minimal fiscal and paperwork impact on the Board and the regulated community. The application procedures included in this final-form rulemaking are, for the most part, currently in place and therefore will not incur additional Board time. Board staff will have to spend some additional time confirming that examination candidates take the licensure examination within 1 year of completion of their nursing education program, unless waived. Applicants who fail to take the licensure examination within 1 year of their program completion will have the burden of proving to the Board that they were prevented from taking the examination due to an emergency, illness, military service or other good cause. In that the Board deleted the requirement that applicants who fail to pass the examination within 2 years have to provide the Board with documentation evidencing their compliance with a remediation plan, any fiscal or paperwork impact of that requirement has been negated.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 17, 2014, the Board submitted a copy of the notice of proposed rulemaking, published

at 44 Pa.B. 6934, 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, the Board shall submit to IRRC, the HPLC and the SCP/PLC copies of comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on November 16, 2016, this final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 17, 2016, and approved this final-form rulemaking.

Additional Information

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

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 in drafting this final-form rulemaking.

(3) The amendments made to this 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 (P.L. 769, No. 240) (45 P.S. § 1201).

(4) These amendments to the regulations of the Board are necessary and appropriate for the regulation of the practice of registered nurses, practical nurses and licensed dietitian-nutritionists in this Commonwealth.

Order

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by adding §§ 21.29b, 21.156c and 21.723b, deleting §§ 21.3, 21.22, 21.27, 21.144 and 21.154 and amending §§ 21.2, 21.7, 21.21, 21.23, 21.24, 21.25, 21.28, 21.29, 21.30, 21.30a, 21.142, 21.149, 21.151, 21.152, 21.153, 21.155, 21.156, 21.156a, 21.701, 21.722 and 21.724 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 submit this order and Annex A to IRRC, the HPLC and the SCP/PLC as required by law.

(d) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) The regulations shall take effect upon publication in the *Pennsylvania Bulletin*.

KRISTIN MALADY, RN, BSN,
Chairperson

(Editor's Note: See 46 Pa.B. 7603 (December 3, 2016) for IRRC's approval order.)

Fiscal Note: Fiscal Note 16A-5125 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

§ 21.2. Scope.

(a) The Board administers the act by providing rules and regulations on standards for nursing schools and the conduct of the programs.

(b) The Board provides for licensure of graduate nurses from approved schools by examination, by endorsement and by renewal of licenses.

(c) The Board has the right to establish rules and regulations for the practice of nursing.

(d) The Board may impose disciplinary sanctions and assess civil penalties for cause.

(e) The Board may approve professional nursing education programs conducted in hospitals and accredited colleges, universities and postsecondary institutions that award academic degrees, and will make available a list of approved programs on its web site.

(f) The Board will regulate the practice of professional nursing.

§ 21.3. (Reserved).

§ 21.7. Temporary practice permits.

(a) A graduate registered nurse may only practice professional nursing under supervision and if the graduate registered nurse holds a current temporary practice permit. "Supervision" means that a licensed registered nurse is physically present in the area or unit where the graduate registered nurse is practicing. The Board may grant a temporary practice permit to a graduate registered nurse as follows:

(1) A graduate registered nurse who wishes to practice professional nursing shall submit an application for a temporary practice permit for a graduate registered nurse on a form provided by the Board and remit the fee specified in § 21.5 (relating to fees). A temporary practice permit granted under this section is valid for up to 1 year from the date of issuance, unless extended under paragraphs (3) and (4), and immediately expires if the applicant fails the licensing examination.

(2) At least 90 days prior to the expiration date of the temporary practice permit, the graduate registered nurse shall:

(i) Submit an application for licensure by examination as a registered nurse.

(ii) Remit the fee specified in § 21.5.

(iii) Submit the licensure examination registration form and fee required to the professional testing organization.

(3) At least 60 days prior to the expiration date of the temporary practice permit, the graduate registered nurse who wishes to extend the expiration date of the temporary practice permit because of illness or extreme hardship shall:

(i) Submit an application for temporary practice permit extension on a form provided by the Board.

(ii) Remit the fee specified in § 21.5.

(iii) Provide a detailed, written explanation of the reason the extension is requested. If requesting an extension due to illness, the applicant shall provide certification of the illness from the applicant's treating physician.

(4) The Board will not grant an extension to an individual who fails to meet the requirements of paragraphs (2) and (3).

