

PROPOSED RULEMAKING

STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

[49 PA. CODE CH. 39]

Continuing Education

The State Board of Examiners of Nursing Home Administrators (Board) proposes to amend §§ 39.1, 39.11, 39.44, 39.51, 39.52 and 39.61, add §§ 39.11a and 39.11b (relating to reactivation; and continued competence) and delete § 39.71 (related to licensure renewal) to read as set forth in Annex A.

Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The reduction in continuing education clock hours will be applied for the first time when licensees renew for the July 1, 2020, through June 30, 2022, biennial period. Licensees must have completed no less than 36 hours of continuing education as a condition of renewal in 2020.

Statutory Authority

Section 9(b) of the Nursing Home Administrators License Act (act) (63 P.S. § 1109(b)) requires licensees to complete not less than 24 hours of Board-approved continuing education courses and programs as a condition of biennial renewal. Section 9(e) of the act addresses reactivation of expired or inactive licenses. Section 4(a)(9) of the act (63 P.S. § 1104(a)(9)) provides the statutory authority for the proposed continued competency provision. Section 4(a)(9) also authorizes the Board to develop standards of professional practice and standards of professional conduct appropriate to establish and maintain a high level of integrity and performance in the practice of nursing home administration. Additionally, section 4(c) of the act authorizes the Board to promulgate regulations to effectuate the act.

Background and Need for Amendments

On October 24, 2017, Governor Tom Wolf signed Executive Order 2017-3, published at 47 Pa.B. 6929 (November 11, 2017), requiring the Commissioner of Professional and Occupational Affairs (Commissioner) to comprehensively review and catalog the processes, fees, training requirements, criminal history policies, portability and continuing education requirements for occupational and professional licensure within the purview of the 29 licensing boards and commissions under the Commissioner's authority. The order further directed the Commissioner to benchmark that data against regional averages from 12 states with similar or equivalent licenses that comprise the Northeast geographic region—Ohio, West Virginia, Maryland, Delaware, New Jersey, New York, Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine—to identify requirements or functions that presented unnecessary burdens to licensure and occupational employment within this Commonwealth.

That report, issued on June 12, 2018, revealed that the Commonwealth carried one of the highest continuing education requirements in the regional comparison group for seven different occupational/professional licenses, including nursing home administrators. The Wolf administration believes that public protection through the function of continuing education must be balanced against the burden to the regulated community. Therefore, because

these requirements are significantly above the regional average, and no superseding Federal requirement or imminent public threat to health and safety mandates the increase, the administration recommended that the biennial requirement for continuing education be reduced to the statutory minimum.

The Board initially considered reducing the continuing amount to at least 24 hours, as recommended. However, after discussion with stakeholders who opposed the reduction, the Board determined that a reduction by one-quarter to at least 36 hours per biennium would accomplish the Governor's goal of reducing the required continuing education while at the same time ensure that licensees obtain sufficient continuing education given the complexities of nursing home regulation. This proposed rulemaking effectuates the reduction to at least 36 hours and makes similar revisions related to the length of an educational program and the number of clock hours awarded for various continuing education activities. Applying this same logic, the Board would remove the proration provision for licensees renewing for the first time; and instead exempt them from completing the continuing education requirement for their first biennial renewal. This exemption is consistent with other licensure boards within the Health Licensing Division of the Bureau of Professional and Occupational Affairs.

Additionally, this proposed rulemaking would institute a continued competence provision. The Board believes that it is appropriate to require licensees whose licenses have been inactive or expired for 5 years or longer to demonstrate their competence to resume the practice of nursing home administration by passing the licensure examinations, taking additional coursework or otherwise demonstrating that they are or have been actively engaged in the practice of nursing home administration in another state, have been employed by a nursing home in a supervisory or consultant capacity, or have been teaching long term care subject matter in an accredited college or university or in a Board-approved 120-hour training program.

Description of Proposed Amendments

The definition of "clock hour" in § 39.1 (relating to definitions) is proposed to be amended to reduce the minimum course length to 30 minutes (.5 clock hours) and to grant additional credit in 15-minute increments.

