

Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Department of State, Bureau of Professional and Occupational Affairs, State Board of Nursing

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

16A-5118

IRRC Number: 2383

(3) Short Title

Diploma Programs in Transition to Degree-Granting Status

(4) PA Code Cite

49 Pa. Code, Chapter 21
§ 21.51

(5) Agency Contacts & Telephone Numbers

Primary Contact: Teresa Lazo-Miller, Counsel

State Board of Nursing (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

☐ Policy Statement

(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.

These revisions amend 49 Pa. Code §21.51 to provide the methods by which a hospital-based registered nurse diploma education programs may transition to degree-granting status under the authority of a university or college which is pursuing, but has not yet attained, regional accreditation.

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

The Board is authorized to establish rules and regulations for the practice of professional nursing and the administration of the act under section 2.1(k) of the Professional Nursing Law (act) (63 P.S. § 212.1(k)). Section 6.1 of the act (63 P.S. § 216.1) requires the Board to establish standards for the operation and approval of nursing education programs. Section 5 of the act of June 28, 2002 (P.L. 651, No. 99) amended section 6 of the act (63 P.S. § 216), to include "programs in transition from approved diploma to degree granting programs" in the category of programs of professional nursing which may be approved by the Board.

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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.

These regulations are not mandated by federal law, regulations, or by court order. Although state law does not mandate the regulations, the Board's regulations provide the process for establishment and approval of diploma and degree-granting nursing education programs and regulations are needed to set forth the process for programs in transition.

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

The public has an interest in a supply of well-educated and highly skilled professional nurses. The provisions of § 21.51 pertain to the establishment of an approved diploma or degree-granting program of nursing. There is a compelling public interest in eliminating obsolete and unnecessary provisions and updating necessary provisions. The regulation will provide increased flexibility for hospital-based diploma programs that may wish to transition to degree-granting status by starting their own college or university. The public is protected by regulation which provides programs with a method for transition while ensuring that every nursing education program meets quality standards.

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

Nonregulation of nursing education programs would affect the public health and safety by permitting nursing students to be educated in programs that do not provide the highest quality education for safe and effective entry-level nursing practice. Nonregulation would also result in obsolete provisions remaining on the books.

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

These proposed amendments would benefit both consumers of nursing services and nursing students in assuring that nursing education programs maintain high educational standards, while permitting added flexibility for hospital-based diploma programs to transition to degree-granting status, should they wish to do so.

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(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 is not aware of any person or groups who would be adversely affected by the regulation.

(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.)

Those diploma nursing education programs that train professional nurses and wish to transition to degree-granting status by starting their own college or university would be required to comply with these regulations. There are currently 24 hospital-based diploma nursing education programs educating registered nurses in the Commonwealth. Please see the Board's website at <http://www.dos.state.pa.us/bpoa/nurbd/nurprograms.htm> for the most current list of nursing education programs.

(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.

Seven comments were received from the public following the publication or proposed rulemaking. The Board considered all comments and made substantial revisions to its proposed rulemaking.

(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.

It is not possible to provide a specific estimate of the costs or savings to the regulated community associated with complying with these regulations. Compliance should not involve any legal, accounting, or consulting procedures. The Board expects that the amendments will have no fiscal impact on hospital-based diploma programs seeking to transition and will impose only minimal additional paperwork on those programs beyond what is already required for establishment of a nursing education program.

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(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.

This rulemaking will not involve any direct costs or savings to local government and will not involve any legal, accounting or consulting procedures.

(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.

The Department and the Board will incur minimal costs to implement this regulation, in the form of required site visits and surveys of transitioning nursing education programs conducted by Board staff.

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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 Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
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.

See paragraphs (17)-(19) above.

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

Program	FY—01-02	FY—02-03	FY—03-04	Budgeted FY— 04-05
State Board of Nursing	\$4,324,290.12	\$5,091,980.11	\$5,270,287.07	\$5,989,000.00

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

No costs or adverse effects are anticipated to result from the regulations.

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

No nonregulatory approaches were considered.

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

As is evident from the amendments made between proposed and final rulemaking, the Board considered alternative organizational schemes for this rulemaking. The Board believes the final rulemaking offers much greater clarity than previously.

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(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.

The Board is not aware of any federal standards that relate to the issues addressed in this rulemaking.

