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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 8, 1999

Robert H. Morrow, Chairman
State Board of Examiners of Nursing Home Administrators
124 Pine Street
Harrisburg, PA 17105

Re: IRRC Regulation #16A-623 (#1999)
State Board of Examiners of Nursing Home Administrators
Continuing Professional Education

Dear Chairman Morrow:

Enclosed are our Comments on your proposed regulation #16A-623. They are also available on our Web site at <http://www.irrc.state.pa.us>.

The Comments list our objections and suggestions for your consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you want to meet with us to discuss these Comments, please contact John Jewett at 783-5475.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director

REN:cae
Enclosure

cc: Joyce McKeever
Kim Pizzingrilli
Dorothy Childress
Office of General Counsel
Office of Attorney General
Pete Tartline

IRRC # 1999
State Board of Examiners of Nursing Home Administrators
Continuing Professional Education

Robert H. Morrow, Chairman
A handwritten signature in black ink that reads "Robert H. Morrow".

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

**STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS
REGULATION NO. 16A-623**

CONTINUING PROFESSIONAL EDUCATION

APRIL 8, 1999

We have reviewed this proposed regulation from the State Board of Examiners of Nursing Home Administrators (Board) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to fiscal impact, reasonableness, feasibility, need and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 39.41. Provider registration. - Clarity

Subsection 39.41(a) states that "anyone seeking to offer a program for continuing education" must apply for Board approval as a provider. According to Board staff, this requirement applies to all providers including colleges, universities, associations, professional societies or organizations. Currently, Subsection 39.14(b) outlines an approval process for programs offered by an association, professional society or organization. The proposed regulation deletes Subsection 39.14(b). There are no other references to professional organizations in the regulation. In contrast, college or university courses are listed in Subsection 39.61(b)(2). To clarify that professional organizations may apply to be continuing education providers, Subsection 39.41(a) should include "colleges, universities, associations, professional societies or organizations" as examples of providers.

2. Section 39.44. Provider responsibilities. - Clarity

The Preamble states that the new Section 39.44 establishes provider responsibilities including "verification requirements." The term "verification" is not used in the new section. However, Subsection 39.44(8) does require providers to retain "attendance records" and other materials. The Board counsel indicates that the term "verification requirements" is intended to refer to the attendance records. This explanation needs to be included in the Preamble of the final-form regulation.

3. Section 39.51. Standards for continuing education programs. - Clarity

Subsection 39.51(b), as it appears in the *Pennsylvania Bulletin*, contains a typographical error. The first word of the revised subsection is repeated twice.

4. Section 39.52. Programs registration. - Fiscal Impact, Reasonableness, Feasibility and Need

Subsection 39.52(b) requires "preapproval" of all continuing education programs. The Pennsylvania Association of Non-Profit Homes (PANPHA), Hospital and Healthsystem

Association of Pennsylvania (HHAP) and individual commentators are concerned that this requirement will unnecessarily limit the availability of valuable continuing education programs.

The House Professional Licensure Committee (House Committee) met on March 23, 1999, and considered this proposed regulation. The House Committee also expressed concern over the availability of continuing education programs. It requested additional information regarding the impact of the proposed regulation on the availability of continuing education programs for licensees.

Availability is important. The Board needs to study the numbers and types of courses that will be available under this proposed regulation. It should also examine the costs to licensees of locating and attending "preapproved" programs. The Board's licensure renewal prerequisites must be both reasonable and feasible. The Board needs to assure both the House Committee and licensees that programs will be available and affordable.

In addition, the Board should consider two options to increase availability of programs. First, the regulation should include procedures whereby licensees could individually submit applications for preapproval of programs when a provider is unwilling to apply or is unaware of the requirement. Second, the Board should consider retaining the retroactive approval option. Currently, Section 39.64 contains procedures whereby licensees can obtain credit hours for attendance at programs that were not "preapproved" by the Board. It is being deleted by the proposed regulation. Rather than completely eliminating this option, the Board should consider retaining it. To encourage licensees to attend "preapproved" courses, it could limit the retroactive approval option to a limited number of hours.