Section 39.11(b) and (d) (relating to biennial renewal) is proposed to be amended to include current biennial renewal procedures. Rather than sending applications for renewal to licensees, the Board e-mails licensees approximately 3 months prior to the end of the biennial period and advises them about the availability of the online renewal process to renew licenses in the Pennsylvania Licensing System (PALS). Licensees are then required to submit the completed renewal application and the biennial renewal fee and, unless there is a discrepancy, will be accepted by the Board and renewed. Subsection (c) is proposed to be amended to reduce the minimum number of continuing education clock hours required for biennial renewal from 48 to 36. Subsection (e) is proposed to be deleted, as it is a reactivation provision, which has now been included in proposed § 39.11a (relating to reactivation).

Proposed § 39.11a sets forth the reactivation requirements for licenses that are expired or inactive. Subsection (a), which replaces current § 39.11(e), provides the re-

quirements when the license is expired or inactive for fewer than 5 years while subsection (b) provides the requirements when the license has been expired or inactive for 5 years or longer. In the latter circumstance, the licensee must also demonstrate continued competence as provided in proposed § 39.11b.

Proposed § 39.11b would provide five options for demonstrating continued competence: (1) passing the licensure examinations approved by the Board (the Core of Knowledge Exam for Long Term Care Administrators, the Line of Service Exam—Nursing Home Administrators, and the State Based Licensing Exam—Pennsylvania); (2) successfully reCompleting a Board-approved 120-hour program of study; (3) documenting that the licensee has practiced as a nursing home administrator in another jurisdiction for at least 2 of the last 5 years; (4) documenting that the licensee has served in a supervisory or consultant capacity in a nursing home for at least 3 of the last 5 years; or (5) documenting that the licensee taught long term care courses for a Board-approved 120-hour program of study provider or a college or university for at least 3 of the last 5 years. The Board believes that requiring licensees who have not had a current license for 5 years or longer to demonstrate continued competence assures their currency in nursing home administration thereby protecting the health, safety and welfare of the residents of nursing homes and their families, as well as nursing home employees. In the last three continued competence options, the licensee would be required to appear before the Board to demonstrate actual involvement in nursing home administration in another jurisdiction or through supervision, consultation or instruction. To meet the requirements of paragraph (4), the supervision or consulting provided to a nursing home in at least 3 of the last 5 years must be significant; merely providing supervision or consulting for 2 or 3 months a year does not demonstrate significant involvement.

Section 39.44(7) (relating to provider responsibilities) is proposed to be amended to set forth the items that must be contained in continuing education records. Section 39.51(b) (relating to standards for continuing education programs) is proposed to be amended to add the prohibition in paragraph (3) that continuing education programs may not be less than 30 minutes in length. The Board believes that there is not sufficient time to engage in meaningful learning in less than 30 minutes. Section 39.52(a) (relating to program registration) is proposed to be amended to correct a cross-reference to § 39.61 (relating to requirements).

Section 39.61 sets forth the continuing education requirement. Subsections (a) and (c) are proposed to be amended to reduce the minimum number of continuing education hours from 48 to 36. Additionally, the maximum number of clock hours for being an instructor in paragraph (c)(2), being an author in paragraph (c)(3), serving as an Administrator-In-Training supervisor in paragraph (c)(4) and for completing college or university courses in paragraph (c)(5) would be reduced incrementally to coincide with the overall reduction. Subsection (d) is proposed to be amended to remove the proration calculation for licensees' first biennial renewal in favor of an exemption of the continuing education requirement for that period. Proposed subsection (h) provides that licensees will not be awarded credit for programs that have less than 30 minutes of instruction. In addition, the Board proposes to replace the undesignated center heading "Clock Hours Requirement" with "Continuing Education"

to be more descriptive of the content of §§ 39.61 and 39.65 (relating to reporting continuing education clock hours).

The Board proposes to delete § 39.71 because the information contained in this section is either outdated or duplicative of § 39.11. In addition, the undesignated center heading "Renewal" is proposed to be amended with "Fees" because of the deletion of § 39.71, all that remains is § 39.72 (relating to fees).

Fiscal Impact and Paperwork Requirements

Because licensees will continue to renew their licenses in the same manner as they currently do, the reduction in the minimum number of continuing education clock hours that have to be completed per biennium will not result in any increased fiscal impact or additional paperwork requirements on the Board. For licensees, it will result in a decrease in costs as they will have to complete fewer required clock hours of continuing education.