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

The Boards of Nursing or their oversight agencies of the six states surrounding the Commonwealth of Pennsylvania (Delaware, Maryland, New Jersey, New York, Ohio, and West Virginia) have the authority to approve nursing education programs. Other agencies in those states confer degree-granting status, as does Pennsylvania's Department of Education. This rulemaking is consistent with the law and regulations of New York, New Jersey and Ohio, which do not mandate that nursing education programs be offered only in institutions holding current regional accreditation. Maryland law requires that all nursing education programs, including transition programs, be in schools that hold current regional accreditation. Delaware and West Virginia do not have regulations that address this situation, nor have these states had this situation occur.

These amendments will not put 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.

No other regulations of the Board or other state agencies would be affected by these regulations. These regulations recognize the Pennsylvania Department of Education as the proper state entity which provides colleges and universities with authority to operate.

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

The Board holds monthly meetings at which all information relative to this rulemaking will be discussed. Meetings are held in Board meeting rooms at 2601 North Third Street, Harrisburg, Pennsylvania. A schedule of Board meeting dates is available from the Board administrator at (717) 783-7143 or on the Department of State's website at www.dos.state.pa.us/bpoa.

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(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 amendments will impose only minimal additional paperwork on diploma programs seeking to transition beyond what is already required for establishment of a nursing education program. The additional reporting will take the form of brief annual reports on the progress of the transition and documentation of the pursuit of regional accreditation.

(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 not identified any group or subset of a group with particular needs that would be affected by the amendments. Therefore, no special provisions have been developed or anticipated.

(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 amendments will be effective on final publication in the Pennsylvania Bulletin.

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

The amendments have not been given a sunset date. The Board regularly evaluates the effectiveness of its regulations.

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WITH THE LEGISLATIVE REFERENCE BUREAU**

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2383

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Copy below is hereby certified to be a true and correct
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Agencies

BY: _____
(DEPUTY ATTORNEY GENERAL)

State Board of Nursing
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-5118

DATE OF ADOPTION: _____

BY: Janet Hunter Shields
Janet Hunter Shields, MSN, CRNP, CS

9.22.05

DATE OF APPROVAL

DATE OF APPROVAL

EXECUTIVE

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

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- [] Check if applicable
Copy not approved.
Objections attached.
- [] Check if applicable. No Attorney
General approval or
objection within 30 day
after submission.

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF NURSING
49 PA. CODE, CHAPTER 21
APPROVAL OF DIPLOMA PROGRAMS
IN TRANSITION TO DEGREE-GRANTING STATUS

The State Board of Nursing (Board) adopts amendments to § 21.51 (relating to establishment) governing the establishment of approved programs of nursing for professional nurses (registered nurses (RNs)) to read as set forth in Annex A.

Notice of Proposed Rulemaking was published at 34 Pa. B. 851 (February 14, 2004). Publication was followed by a 30-day public comment period. The Board received seven comments from the public. On March 16, 2004, the House Professional Licensure Committee (HPLC) submitted comments. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) made no comments. On April 14, 2004, the Independent Regulatory Review Commission (IRRC) submitted comments to the proposed rulemaking.

Statutory Authority

The Board is authorized to establish rules and regulations for the practice of professional nursing and the administration of the act under section 2.1(k) of the Professional Nursing Law (act), (63 P.S. § 212.1(k)). Section 6.1 of the act (63 P.S. § 216.1) requires the Board to establish standards for the operation and approval of nursing education programs. Section 5 of the act of June 28, 2002 (P.L. 651, No. 99) amended section 6 of the act (63 P.S. § 216) to include “programs in transition from approved diploma to degree granting programs” in the category of programs of professional nursing that may be approved by the Board.

Summary of Comments and Responses to Proposed Rulemaking

Public Comments

The Lancaster Institute for Health Education commented that the Board’s proposed rulemaking was “realistic and reasonable” and would allow the Board to “continue to protect the quality of educational curricula within our Commonwealth.”

The Pennsylvania Osteopathic Medical Association (POMA) commented that there were two osteopathic medicine colleges in Pennsylvania who could qualify to develop a nursing program. The POMA suggested that the Board allow hospital programs accredited by the American Osteopathic Association’s Healthcare Facilities Accreditation Program (HFAP), in addition to the Joint Commission on Accreditation of Healthcare Organizations (JCAHO, an independent organization), to develop nursing education programs. No osteopathic hospitals in Pennsylvania that conduct a diploma nursing education program. This rulemaking relates to the transition of an existing hospital-based nursing education program to a degree-granting nursing education program. Adding a new hospital accreditation organization, which would only serve to make it possible for an osteopathic hospital to open a diploma nursing education program, exceeds the scope of proposed rulemaking.

