

Regulatory Analysis Form

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IRRC REVIEW COMMISSION

(1) Agency

Department of State, Bureau of Professional and Occupational Affairs, State Board of Examiners of Nursing Home Administrators

(2) I.D. Number (Governor's Office Use)

16A-628

IRRC Number: 2377

(3) Short Title

Deletion and Correction of Fees

(4) PA Code Cite

49 Pa. Code § 39.72

(5) Agency Contacts & Telephone Numbers

Primary Contact: Martha H. Brown, Counsel,
State Board of Examiners of Nursing Home Administrators (717) 783-7200
Secondary Contact: Joyce McKeever, Deputy Chief Counsel, Department of State (717) 783-7200

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
- Final Order Adopting Regulation
- Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
- Yes: By the Attorney General
- Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The proposed regulation amends the fee schedule for the State Board of Examiners of Nursing Home Administrators (Board) by eliminating references to the amount paid by applicants to take the National Association of Boards of Examiners of Long-Term Care Administrators (N.A.B.) examination, the state rules and regulations examination and the complete nursing home administration examination. The fees for these examinations are set by the testing organization, N.A.B., and not the Board. The proposed amendment also corrects two fees relating to continuing education program applications, which were mistakenly omitted or reduced by a regulation package concerning continuing education.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The proposed regulatory amendments are adopted under Section 7.1(a) of the Nursing Home Administrators License Act (Act), (63 P.S. §1107.1(a)), which provides that the Board shall fix the fees required under the Act by regulation.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No. The regulation eliminating references to examination fees is not mandated by any federal or state law or court order.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Examination fees are set by the national testing organization that administers the examinations. Eliminating references to the current examination fees in the regulations will obviate the need to amend the regulations in the future should the examination fees be changed. Correcting the fee for continuing education application per credit is necessary to rectify the unintentional deletion of a previous increase in this fee by a subsequent regulation package. Correcting the fee for continuing education individual program application is necessary to rectify the unintentional omission of the fee by a subsequent regulation package.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no specific public health, safety, environmental or general welfare risks associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Applicants for licensure will benefit by not having potentially conflicting sources of information relating to examination fees. The Board will benefit because the regulations will eliminate the need to make future adjustments to its regulations should the examination fees be changed. Individuals or entities submitting applications for continuing education programs will benefit by having the correct information relating to the fee for submission of such programs.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The Board has identified no group of individuals or entities who will be adversely affected by the regulation. Applicants for examination and continuing education programs will be required to bear up-to-date costs of providing the services involved.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All applicants for the N.A.B. examination, the state rules and regulations examination, and the complete nursing home administration examination are required to pay the fee set by the testing organization. The Board estimates that approximately 110 persons will avail themselves of one or more of the enumerated examinations in the next year. This regulation does not affect the fee charged by the testing organization. All individuals and entities submitting continuing education program applications are required to pay the fees set by the Board.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

These regulations do not place requirements on licensees concerning their conduct or compliance with state law regarding the performance of a licensing duty under licensing statutes. The regulation embodies the fees which are set by the testing organization and paid directly to the testing organization. Therefore, the information requested in this item is not applicable.

The increase in the continuing education program application fee per credit was promulgated under the Regulatory Review Act, effective December 2, 2000, and the Board merely inserts the proper fee at this time. The continuing education program individual application fee was established under the Regulatory Review Act, effective July 23, 1988, and the Board only reinstates the proper fee at this time.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

No specific costs or savings to the regulated community are anticipated. However, the general operational costs of the Board may be reduced by eliminating the need to make future amendments to the Board's fee regulations.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no anticipated costs or savings to local governments associated with this regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

Because the Board's operational expenses are paid from license renewal fees, there are no anticipated costs or savings to state government associated with implementing this regulation.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY	FY +1	FY +2	FY +3	FY +4	FY +5
SAVINGS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A

Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
State Board of Examiners of Nursing Home Administrators	\$ 163,265.43	\$ 177,296.81	\$ 197,813.76	\$ 182,000.00*
				*Budgeted

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no adverse effects or costs associated with the regulation. The regulated community will benefit because the Board will not be required to make any future amendments to its fee regulations to conform to changing costs of the licensing examinations.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Because the fees are currently part of the Board's regulations, no nonregulatory alternatives were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Because the fees are currently part of the Board's regulations, the only alternative regulatory scheme which was considered was to continue amending the regulation to reflect the national testing organization fee. The Department and the Board determined that applicants may experience confusion when the testing organization advertises different fees than the fees listed in the regulations, during the interim period when the Board is attempting to revise its regulations to reflect the new examination fees set by the national testing organization.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No federal licensure standards apply.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The National Association of Boards of Examiners of Long-Term Care Administrators (N.A.B.) examination required for Pennsylvania licensure is a uniform national examination. The fees charged are uniform in all the states surrounding Pennsylvania and in the remainder of the United States. Of the six surrounding states, three (Maryland, Ohio and West Virginia) require a state rules and regulations examination. This regulation, which does not establish any new examination requirement but deletes references to existing examination fees and reinstates existing continuing education fees which were inadvertently deleted by subsequent regulation packages, will not place Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation will have no effect on other existing or proposed regulations of the Board or other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Board reviews its regulatory proposals at regularly scheduled public meetings each month, generally on the second Wednesday of every month. Meetings are held in the Board's offices at 116-124 Pine Street, Harrisburg, Pennsylvania. Please contact the Board Administrator for further information or see the Department of State's website at www.dos.state.pa.us.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The regulation will not change any existing reporting, record keeping or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Board has identified no particular groups or persons who will be affected by the regulation.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon final publication in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