(b) The Board may grant a temporary practice permit to an individual who holds a current registered nurse license issued by another state, territory or possession of the United States or Canada (a currently-licensed registered nurse). The temporary practice permit will expire in 1 year, unless the individual fails the licensure examination, in which case the temporary practice permit will immediately expire. The Board may extend the temporary practice permit period in cases of illness or extreme hardship as set forth in paragraph (5).

(1) A currently-licensed registered nurse who wishes to practice professional nursing during the period from the date of submission of the Applicant Data Sheet of the application for licensure until the Board makes a determination on the application for licensure or 1 year, whichever comes first, shall:

(i) Submit an application for temporary practice permit for a currently-licensed registered nurse on a form provided by the Board.

(ii) Remit the fee specified in § 21.5.

(2) An individual applying for a temporary practice permit for a currently-licensed registered nurse shall demonstrate proficiency in English by submitting proof that the individual's nursing education program was conducted in English or that the individual has received a passing score on a Board-approved English proficiency examination. The Board will make available a list of Board-approved English proficiency examinations on its web site. This information must be submitted with the Applicant Data Sheet of the application for licensure.

(3) Within 45 days of the date the temporary practice permit is issued, an individual who has been granted a temporary practice permit for a currently-licensed registered nurse shall submit the Verification of Licensure Form of the application for licensure and shall:

(i) Request verification of licensure from the foreign jurisdiction and retain documentation of the submission of the request to provide to the Board upon request.

(ii) Request certification of the applicant's nursing education program from the licensing board or appropriate educational authorities. The certification of nursing education shall be submitted to the Board in English directly from the appropriate educational authorities. The applicant shall retain documentation of the submission of the request to provide to the Board upon request.

(iii) Submit an application for an education evaluation to a Board-approved foreign credentials evaluator if required under §§ 21.23(b) and 21.28(c) (relating to qualifications of applicant for examination; and licensure by endorsement) and retain documentation of the application submitted to the evaluator to provide to the Board upon request.

(iv) If the applicant is required to take the licensure examination, submit the licensure examination registration form and fee required to the professional testing

organization and retain documentation of the submission of the application to take the examination to provide to the Board upon request.

(4) An individual who has been granted a temporary practice permit for a currently-licensed registered nurse shall ensure that all documentation in support of the application for licensure is received by the Board no later than 90 days prior to the expiration date of the temporary practice permit. An individual whose supporting documentation has not been received by the Board at least 90 days prior to the expiration date of the temporary practice permit shall submit, within 10 days of receiving notice of the deficiency from the Board, a detailed written explanation of why the supporting documentation has not been supplied to the Board in a timely manner.

(5) An individual who has been granted a temporary practice permit for a currently-licensed registered nurse and who has complied with paragraphs (2)—(4) may request an extension of the individual's temporary practice permit because of illness or extreme hardship by:

(i) Submitting a temporary practice permit extension application provided by the Board.

(ii) Remitting the fee specified in § 21.5.

(iii) Submitting a written, detailed explanation of the reasons the extension is requested. If requesting an extension due to illness, the applicant shall provide certification of the illness from the applicant's treating physician.

(iv) Providing proof of the timely request for verification of licensure referenced in paragraph (3)(i).

(6) The request for temporary practice permit extension shall be submitted to the Board no less than 60 days prior to the expiration date of the temporary practice permit.

(7) The Board will not grant an extension to an individual who fails to meet the requirements of paragraphs (2)—(6).

LICENSES

§ 21.21. Application for examination.

(a) A candidate for the licensing examination may submit an application together with the required fee no sooner than 90 days prior to completing a professional nursing education program.

(b) A candidate will not be authorized to take the examination unless the candidate has satisfied the requirements of the act necessary for eligibility, including confirmation of completion of an approved professional nursing educational program.

(c) Graduates of professional nursing education programs outside of this Commonwealth shall file an official transcript validating program completion with the application.

(d) An applicant seeking a waiver of the 1-year requirement in § 21.23(c) (relating to qualifications of applicant for examination) shall submit documentation to demonstrate that an emergency, illness, military service or other good cause prevented compliance, or that the candidate holds a license to practice nursing in another state or country.

§ 21.22. (Reserved).

§ 21.23. Qualifications of applicant for examination.

