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

May 11, 2001

K. Stephen Anderson, M.Ed., CRNA, Chairperson
State Board of Nursing
116 Pine Street
Harrisburg, PA 17105

Re: Regulation #16A-516 (IRRC #2171)
State Board of Nursing
General Revisions of the Professional Nursing Provisions

Dear Mr. Anderson:

Enclosed are our Comments. They will soon be available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for 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 would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director
wbg
Enclosure

cc: Honorable Mario J. Civera, Jr., Majority Chairman, House Professional Licensure Committee
Honorable William W. Rieger, Democratic Chairman, House Professional Licensure Committee
Honorable Clarence D. Bell, Chairman, Senate Consumer Protection & Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection & Professional Licensure Committee
Honorable Kim Pizzingrilli, Secretary of the Commonwealth

Comments of the Independent Regulatory Review Commission

on

State Board of Nursing Regulation No. 16A-516

General Revisions of the Professional Nursing Provisions

May 11, 2001

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The State Board of Nursing (Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by April 11, 2003, the regulation will be deemed withdrawn.

1. Section 21.1. Definitions. - Clarity; Feasibility.

Accredited program

We have two issues. First, we could not find this term used either in existing Chapter 21 or the proposed amendments. Is this definition needed?

Second, if this term is applied to existing nursing education programs, do they meet this definition?

Compliance review

This definition refers to "guidelines of the Board." Where can these guidelines be found?

2. Section 21.21. Application for examination. - Clarity.

The Board is eliminating the existing 2-week time period for out-of-state candidates to file transcripts. The Board should specify when the transcript is required.

3. Section 21.31. Compliance reviews; list of approved schools. - Clarity.

The Preamble is clear regarding how the Board conducts compliance reviews of nursing education programs under Subsection (a). However, the wording of the regulation is unclear concerning how the reviews differ between accredited and non-accredited programs. The Preamble explains the accrediting process, but the regulation is silent. The final regulation

should define “accredited” or specify the process in this section. For clarity, the Board should also consider using separate subsections for accredited and non-accredited programs.

Subsection (b) specifies that the Board will compile and publish an annual list of approved nursing education programs. The regulation should state when and where the list will be published. We also question whether the information relating to the percentage of graduates passing the standard examination for a particular nursing education program is available?

4. Section 21.33. Types of approval. - Clarity.

Subsection (1) states “the Board may grant initial approval to a new nursing education program, with evidence that *acceptable standards* are being met, *for a period of time necessary* to evaluate the results....” Subsection (3) states “the Board may place on provisional approval a nursing education program not meeting *acceptable standards*.” We have two concerns.

First, what are acceptable standards? Are the “acceptable standards” the provisions of Subchapter A? The regulation should list the standards or provide a cross-reference to the specific standards a program must meet. Second, the Board should provide a specific amount of time to clarify the phrase “for a period of time necessary.”

In addition, Subsection (3) states “[If] the standards are not met *within a time designated* by the Board....” The Board should specify an amount of time in the regulation within which a nursing education program must meet the standards. Section 21.34(a) specifies that the Board will provide “90 days notice” of its intent to remove a nursing education program from the approval list. Adding a specific amount of time in Subsection (3) would be consistent with this provision.

5. Section 21.34. Removal from approved list; percentage failure rate in examination. - Reasonableness; Protection of the public health, safety and welfare.

We have three concerns with this section. First, in Subsection (b)(2), the Board proposes to place a nursing education program on provisional approval status if, in one examination year, 20% or more of its graduates fail the licensure examination (NCLEX) on their first try. Currently, the regulation provides for nursing education programs to be placed on provisional approval status if 40% or more of the graduates fail the examination.

In its Preamble, the Board states that if the amendment was in effect, the following nursing education programs would be on provisional approval status:

- 6 out of 26 diploma programs;
- 11 out of 22 associate programs;
- 17 of 32 baccalaureate programs.

This projection raises serious concerns with existing nursing education programs and the reported nursing shortage in the Commonwealth. Will the 20% standard, based upon first time failure of licensure examinations, improve the quality of existing nursing education programs? The Preamble says that the Board believes "a number of programs are not providing sufficient support services for students which results in lower pass rates for their graduates." Did the Board consider implementing more stringent requirements for programs to provide adequate support services?

Commentators have cited existing problems such as nursing shortages and falling enrollment rates in nursing education programs. If the amendment goes into effect, what impact would this have on the reported nursing shortage in the Commonwealth?

The House Professional Licensure Committee in their comments to the Board of April 24, 2001, raised several concerns with this proposed regulation. The Committee recommends that the Board "reconsider its proposal to raise the standard for program approval, in that this action would likely have an adverse impact on the shortage of nursing professionals." We concur with the concerns raised by the Committee.