5. Section 39.61. Requirements - Fiscal Impact, Reasonableness, Need and Clarity

When is preapproval required

Subsection 39.61(b)(1) requires that at least 24 hours of continuing education be taken in courses approved by the Board or National Association of Boards of Examiners of Long-Term Care Administrators (NAB). The rest of the section discusses other alternatives for receiving credit for clock hours including college or university courses, individual study, authoring a published article and serving as an instructor. However, there is no indication that these alternatives must be Board or NAB approved. According to the Board counsel, the only exception to the "preapproval" requirement will be authoring a published article.

The regulation should clearly delineate the programs that require "preapproval." For example, Subsection 39.61(b)(2) should be deleted or revised to state clearly that college and university courses need to be preapproved by the Board. In addition, Subsection 39.52(b) should include "authoring a published article" as an exception to the "preapproval" rule.

Awarding "clock hours" for individual study and authoring a published article

Subsection 39.61(b)(3) allows a licensee to earn clock hours of continuing education through other activities including "individual study" and authoring an article. The continuing education prerequisite is 48 clock hours of instruction. "Individual study" is defined as not having "an instructor or other interactive learning methodologies" in Section 39.1. The regulation does not contain any procedures for crediting "clock hours" to "individual study." The regulation needs to describe how the Board will calculate the credit earned through individual study.

The subsection also states that a licensee may earn up to three clock hours per published article. It goes on to indicate that an author may earn additional clock hours for an article based on the complexity of the subject matter or work or if the article is published in a refereed journal. However, there is no indication of how and when the Board will determine the amount of additional credit to be awarded to a licensee for authoring a published article. The regulation needs to explain how this credit will be measured as well.

Authoring a published article and earning more clock hours

Subsection 39.61(b)(3) begins with this statement: "A maximum of 12 clock hours may be taken in any of the following categories." However, there is an exception to the maximum in Subparagraph 39.61(b)(3)(ii). This subparagraph indicates that a licensee who authored an article published in a refereed journal may earn up to 24 clock hours of credit.

Subparagraph 39.61(b)(3)(ii) is not consistent with the "maximum 12-hour rule" set forth in the first sentence in the subsection. To improve clarity, Subparagraph 39.61(b)(3)(ii) should appear as a separate subsection. It could be Subsection 39.61(b)(4). Subparagraph 39.61(b)(3)(iii) would then be renumbered as (ii).

6. Section 39.61. Requirements - Fiscal Impact, Reasonableness and Need

The proposed regulation deletes the existing language in Subsection 39.61(b)(2) which allows licensees to earn up to 12 credit hours by actively participating in community, professional and health care activities. Individual commentators claim that these activities are valuable experiences and they need the flexibility to use these activities as credit. The Board's position is that while these are worthwhile activities, they do not constitute education or learning which contributes directly to the professional competence of licensees.

Since the Board acknowledges that community, professional and health care activities are worthwhile, it needs to explain why they are not valuable as continuing education for licensees. Written comments to the Board questioned the value of some preapproved courses and presented a compelling case for receiving continuing education credit for professional, community and health care activities. For example, meetings with professional colleagues are an opportunity to exchange new and current ideas that enhance the quality and efficiency of health care and skilled nursing operations.

Section 9(b) of the Nursing Home Administrators License Act (63 P.S. § 1109(b)) requires licensees to attend "not less than 24 hours" of continuing education biennially. The Board increased the requirement to 48 hours. The Board's authority to increase the minimum requirement of the statute is clear. However, the Board should fully explain the need and rationale for restricting licensees' ability to meet the requirement.

Many nursing homes and their staffs operate under tight budgets. Limiting the options for administrators to meet their continuing education requirements may not be in the best interests of these facilities or their residents. Rather than eliminating the "community, professional and health care activities" option, the Board should examine the possibility of reducing the maximum amount of credit available for this option from 12 to 9 hours.