(a) An applicant shall demonstrate proficiency in English by submitting proof that the applicant's nursing

education program was conducted in English or that the applicant has, prior to being approved to take the licensure examination, received a passing score on a Board-approved English proficiency examination, unless the applicant has already met this requirement in satisfaction of § 21.7(b)(2) (relating to temporary practice permits). The Board will make available a list of Board-approved English proficiency examinations on its web site.

(b) An applicant who graduated from a professional nursing education program in a country or territory outside of the United States or Canada shall have the applicant's education evaluated by a Board-approved foreign credentials evaluator to determine whether the education obtained is equivalent to the program of study required in this Commonwealth at the time the program was completed.

(c) A candidate for licensure shall take the examination for the first time within 1 year of completing the professional nursing education program unless prevented by emergency, illness, military service or other good cause shown, or the candidate holds a license to practice nursing in another state or country.

§ 21.24. Passage of the licensure examination.

The candidate for licensure shall pass the licensure examination approved by the Board.

§ 21.25. Re-examination.

(a) A candidate shall submit a re-examination application, including the required fee for re-examination.

(b) The candidate may take the licensing examination as many times as necessary to pass the licensure examination.

(c) Candidates who apply for re-examination 2 years or more after initial examination shall satisfy the administrative and education requirements prevailing at the time of reapplication.

§ 21.27. (Reserved).

§ 21.28. Licensure by endorsement.

(a) A registered nurse who has graduated from an approved professional nursing education program in the United States or Canada and who obtained licensure in another jurisdiction having passed an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth may be granted licensure by endorsement.

(b) An applicant for licensure by endorsement shall meet the requirements as stated in the act.

(c) A registered nurse who has graduated from a professional nursing education program in a country or territory outside of the United States or Canada deemed equivalent to the program of study required in this Commonwealth at the time the program was completed and who obtained licensure in that country or territory upon having passed an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth may be granted licensure by endorsement without examination. The Board will base educational equivalency upon an evaluation administered by a Board-approved foreign credentials evaluator.

(d) An applicant for licensure by endorsement whose license in the other jurisdiction is not current for 5 years or longer shall, prior to receiving a license in this

Commonwealth, satisfy the requirements of § 21.30a(1) or (2) (relating to continued competency).

(e) An applicant for licensure by endorsement shall demonstrate proficiency in English by submitting proof that the applicant's nursing education program was conducted in English or that the applicant received a passing score on a Board-approved English proficiency examination unless the applicant has met this requirement in satisfaction of § 21.7(b)(2) (relating to temporary practice permits). The Board will make available a list of Board-approved English proficiency examinations on its web site.

§ 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 registered nurse shall:

(1) Complete and submit the renewal application, 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) Verify that the registered nurse has complied with the continuing education requirements mandated by section 12.1 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. §§ 1-101—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 unless prior notification has been made under § 21.29a (relating to reporting of crimes and disciplinary action).

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

§ 21.29b. Reporting of address changes.

A registered nurse shall notify the Board within 14 days of a change of address.

§ 21.30. Registered nurses licensed outside of the United States or Canada.

(a) A registered nurse educated and licensed outside of the United States or Canada may not practice profes-

sional nursing in this Commonwealth until the registered nurse is issued a license or temporary practice permit by the Board.

(b) A graduate nurse licensed in another country may participate in an accredited graduate program in nursing for 2 years without licensure and compensation in this Commonwealth.

§ 21.30a. Continued competency.

(a) A registered nurse whose license has lapsed for 5 years or longer or has been placed on inactive status for 5 years or longer, as permitted in section 11(b) of the act (63 P.S. § 221(b)), may reactivate the license by doing one of the following:

(1) Successfully completing the initial licensing examination approved by the Board and submitting the examination fee in § 21.5 (relating to fees).

(2) Successfully completing a Board-approved reactivation program, which requires passage of a nursing achievement examination.

(3) Providing evidence to the Board that the applicant has a current license and has practiced as a registered nurse in another jurisdiction at some period of time within the last 5 years.

(b) A registered nurse whose license has been suspended for 5 years or longer may reactivate the license after complying with the terms of the suspension Order by doing either of the following:

(1) Successfully completing the initial licensing examination approved by the Board and submitting the examination fee in § 21.5.

(2) Successfully completing a Board-approved reactivation program which requires passage of a nursing achievement examination.

Subchapter B. PRACTICAL NURSES

GENERAL PROVISIONS

§ 21.142. Scope.

(a) The Board administers the act by promulgating rules and regulations which establish standards for practical nursing programs and the conduct of programs.