Second, the regulation specifies in Subsection (b)(2), that the 20% failure rate is to encompass "graduates taking the licensure examination *for the first time*." A commentator expressed concern with reliance on the first time a graduate takes the examination. Should consideration be given for example, to those who take the examination six to twelve months after graduation? Should the Board consider graduates that fail the exam the first time, but retake and pass the exam the second time within the year?

Third, Subsection (b)(4) provides that the Board "may consider additional documented statistics concerning the examination scores received in other states by Commonwealth graduates in determining the approval status of the program." We have several questions.

What additional documents or statistics will the Board consider? Will this be done in a comprehensive manner that includes graduates who both pass and fail the examination? If this information could affect the Board's decision to place a program on provisional approval, the word "will" in Subsections (b)(1) and (b)(2) should be changed to "may."

6. Section 21.41. Notification; completion of program; records. - Clarity.

Subsection (c) provides that "a controlling institution is a university, college or hospital which conducts programs of education in nursing." The Board is defining the term "controlling institution" within the text of the regulation. The last sentence of Subsection (c) should be removed and placed in Section 21.1 relating to definitions. Further, in Section 21.71(a)(5), the Board uses the term "institution of higher education." Are the terms "controlling institution" and "institution of higher education" referring to the same institutions? If so, the term "controlling institution" should be used in both sections.

7. Section 21.51. Establishment. - Reasonableness; Implementation procedures; Clarity.

Program director

Subsection (b)(1)(vii) provides for a feasibility study to include a “job description for a full-time program director who meets the qualifications in Section 21.71.” We have two concerns with this section.

First, the reference in Subsection (b)(1)(vii) should be more specific than just “Section 21.71.” For example, it should direct the reader to Section 21.71(a)(1) relating to full-time nurse administrator and Section 21.71(b) relating to faculty and nurse administrator qualifications.

Second, the term “program director” has been changed in the proposed regulation to “nurse administrator” in Sections 21.71(a)(1) and (b). These terms should be consistent.

Transitional programs

Commentators state the amended regulation would not allow a hospital-based nursing education program to transition to an independent degree-granting program. The problem is that a new independent degree-granting program cannot be accredited until it graduates its first class of nursing students, even though it already existed as an accredited hospital-based nursing education program. The Board should explain how these programs would maintain Board approval in the transition to the new requirements.

8. Section 21.71. Faculty and staff requirements. - Fiscal impact; Clarity.

Subsection (a)(5) requires programs to have a “full-time librarian with at least a bachelor’s degree in library science.” Has the Board considered the fiscal impact on nursing education programs that may not currently meet the proposed criteria for a librarian?

Subsection (b)(6) consists of one lengthy sentence containing four conjunctions. For clarity, the Board should break this provision into more than one sentence.

9. Section 21.72. Faculty policies. - Clarity.

Subsection (f) requires faculty members to maintain a record of participation in continuing education, professional development and other activities. Should the program also be required to keep this record?

10. Section 21.90. Curriculum philosophy, purposes and objectives. - Clarity.

In Subsection (a), the concluding phrase “at stated time intervals” is vague. How often should the faculty review or revise the curriculum philosophy, purposes and objectives?

11. Section 21.90a. Core curriculum requirements. - Reasonableness; Clarity.

Subsection (a)(1) only uses areas of nursing practice identified by the National Council of State Boards of Nursing. Commentators believe this is too restrictive and information such as feedback from graduates and employers should also be considered. Did the Board consider other sources of information?

12. Section 21.90b. General education criteria. - Reasonableness; Clarity; Duplication.

The standards in this section are vague and contain non-regulatory language. How will nursing education program administrators know if their programs comply with these criteria? How will the Board enforce these criteria?

Subsection (b) refers to “education principles.” What “education principles” does this refer to and where can they be found?

In Subsection (c), it is unclear what is required by the sentence “[C]onsideration shall be given to students’ individual differences.”

Subsection (f) contains vague language. What is an optimal ratio of students to faculty? What are “optimal learning opportunities”?

Subsection (g) appears to overlap Subsection (e). Should the curriculum requirement in Subsection (g) be moved to Section 21.90a relating to core curriculum requirements?

13. Section 21.91. Facility and resource requirements. - Reasonableness; Clarity.

Subsection (b) contains subjective standards. Paragraph (1) uses the phrase “sufficient to meet the needs.” Paragraphs (2), (3) and (4) use the term “adequate.” Paragraph (5)(iii) uses the term “current.” How can a program know if it complies with these requirements? How does the Board intend to enforce these standards?

14. Section 21.123. Access and use of records. - Need.

Existing Section 21.123 provides safeguards for personal information. Why is this section being deleted?

15. Section 21.131. Evaluation. - Clarity.

The first sentence states, “the program shall be evaluated....” However, it does not state who has the responsibility to do the evaluation. Is this the responsibility of the nurse administrator or the faculty?

IRRC #2171 (#16A-516)
State Board of Nursing
General Revisions of the Professional Nursing Provision

K. Stephen Anderson, M.Ed. CRNA, Chairperson

Diane Miller

Date: 5-11-01