The Board continuously reviews its regulations.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

2377

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies.

BY: *Angela M. Elliott*
(DEPUTY ATTORNEY GENERAL)

State Board of Examiners of Nursing Home Administrators
(AGENCY)

BY: *John V. Tom*

DEC 08 2003
DATE OF APPROVAL

DOCUMENT/FISCAL NOTE NO. 16A-628
DATE OF ADOPTION: _____
BY: *Robert H. Morrow*
Robert H. Morrow

11/7/03
DATE OF APPROVAL

TITLE: Chairman
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

(Deputy General Counsel
(~~Chief Counsel~~
Independent Agency
(Strike inapplicable title)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if applicable. No Attorney General approval or objection within 30 day after submission.

PROPOSED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
49 PA. CODE, CHAPTER 39
STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS
DELETION AND CORRECTION OF FEES
16A-628

The State Board of Examiners of Nursing Home Administrators (Board) proposes to amend its regulations at 49 Pa. Code § 39.72 (relating to fees) by deleting references to examination fees and by correcting the fees for continuing education program applications, as set forth in Annex A.

A. Effective Date

The amendments would be effective upon publication of the final-form regulations in the Pennsylvania Bulletin.

B. Statutory Authority

The amendments are authorized under § 812.1 of the Administrative Code of 1929 (71 P.S. § 279.3a) and § 7.1(a) of the Nursing Home Administrators License Act (Act) (63 P.S. § 1107.1(a)). Section 7.1(a) of the Act authorizes the Board to fix fees by regulation. Section 4(a)(1) and (2) of the Act (63 P.S. § 1104(a)(1) and (2)) set forth the functions and duties of the Board, which include the development and application of appropriate techniques, including examinations, for determining whether an individual meets standards to receive a license as a nursing home administrator. Section 4(c) of the Act (63 P.S. § 1104(c)) authorizes the Board to make rules and regulations, not inconsistent with law, as may be necessary for the proper performance of its duties. Section 7 of the Act, 63 P.S. § 1107, directs the Board to prescribe the subject, character, manner, time and place of the examination, and requires that all examinations shall be prepared and administered by a qualified and approved professional testing organization.

C. Background and Purpose

Deletion of Examination Fees

The General Assembly has indicated its preference for the recognition of national uniform examinations and grading services in accordance with § 812.1 of the Administrative Code of 1929 (71 P.S. § 279.3a). The Board currently requires two examinations for initial licensure: the National Association of Boards of Examiners of Long-Term Care Administrators (N.A.B.) examination and a state rules and regulations examination. The proposed amendment to § 39.72 (relating to fees) deletes the examination fees for the N.A.B. examination, the state rules and regulations examination, and the combined examination. These fees are set by the testing organization which develops and administers the examinations, not by the Board. All 51 state boards or licensing agencies administer the N.A.B. examination as a requirement for licensure and the examination fees are uniform throughout the United States. In order to avoid the necessity of amending its regulations whenever the testing organization might change the fees, the Board proposes to delete references to the examination fees.

The fees for the examinations are established by the N.A.B. and communicated to applicants by both the N.A.B. and the Board, as part of the licensure application. Applicants for these exams pay the examination fees directly to the national examiners, via a certified check or money order payable to N.A.B., which the Board collects with the application submitted to the Board. The fee is held by the Board until the application is approved. After the Board grants the applicant permission to take the licensing examination, the fee payable to N.A.B. is transmitted to the test administrator. It is unnecessary and impractical for the Board to continue to publish the national examiners' examination fees in the Board's regulations. Because examination fees are no longer established by the Board, § 7.1 of the Act (63 P.S. § 1107.1), is inapplicable as to the national uniform examination and state rules and regulations examination developed by the national examiner. Thus, the Board is eliminating reference to these examination fees in § 39.72.

Other references to examination fees are found at §§ 39.5(a)(3) and 39.6(b). These sections require that the candidate for admission to the licensing examination pay the required fee for examination and licensure and also that the examination application be accompanied by the required fee. It would be inappropriate to delete these references to the examination fee, when the examination fee will continue to be submitted to the Board and transmitted to the test administrator once the application for examination is approved by the Board. There are no fees paid directly to the test administrator. All certified checks or money orders for the examination are made payable to N.A.B., the national examiner and test developer.