(b) The Board provides for licensure of graduate practical nurses from approved programs by examination, by endorsement and by programs renewal of licenses.

(c) The Board may impose disciplinary sanctions and assess civil penalties for cause.

(d) The Board may approve practical nursing education programs conducted in hospitals and accredited community colleges, universities and postsecondary institutions that award academic degrees and public school districts and vocational education programs under the Department of Education, and will make available a list of approved practical nursing education programs on its web site.

(e) The Board will regulate the practice of practical nursing.

§ 21.144. (Reserved).

§ 21.149. Temporary practice permits.

(a) A graduate practical nurse may only practice practical nursing under supervision and if the graduate practical nurse holds a current temporary practice permit. "Supervision" means that a licensed registered nurse is physically present in the area or unit where the graduate

practical nurse is practicing. The Board may grant a temporary practice permit to a graduate practical nurse as follows:

(1) An individual who wishes to practice as a graduate practical nurse during the period from the date of completion of the Board-approved educational program to the notification of the results of the licensing examination shall submit an application for temporary practice permit for a graduate practical nurse on a form provided by the Board and remit the fee specified in § 21.147 (relating to fees). A temporary practice permit granted under this section is valid for up to 1 year from the date of issuance unless extended under paragraphs (3) and (4), and immediately expires if the applicant fails the licensing examination.

(2) At least 90 days prior to the expiration date of the temporary practice permit, the graduate practical nurse shall:

(i) Submit an application for licensure by examination as a practical nurse.

(ii) Remit the fee specified in § 21.147.

(iii) Submit the licensure examination registration form and fee required to the professional testing organization.

(3) At least 60 days prior to the expiration date of the temporary practice permit, the graduate practical nurse who wishes to extend the expiration date of the temporary practice permit because of illness or extreme hardship shall:

(i) Submit an application for temporary practice permit extension on a form provided by the Board.

(ii) Remit the fee specified in § 21.147.

(iii) Provide a detailed, written explanation of the reasons the extension is requested. If requesting an extension due to illness, the applicant shall provide certification of the illness from the applicant's treating physician.

(4) The Board will not grant an extension to an individual who fails to meet the requirements of paragraphs (2) and (3).

(b) The Board may grant a temporary practice permit to an individual who holds a current practical nurse license issued by another state, territory or possession of the United States or Canada (a currently-licensed practical nurse). The temporary practice permit will expire in 1 year, unless the individual fails the licensure examination, in which case the temporary practice permit will immediately expire. The Board may extend the temporary practice permit in cases of illness or extreme hardship, as set forth in paragraph (5).

(1) A currently-licensed practical nurse who wishes to practice practical nursing during the period from the date of submission of the Applicant Data Sheet of the application for licensure until the Board makes a determination on the application for licensure or 1 year, whichever comes first, shall:

(i) Submit an application for temporary practice permit for a currently-licensed practical nurse on a form provided by the Board.

(ii) Remit the fee specified in § 21.147.

(2) An individual applying for a temporary practice permit for a currently-licensed practical nurse shall demonstrate proficiency in English by submitting proof that the individual's nursing education program was conducted in English or that the individual has received a passing

score on a Board-approved English proficiency examination. The Board will make available a list of Board-approved English proficiency examinations on its web site. This information shall be submitted with the Applicant Data Sheet of the application for licensure.

(3) Within 45 days of the date the temporary practice permit is issued, an individual who has been granted a temporary practice permit for a currently-licensed practical nurse shall submit the Verification of Licensure Form of the application for licensure and shall:

(i) Request verification of licensure from the foreign jurisdiction and retain documentation of submission of the request to provide to the Board upon request.

(ii) Request certification of the applicant's nursing education program from the licensing board or appropriate educational authorities. The certification of nursing education shall be submitted to the Board in English directly from the appropriate educational authorities. The applicant shall retain documentation of submission of the request to submit to the Board upon request.

(iii) Submit an application for an education evaluation to a Board-approved foreign credentials evaluator if required under § 21.155(d) (relating to licensure by endorsement) and retain documentation of the application submitted to the evaluator to provide to the Board upon request.

(iv) If the applicant is required to take the licensure examination, submit the licensure examination registration form and fee required to the professional testing organization and retain documentation of the submission of the application to take the examination to provide to the Board upon request.