Licensees who wish to reactivate licenses that have expired or been inactive for more than 5 years may have an increased fiscal impact depending upon the continued competence activity selected. Those who select completion of the 120-hour course in new § 39.11b(2) will experience the highest costs as the average cost for the 120-hour course is currently \$2,650. Individuals who chose to complete the licensure examinations would be required to pay the fee for the State and National portions of the examination, which is currently \$785. For either of these activities there will be no additional paperwork requirements, as § 39.11(e) currently requires application, a fee and documentation.

The continued competence activities in proposed § 39.11b(3), (4) and (5) will have no increased costs but will have some additional paperwork requirements. Each of these activities involve work experience. Under proposed § 39.11b(3), a licensee would have to document that the licensee practiced as a nursing home administrator in another jurisdiction for at least 2 of the last 5 years prior to application for reactivation. In proposed § 39.11b(4) and (5) the licensee would be required to demonstrate significant involvement in the field of nursing home administration or instruction in long term care during the time the license was expired or inactive. That involvement may include, for example, serving as an assistant nursing home administrator or department head or teaching a nursing home administration course within the 120-hour program or bachelor's degree 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 January 16, 2020, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to this proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory

review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Jaime D. Black, Counsel, State Board of Examiners of Nursing Home Administrators, P.O. Box 69523, Harrisburg, PA 17106-9523 or by e-mail to RA-STRegulatoryCounsel@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6219 (Continuing Education) when submitting comments.

KIMBERLY COBAUGH,
Chairperson

Fiscal Note: 16A-6219. No fiscal impact; (8) recommends adoption.

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:

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Clock hour—A [**minimum**] unit of education consisting of 60 minutes of instruction. Programs longer than [**60**] **30** minutes will be credited in [**30**] **15** minute increments.

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§ 39.11. Biennial renewal.

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

(b) [**Applications for renewal**] **Notice of the availability of the renewal process** will be forwarded to each active licensee at the licensee's address of record **or current e-mail address on file** with the Board, **or both**, prior to the expiration of the current biennial period.

(c) As a condition of biennial renewal, licensees shall complete [**48**] **a minimum of 36** clock hours of continuing education during the preceding biennial period as required in § 39.61 (relating to requirements).

(d) Renewal applications shall be completed **in a format and manner required by the Board** and [**returned to the Board office**] accompanied by the required renewal fee **in § 39.72 (relating to fees)**. Upon [**approval of each**] **Board acceptance of the biennial renewal** application, the **license will be renewed and the applicant [shall] will** receive a certificate of registration for the current renewal period.

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

(Editor's Note: The following sections are proposed to be added and printed in regular type to enhance readability.)

§ 39.11a. Reactivation.

(a) A nursing home administrator who desires to reactivate a license that has been expired or inactive shall file an application for reactivation in a format and manner required by the Board and shall provide:

(1) A late fee as required by section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P.S. § 1401-225) or a verification of nonpractice, as applicable.

(2) The renewal fee in § 39.72 (relating to fees).

(3) Documentation evidencing the satisfactory completion of the continuing education requirement for the preceding biennial period.

(b) In addition to complying with the requirements in subsection (a), a nursing home administrator whose license has been expired or inactive for 5 years or longer shall demonstrate continued competence under § 39.11b (relating to continued competence).

§ 39.11b. Continued competence.

A nursing home administrator applying to reactivate a license that has been expired or inactive for 5 years or longer shall demonstrate continued competence by doing one of the following:

(1) Passing the licensure examinations approved by the Board.

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

(3) Providing written documentation to the Board evidencing that the licensee has practiced nursing home administration in another jurisdiction for at least 2 years within the last 5 years under a current license in that jurisdiction. The licensee shall appear personally before the Board to demonstrate that practice.

(4) Providing written documentation to the Board that the licensee has been employed in a nursing home in a supervisory or consultant capacity for at least 3 years within the last 5 years. The licensee shall appear personally before the Board to demonstrate, to the Board's satisfaction, a significant involvement in the field of nursing home administration during the time the license has been expired or inactive. Sporadic or occasional involvement is not sufficient to demonstrate continued competence.

(5) Providing written documentation to the Board that the licensee has been teaching long term care subject matter for a continuing educational provider approved by the Board to offer the 120-hour program or an accredited college or university for at least 3 years within the last 5 years. The licensee shall appear personally before the Board to discuss the scope of the education provided during the time the license has been expired or inactive.

APPROVAL PROCESS—PROVIDERS

§ 39.44. Provider responsibilities.