The Board will invite the POMA to provide additional information related to HFAP and separately consider whether HFAP accredited hospitals should be permitted to open a diploma nursing education program.

Mount Aloysius College commented that “[t]here are substantive questions about the hospital-based program’s capacity to provide the comprehensive education that is the hallmark of the associate or bachelor’s degree in nursing.” The College recommended “that diploma programs seek creative ways in which to partner over the long term with degree-granting institutions in order to afford their students the advantages that accrue to affiliation with such institutions.”

The Pennsylvania Medical Society expressed its support for the proposed rulemaking.

The Hospital and Healthsystem Association of Pennsylvania (HAP) noted that it fully supports the proposed regulations as written. HAP did suggest additional details be provided, outside of the rulemaking, such as whether the Board would send the Department of Education a statement that a diploma program wishing to transition to a degree-granting program had been on full approval status for 3 years prior to the transition. HAP suggested that the Board and the Department of Education consider hosting an educational program to provide such details. The Board has a checklist of requirements for program approval, which is provided to persons who contact the Board for information. The checklist will instruct interested parties how to obtain verification of full approval status.

Carol Gisselquist, Higher Education Specialist with the Pennsylvania Department of Education, wrote to clarify the role of the Department of Education, and noted that regional accreditation is different than the certificate of authority to operate granted by the Department of Education. Ms. Gisselquist noted that the rulemaking appeared to incorrectly identify the Department of Education as the agency that granted accreditation. The Board revised its final rulemaking to correctly identify the role of the Department and the accrediting body.

The Accrediting Council for Independent Colleges and Schools (ACICS) commented that it should be considered an accrediting body for purposes of the rulemaking. The U.S. Department of Education recognizes the Middle States Association of Colleges and Schools (Middle States) as the regional accrediting body for Pennsylvania institutions of higher learning. The U.S. Department of Education recognizes ACICS as an accrediting body for independent colleges and schools training in business careers. Currently, all Pennsylvania colleges and universities with Board-approved schools of nursing are accredited by Middle States. The Board does not believe that ACICS accreditation is comparable to Middle States accreditation and declines to make the proposed amendment.

HPLC Comments

The HPLC submitted two comments. First, the Committee sought clarification under subsection (a)(2)(iv), and asked what would happen to a nursing education program if the program did not obtain full approval from the Department of Education and has been in existence more than 6 years. The question is similar to one raised by IRRC and is addressed below.

Second, the HPLC asked whether the Board intended to make an exception for programs in transition to the rule that a nursing education program be developed under the leadership of a registered nurse. The Board did not intend this and believes the renumbered, redrafted final rulemaking addresses this issue.

IRRC Comments

First, IRRC commented that the phrase “under the leadership of a registered nurse” already existed in §§ 21.71(b) and 21.74(b) (relating to faculty and staff requirements for baccalaureate and associate degree programs; and faculty and staff requirements for diploma programs), and suggested that the phrase may be duplicative. The phrase is already part of existing § 21.51(a). It has not been added by the proposed rulemaking. This provision has been in existence since the regulation was part of the Board’s Handbook for Schools of Nursing from 1952. The provision remained in existence through two regulatory amendments, in 1976 (6 Pa. B. 2677) and 1983 (13 Pa. B. 2829). Throughout this time, the phrase has not caused any confusion among universities, colleges or hospitals as to the requirements for establishment of an approved nursing education program. The Board therefore declines to remove the phrase.

Second, IRRC noted that a commentator had suggested that HFAP be added as an approval body for hospitals. As discussed above, the Board will further examine this issue, which is distinct from the purposes of this rulemaking.

Third, IRRC suggested that subsection (a)(1)(iii) be amended to require a diploma program contemplating transition to a degree-granting program to have 3 years of full approval status before the program applies to the Board to start the transition process. The Board agrees that subsection (a)(1)(iii) is unclear as drafted because the date of transition is unspecified. In order to clarify this subsection, the Board has added language to indicate that a program must have been on full approval status for at least 3 years prior to the admission of students to the degree-granting program. In addition, the Board has amended subsection (a)(2)(i) to list the other Board regulations with which a program in transition must comply. A program in transition must comply with § 21.51(b). The amendment to this section will clarify that an intent to transition commences with a feasibility study, a process already familiar to all nursing education programs.