(4) An individual who has been granted a temporary practice permit for a currently-licensed practical nurse shall ensure that all documentation in support of the application for licensure is received by the Board at least 90 days prior to the expiration date of the temporary practice permit. An individual whose supporting documentation has not been received by the Board at least 90 days prior to the expiration date of the temporary practice permit shall submit, within 10 days of receiving notice of the deficiency from the Board, a detailed written explanation of why the supporting documentation has not been supplied to the Board in a timely manner.

(5) An individual who has been granted a temporary practice permit for a currently-licensed practical nurse and who has complied with paragraphs (2)—(4) may request an extension of the temporary practice permit because of illness or extreme hardship by:

(i) Submitting a temporary practice permit extension application on a form provided by the Board.

(ii) Remitting the fee specified in § 21.147.

(iii) Submitting a written, detailed explanation of the reasons the extension is requested. If requesting an extension due to illness, the applicant shall provide certification of the illness from the applicant's treating physician.

(iv) Providing proof of the timely request for verification of licensure referenced in paragraph (3)(i).

(6) The request for temporary practice permit extension shall be submitted to the Board at least 60 days prior to the expiration date of the temporary practice permit.

(7) The Board will not grant an extension to an individual who fails to meet the requirements of paragraphs (2)—(6).

LICENSURE**§ 21.151. Application for examination.**

(a) A candidate for the licensing examination may submit an application together with the required fee no sooner than 90 days prior to completing a practical nursing education program.

(b) A candidate will not be authorized to take the examination unless the candidate has satisfied the requirements of the act necessary for eligibility, including confirmation of completion of an approved practical nursing educational program.

(c) Graduates of practical nursing education programs outside of this Commonwealth shall file an official transcript validating program completion with the application.

(d) An applicant shall demonstrate proficiency in English by submitting proof that the applicant's nursing education program was conducted in English or that the applicant has, prior to being approved to take the licensure examination, received a passing score on a Board-approved English proficiency examination unless the applicant has already met this requirement in satisfaction of § 21.149(b)(2) (relating to temporary practice permits). The Board will make available a list of Board-approved English proficiency examinations on its web site.

(e) An applicant who graduated from a practical nursing education program outside of the United States or Canada shall have the applicant's education evaluated by a Board-approved foreign credentials evaluator to determine whether the education obtained is equivalent to the program of study required in this Commonwealth at the time the program was completed.

(f) A candidate shall take the examination for the first time within 1 year of completing the practical nursing education program unless prevented by emergency, illness, military service or other good cause shown, or the candidate holds a license to practice nursing in another state or country.

§ 21.152. Passage of the examination.

Candidates for practical nursing licensure shall pass the licensure examination approved by the Board.

§ 21.153. Re-examination.

(a) A candidate shall submit a re-examination application, including the required fee for re-examination.

(b) The candidate may take the licensing examination as many times as necessary to pass the licensure examination.

(c) Candidates who reapply for examination 2 years or more after initial examination shall satisfy the administrative and education requirements prevailing at the time of reapplication.

§ 21.154. (Reserved).**§ 21.155. Licensure by endorsement.**

(a) A practical nurse who has graduated from an approved practical nursing program in the United States or Canada and who obtained licensure in another jurisdiction of the United States or Canada upon having passed an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth may be granted licensure by endorsement.

(b) An applicant for licensure by endorsement shall meet the requirements regarding age, good moral character, preliminary education and practical nursing education as outlined in the act.

(c) An applicant for licensure by endorsement whose license in the other jurisdiction is not current for 5 years or longer shall, prior to receiving a license in this Commonwealth, satisfy the requirements of § 21.156a(a)(1) or (2) (relating to continued competency).

(d) A practical nurse who has graduated from a practical nursing education program in a country or territory outside of the United States or Canada deemed equivalent to the program of study required in this Commonwealth at the time the program was completed and who obtained licensure in that country or territory upon having passed an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth may be granted licensure by endorsement without examination. The Board will base educational equivalency upon an evaluation administered by a Board-approved foreign credentials evaluator.

(e) An applicant for licensure by endorsement shall demonstrate proficiency in English by submitting proof that the applicant's nursing education program was conducted in English or that the applicant has received a passing score on a Board-approved English proficiency examination unless the applicant has previously met this requirement in satisfaction of § 21.149(b)(2) (relating to temporary practice permits). The Board will make available a list of Board-approved English proficiency examinations on its web site.

§ 21.156. Renewal of license.