For each program, providers shall:

* * * * *

(7) Issue continuing education records[.] to each licensee who completed the course, which must include:

- (i) The name of the licensee.
- (ii) The title of the course or program.
- (iii) The date of the course or program.
- (iv) The number of continuing education clock hours provided.
- (v) The name of the course provider and the provider number.
- (vi) A statement that the course or program was approved by the Board or NAB, which must include the program approval number.

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

APPROVAL PROCESS—PROGRAMS

§ 39.51. Standards for continuing education programs.

- (a) A program shall consist of the subjects listed in § 39.14(a)(2) (relating to approval of programs of study).
- (b) The Board does not deem the following programs acceptable:
 - (1) Inservice programs which are not open to licensees.
 - (2) Programs limited to the organization and operation of the employer.

(3) Programs consisting of less than 30 minutes of instruction.

§ 39.52. Program registration.

(a) All programs require preapproval, except as in § [39.61(b)(4) and (5)] 39.61(c)(2)—(5) (relating to requirements).

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**[CLOCK HOURS REQUIREMENT]
CONTINUING EDUCATION**

§ 39.61. Requirements.

- (a) A licensee shall complete at least [48] 36 clock hours of continuing education during the preceding biennial period.
- (b) All continuing education clock hours shall be completed in courses preapproved by NAB or the Board, except as provided in subsection (c)(2)—(5).
- (c) Of the [48] 36 clock hours required, the following apply:
 - (1) Up to [48] 36 clock hours may be taken in lecture, college or university, computer interactive, distance learning or correspondence courses preapproved by NAB or the Board.
 - (2) A maximum of [12] 9 clock hours may be earned by serving as an instructor of a NAB or Board-approved continuing education program or as an instructor of a college or university course approved by NAB or the Board. Instructors may earn 1 clock hour for each hour of instruction up to [12] 9 clock hours.
 - (3) Clock hours may be earned by authoring an article on long-term care as follows:

(i) 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] 9 clock hours per biennium.

(ii) Additional credit per article, up to [12] 9 of the required clock hours, may be awarded based on the complexity of the subject matter or work.

(iii) 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] 18 clock hours.

(iv) Published articles used for continuing education credit shall be submitted to the Board within 60 days of publication. Upon review of the published article, the Board will determine the appropriate number of clock hours to be awarded based upon the complexity of the subject matter or work.

(4) Up to [24] 18 clock hours may be obtained by serving as a supervisor in a Board-approved AIT program, when the AIT successfully completes the AIT program.

(5) A maximum of [12] 9 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 60 days of attending the program and document attendance. The attendee shall demonstrate to the Board's satisfaction that the programs meet the requirements in §§ 39.14(a)(2) and 39.51 (relating to approval of programs of study; and standards for continuing education programs).

(d) 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] is not required to meet the continuing education requirement on the first renewal immediately following licensure.

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

(f) A licensee who cannot meet the overall continuing education clock hour requirement in subsection (a) or (d) due to illness, emergency or hardship may apply to the Board in writing prior to the end of the renewal period for an extension of time to complete the clock hours. A licensee who cannot meet any other requirement in this section due to illness, emergency or hardship may apply to the Board in writing prior to the end of the renewal period for a waiver of the requirement. An extension or waiver request must explain why compliance is impossible, and include appropriate documentation. An extension or waiver request will be evaluated by the Board on a case-by-case basis.

(g) 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.

(h) A licensee will not be credited for any continuing education program less than 30 minutes of instruction in duration.

[RENEWAL] FEES

§ 39.71. [Licensure renewal] (Reserved).

[(a) Licensure renewal will be based on the payment of the required fee to the Commonwealth and submission of "certification of credit" form. This form is available from the State Board of Examiners of Nursing Home Administrators, Post Office Box 2649, Harrisburg, Pennsylvania 17105.

(b) Total credit hours for the 1982-84 biennium consist of 48 hours.

(c) Certification forms shall be submitted to the Board. Documentation of programs attended with proper signatures of provider and nursing home administrator shall be kept by the licensee for a period of 2 years.

(d) Certification of credit hours submitted by the nursing home administrator shall be properly signed as being correct and true. False statements shall be grounds for licensure revocation or suspension.]

[Pa.B. Doc. No. 20-150. Filed for public inspection January 31, 2020, 9:00 a.m.]