Correction of fees for continuing education program applications

The fee for continuing education program application per clock hour was changed from \$10.00 per clock hour to \$15.00 per clock hour as part of final rulemaking by the Board, pertaining to fees, published as final form regulations in the Pennsylvania Bulletin on December 2, 2000 (30 Pa.B. 6199). This fee is for continuing education providers seeking Board approval of an upcoming course. This fee was inadvertently published as \$10.00 per clock hour, however, in another final regulation published on March 10, 2001 (31 Pa.B. 1362). The need for the \$15.00 per clock hour fee was explained in the fee rulemaking effective December 2, 2000, promulgated under the Regulatory Review Act (71 P.S. §§ 745.1-745.12). The change proposed here corrects the erroneous fee of March 10, 2001.

In addition, the fee for continuing education individual program applications was initially proposed to be deleted by the regulation package pertaining to continuing education, published as proposed on February 6, 1999, because the Board intended to eliminate all individual retroactive approval for continuing education courses. In light of the concerns of the commentators on proposed, the Board reinstated limited retroactive continuing education course approval for individuals in the final-form regulations in the Pennsylvania Bulletin on March 10, 2001 (31 Pa.B. 1362). However, the fee for continuing education individual program applications was not reinstated in the final-form regulations as well. The need for the \$20.00 per application fee was explained in

the fee rulemaking effective July 23, 1988 (18 Pa.B. 3211), promulgated under the Regulatory Review Act (71 P.S. §§ 745.1-745.12). The change proposed here corrects the erroneous omission of the fee on March 10, 2001.

D. Compliance with Executive Order 1996-1

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation (February 6, 1996). The proposed amendment addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

E. Fiscal Impact and Paperwork Requirements

The proposed amendments as to the deletion of examination fees will have no adverse fiscal impact on the Board or its licensees. The proposed amendments as to continuing education fees will have fiscal impact on the Board and its licensees, but only insofar as it will reinstate the proper fees and permit the Board to charge the fees for continuing education approval which it has continuing authority to charge. The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector.

G. Sunset Date

The Board monitors its regulations on a continuing basis. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Board submitted a copy of this proposed regulation on December 16, 2003, to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. In addition to submitting the proposed rulemaking, the Board has provided IRRC and the committees with a copy of a detailed Regulatory Analysis Form prepared by the Board. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), if IRRC has comments, recommendations or objections regarding any portion of the proposed rulemaking, it will notify the Board within 30 days of the close of the public comment period. The notification will

specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of comments, recommendations and objections by the Board, the General Assembly, and the Governor prior to publication of the regulations.

I. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Christina Stuckey, Board Administrator, State Board of Examiners of Nursing Home Administrators, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-628 (Deletion of Examination Fees), when submitting comments.

ROBERT H. MORROW, NHA
Chairperson

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**

* * *

RENEWAL

* * *

§ 39.72. Fees.

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

Biennial renewal of nursing home administrators license.....	\$108
License application fee.....	\$40
[N.A.B. examination fee.....	\$235
State rules and regulations examination.....	\$87
Complete nursing home administration examination.....	\$322]
Temporary permit fee.....	\$145
Certification of examination scores.....	\$25
Verification of licensure or temporary permit.....	\$15
Continuing education provider application fee.....	\$40
Continuing education program application fee per clock hour....	[\$10] <u>\$15</u>
<u>Continuing education individual program application fee</u>	<u>\$20</u>



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF NURSING HOME ADMINISTRATORS

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7155

December 16, 2003

The Honorable John R. McGinley, Jr., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
State Board of Nursing Home Administrators
16A-628: Deletion and Correction of Fees

Dear Chairman McGinley:

Enclosed is a copy of a proposed rulemaking package of the State Board of Nursing Home Administrators pertaining to deletion and correction of fees.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

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

Robert H. Morrow, NHA, Chairperson
State Board of Nursing Home Administrators

RHM/MHB/kmh

Enclosure

cc: Scott J. Messing, Deputy Commissioner
Bureau of Professional and Occupational Affairs
Andrew Sislo, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Department of State
Martha H. Brown, Counsel
State Board of Nursing Home Administrators
State Board of Nursing Home Administrators

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

⑩

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INDEPENDENT
REGULATORY REVIEW COMMISSION

I.D. NUMBER: 16A-628
SUBJECT: Deletion and Correction of Fees
AGENCY: DEPARTMENT OF STATE

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
12/16/03	<i>Sandra J. Hooper</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
12/16/03	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
12/16/03	<i>St. Belmont</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
12/16/03	<i>C. R. P. [Signature]</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

December 10, 2003