(a) Licenses for practical nurses expire on June 30 of each biennium in the even-numbered years.

(b) When applying for licensure renewal, a licensed practical nurse shall:

(1) Submit the renewal application, including disclosing a license to practice nursing or an allied health profession in any other state, territory, possession or country.

(2) Pay the biennial renewal of license fee in § 21.147(b) (relating to fees).

(3) Disclose discipline imposed by a state licensing board in the previous biennial period and 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, unless prior notification has been made under § 21.156b (relating to reporting of crimes and disciplinary action).

(c) When communicating with the Board, licensed practical nurses shall identify themselves by their full name, including maiden name, current address and license number.

§ 21.156a. Continued competency.

(a) A licensed practical nurse whose license has lapsed for 5 years or longer or has been placed on inactive status for 5 years or longer, as permitted in section 13.1(b) of the act (63 P.S. § 663.1(b)), may reactivate the license by doing one of the following:

(1) Successfully completing the initial licensing examination approved by the Board and submitting the examination fee in § 21.147 (relating to fees).

(2) Successfully completing a Board-approved reactivation program which requires passage of a nursing achievement examination.

(3) Providing evidence to the Board that the applicant has a current license and has practiced as a practical nurse in another jurisdiction at sometime within the last 5 years.

(b) A licensed practical nurse whose license has been suspended for 5 years or longer may reactivate the license after complying with the terms of the suspension Order by doing either of the following:

(1) Successfully completing the initial licensing examination approved by the Board and submitting the examination fee in § 21.147.

(2) Successfully completing a Board-approved reactivation program which requires passage of a nursing achievement examination.

§ 21.156c. Reporting of address changes.

A licensed practical nurse shall notify the Board within 14 days of a change of address.

Subchapter G. DIETITIAN-NUTRITIONISTS
GENERAL PROVISIONS

§ 21.701. Definitions.

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

ACEND—Accreditation Council for Education in Nutrition and Dietetics—The organization recognized by the Council on Higher Education Accreditation and the United States Department of Education as the accrediting agency for education programs that prepare individuals for the practice of dietetics-nutrition.

ACN—American College of Nutrition.

AND—Academy of Nutrition and Dietetics.

Act—The Professional Nursing Law (63 P.S. §§ 211—225.5), which provides for the licensing of Licensed Dietitian-Nutritionists.

Approved—Approved by the Board.

Approved program—Those educational programs accredited by ACEND or the American Council on Education for dietetics-nutrition education.

Board—The State Board of Nursing of the Commonwealth.

CBNS—Certification Board for Nutrition Specialists—The certification body of the ACN.

CDR—Commission on Dietetic Registration—The credentialing agency for the AND.

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LICENSURE REQUIREMENTS

§ 21.722. Education, examination and re-examination of applicants.

(a) Education. The Board approves educational programs that meet the requirements of section 6(b)(2) of the act (63 P.S. § 216(b)(2)) that are approved by ACEND or the ACN.

(b) Examination.

(1) The Board approves the Registration Examination for Registered Dietitians and Examination of the Certification Board for Nutrition Specialists as the examinations which an applicant may complete to satisfy section 6(b)(4) of the act.

(2) A candidate shall take the examination for the first time within 1 year of completing the dietetics-nutrition education program unless prevented by emergency, illness, military service or other good cause shown, or the candidate holds a license to practice as a dietitian-nutritionist in another state or country.

(c) Re-examination.

(1) A candidate may take the licensing examination as many times as necessary to pass the licensure examination.

(2) Candidates who apply for re-examination 2 years or more after initial examination shall satisfy the administrative and education requirements prevailing at the time of reapplication.

§ 21.723b. Reporting of address changes.

An LDN shall notify the Board within 14 days of a change of address.

§ 21.724. Continuing education.

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(b) Board-approved continuing professional education. The Board will accept for completion of the CPE requirement substantive learning experiences, subject to the limitations in paragraph (2) relating to the field of nutrition and dietetics which are not designed for the public and which are sponsored by the AND, the ACN, by individual state dietetic associations, if the association is a member of the AND or ACN, by approved college or dietetic programs under § 21.722 (relating to education, examination and re-examination of applicants) when a certificate of attendance is issued, and courses related to the practice of dietetics-nutrition offered by the Accreditation Council for Continuing Medical Education, the Accreditation Council on Pharmaceutical Education, the American Osteopathic Association and the American Medical Association.

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