Fourth, IRRC submitted two comments on subsections (a)(2)(ii) and (iii), related to transition requirements. IRRC questioned whether the requirement that a program in transition submit an annual report was duplicative because that requirement exists in § 21.124 (relating to records to be filed with Board). The annual report submitted by nursing education programs under § 21.124 is a brief demographical report of enrollment and graduation dates. The report envisioned by the Board under subsection (a)(2)(ii) is a report on the progress of the transition. The Board has amended subsection (a)(2)(ii), which has been renumbered § 21.51(g)(1), to make this clarification. IRRC also commented that subsection (a)(2)(iii) states that the program in transition will be subject to a site review, but does not identify what entity will perform the review. The reviewer is identified in § 21.51(e) as a nursing education advisor to the Board. The Board's amendment of subsection (a)(2)(i) to include compliance with § 21.51(e) will clarify the identity of the reviewer.

Fifth, both the HPLC and IRRC commented on subsection (a)(2)(iv), related to the time period for transition. The HPLC queried whether it was necessary to use 6 years as a time limit, and expressed concern that retaining the 6-year time frame could force the Board to close an educational program that was on the verge of receiving full accreditation. IRRC asked what would happen after 6 years if the program does not obtain full approval from the Department of Education, and asked the Board to clarify the consequences of not meeting the 6-year time limit. In addition, IRRC noted that the preamble to the proposed rulemaking indicated that it may take up to 6 years for a college or university to obtain full regional accreditation.

The proposed rulemaking confused the certificate of authority to operate issued by the Pennsylvania Department of Education and regional accreditation by a United States Department of Education-approved body, as noted in Ms. Gisselquist's comments, addressed above. Thus, the question is what will happen to a nursing education program that fails to obtain full regional accreditation (§21.51(g)(3)).

The Board has removed the 6-year time limit for obtaining full regional accreditation. A program that submits annual progress reports evidencing satisfactory progress toward full accreditation under § 21.51(g)(1) may remain on initial approval status longer than 6 years. A program that fails to progress will be placed on provisional approval status under §21.33(c) (relating to types of approval).

Sixth, IRRC submitted comments on subsections (a) through (e), existing regulations relating to nursing education programs, procedures and requirements. IRRC expressed three concerns. First, IRRC noted that subsection (a)(1) should not be an exception to § 21.51. The Board agrees, and has amended the language. Second, IRRC noted that subsection (a)(1) is lengthy and complex and might be better renumbered. The Board agrees and has renumbered the rulemaking for simplicity. Third, IRRC noted that it is unclear whether existing requirements in subsections (b) – (e) will apply to programs in transition. The Board's renumbering and inclusion of specific regulatory references in what had been subsection (a)(2)(i) addresses this concern.

Seventh, IRRC noted that the Board uses both the terms “nursing program” and “nursing education program” in § 21.51. The regulation has been amended to use only the term “nursing education program.”

Eighth, IRRC noted that the term “wishing” was not standard regulatory language. The wording has been amended.

Ninth, IRRC requested that any references to types of approval status reference the appropriate section of the Board’s regulations explaining that status. Thus, full approval status would reference § 21.33(b) and initial approval status would reference § 21.33(a). The Board has made these amendments.

Tenth, IRRC noted that subsection (a)(2)(i) may be unnecessary if a program in transition is considered another type of approved program. The Board believes its renumbering of the regulation addresses this concern.

Additional Amendments

The Board has made several amendments in final rulemaking which delete obsolete requirements from §21.51. Specifically, the Board deleted references to the regional health planning agency, which has not existed for many years. Second, the Board increased the number of copies of the feasibility study required from 15 to 18 to provide adequate copies for the Board members and staff to review.

Fiscal Impact and Paperwork Requirements

The final rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. Programs in transition will be required to follow the same rules regarding the program proposal and feasibility study as new nursing education programs and will be charged the same fee for service as new programs. This fee is being promulgated in a separate rulemaking package related to fees. The final rulemaking will not impose significant paperwork requirements upon programs in addition to those for new programs or upon the Board, and none upon any political subdivisions. The private sector will not incur additional costs in submitting information to the Board.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 14, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa. B. 851 to

IRRC and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, 2005, the final-form rulemaking was approved by the HPLC. On _____, 2005, the final-form rulemaking was (deemed) approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2005, and approved the final-form rulemaking.

Additional Information

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

Findings

The Board finds that:

- (1) Public notice of intention to adopt these amendments 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 under those sections at 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) This final rulemaking is necessary and appropriate for the regulation of diploma nursing education programs in transition to degree-granting nursing education programs in the Commonwealth.
- (4) The amendments to this final-form rulemaking do not enlarge the original purpose of the proposed rulemaking at 34 Pa. B. 851.

Order

The Board therefore ORDERS that:

- (A) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by amending § 21.51 to read as set forth in Annex A.
- (B) The Board shall submit a copy of this order and 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 certify this order and Annex A and shall deposit them with the Legislative Reference Bureau as required by law.
- (D) This order shall take effect upon publication in the Pennsylvania Bulletin.

Janet Hunter Shields, MSN, CRNP, CS
Chairperson, State Board of Nursing

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

APPROVED PROGRAMS OF NURSING

§ 21.51. Establishment.

(a) A nursing EDUCATION program shall be developed under the authority of a ~~regionally accredited university or college, or hospital approved by the Joint Commission on Accreditation of Hospitals, and under the leadership of a registered nurse [-], except as follows:~~

- ~~(1) A Board approved hospital based diploma nursing education program wishing to transition to an associate or baccalaureate degree nursing education program may be developed under the authority of a university or college pursuing regional accreditation, if:~~
- ~~(i) The university or college has initial approval for degree granting status from the Department of Education.~~
 - ~~(ii) The university or college provides documentation of its pursuit of regional accreditation.~~
 - ~~(iii) The hospital based diploma nursing education program has maintained full approval status under § 21.33 (relating to types of approval) for at least 3 years prior to the transition.~~

~~(2) A nursing education program wishing to transition under paragraph (1) shall:~~

~~(i) Comply with all other Board regulations pertaining to nursing education programs.~~

~~(ii) Submit annually to the Board a written report of its progress and may be asked to appear before the Board to respond to questions or concerns which arise from the annual progress report.~~

~~(iii) Be reviewed onsite, after the first class has completed the new program and the results of the licensing examination taken by the first graduates within 1 year of graduation have been received.~~

~~(iv) Continue on initial approval under § 21.33 until the university or college has full approval for degree granting status from the Department of Education or for 6 years, whichever occurs first.~~

(1) A NURSING EDUCATION PROGRAM MAY BE DEVELOPED UNDER THE AUTHORITY OF A REGIONALLY ACCREDITED UNIVERSITY OR COLLEGE AND WILL BE KNOWN AS A DEGREE-GRANTING NURSING EDUCATION PROGRAM.

(2) A NURSING EDUCATION PROGRAM MAY BE DEVELOPED UNDER THE AUTHORITY OF A HOSPITAL APPROVED BY THE JOINT COMMISSION ON ACCREDITATION OF HOSPITALS AND WILL BE KNOWN AS A DIPLOMA NURSING EDUCATION PROGRAM.

(3) A BOARD-APPROVED DIPLOMA NURSING EDUCATION PROGRAM MAY TRANSITION TO A DEGREE-GRANTING NURSING EDUCATION PROGRAM UNDER THE AUTHORITY OF A UNIVERSITY OR COLLEGE PURSUING REGIONAL ACCREDITATION AND WILL BE KNOWN AS A PROGRAM IN TRANSITION.

(b) ~~A university or college may conduct programs of~~ nursing EDUCATION PROGRAM MAY BE DEVELOPED ONLY if there is an adequate faculty and adequate clinical facilities and the philosophy of the parent institution encompasses dual programs of education. ~~A hospital or education institution desiring to establish a program of nursing is required to:~~

(C) PRIOR TO ESTABLISHMENT OR TRANSITION, A NURSING EDUCATION PROGRAM SHALL:

- (1) Complete a feasibility study which shall include:
 - (i) Sufficient statistical data to support the need for a program within the community and to assure availability of an adequate supply and flow of interested candidates.
 - (ii) Identification of available clinical recourses for program implementation based on the projected enrollment and faculty. In viewing the clinical resources, the study shall speak to other nursing EDUCATION programs that share the teaching facilities identified in the study.

- (iii) Letters of intent from the cooperating agencies indicating positive commitment to the nursing EDUCATION program and the availability of sufficient clinical resources to meet the educational requirements of the program.
 - (iv) Actual cost of the program including faculty needed, clinical teaching resources, education supplies, office supplies, and the like and sufficient evidence of stable financial support.
- (2) ~~Submit the feasibility study to the regional health planning agency if that agency is willing to participate in the approval process.~~
- (3) Submit 15 18 copies of the feasibility study ~~and the written decision of the health planning agency, if obtained,~~ to the Board for approval.
- (4)(3) Employ the nurse administrator of the educational unit at least 12 months prior to the intended admission date of students. Board approval of the nurse administrator's credentials must be obtained prior to the appointment. FOR A PROGRAM IN TRANSITION, THE NURSE ADMINISTRATOR MAY SERVE AS ADMINISTRATOR OF BOTH THE DEGREE-GRANTING AND DIPLOMA NURSING EDUCATION PROGRAM DURING THE TRANSITION PERIOD.
- (5)(4) Submit 15 18 copies of the tentative planned education program to the Board. FOR DEGREE-GRANTING AND DIPLOMA NURSING EDUCATION PROGRAMS, THE SUBMISSION MUST BE MADE at least 8 months prior to the intended admission date of students. FOR A PROGRAM IN TRANSITION, THE SUBMISSION MUST BE MADE

AT LEAST 3 MONTHS PRIOR TO THE INTENDED ADMISSION
DATE OF STUDENTS.

~~(6)~~(5) Employ the teaching faculty at least 1 semester before the initiation of
their teaching responsibilities.

~~(e)~~(D) Change of ownership shall be processed as the establishment of a new program.

~~(d)~~(E) The planned educational program shall include:

* * *

~~(e)~~(F) A PROGRAM IN TRANSITION SHALL SUBMIT THE FOLLOWING TO
THE BOARD WITH THE PROGRAM'S FEASIBILITY STUDY:

(1) A COPY OF THE CERTIFICATE OF AUTHORITY TO OPERATE A
DEGREE-GRANTING INSTITUTION FROM THE DEPARTMENT OF
EDUCATION.

(2) DOCUMENTATION OF THE UNIVERSITY OR COLLEGE'S
PURSUIT OF REGIONAL ACCREDITATION.

(3) DOCUMENTATION THAT THE DIPLOMA PROGRAM HAS
MAINTAINED FULL APPROVAL STATUS UNDER § 21.33
(RELATING TO TYPES OF APPROVAL) FOR AT LEAST 3 YEARS
PRIOR TO THE INTENDED DATE FOR ADMISSION OF
STUDENTS.

(G) A PROGRAM IN TRANSITION SHALL:

(1) SUBMIT AN ANNUAL REPORT DETAILING THE PROGRESS OF
THE TRANSITION TO THE BOARD. IF REQUESTED BY THE
BOARD'S EDUCATIONAL ADVISOR(S), A PROGRAM IN

TRANSITION SHALL APPEAR BEFORE THE BOARD TO RESPOND TO QUESTIONS OR CONCERNS THAT ARISE FROM THE ANNUAL PROGRESS REPORT.

- (2) BE SUBJECT TO A SITE REVIEW BY THE BOARD'S EDUCATION ADVISOR(S) AFTER THE FIRST CLASS HAS BEEN AWARDED DEGREES AND THE RESULTS OF THE LICENSING EXAMINATION TAKEN BY THE FIRST CLASS ARE AVAILABLE.
- (3) CONTINUE ON INITIAL APPROVAL UNDER § 21.33(A) UNTIL THE UNIVERSITY OR COLLEGE HAS OBTAINED FULL REGIONAL ACCREDITATION.

(H) Following the review of the program and before final Board action is taken to grant permission to recruit students, an initial faculty AND NURSING EDUCATION PROGRAM survey will be made by a nursing educational advisor of the Board.

Fiscal Impact

State Government

The proposed rulemaking will update and clarify existing regulatory requirements. There will be no increase in cost to the Department as a result of this proposed rulemaking.

General Public

The proposed rulemaking has no fiscal impact on the general public.

Political Subdivisions

There will be no fiscal impact on political subdivisions as a result of the proposed rulemaking.

Private Sector

The updates in this proposed rulemaking will impose no significant costs on continuing care providers.

Paperwork

The proposed rulemaking will not impose additional paperwork on the Department and affected parties.

Effectiveness/Sunset Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore no sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking should be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, fax (717) 772-1969, psalvatore@state.pa.us within 30 days following the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Under the Regulatory Review Act (71 P.S. §§ 745.1—745.15), the Department is required to write to all commentators requesting whether or not they wish to receive a copy of the final-form rulemaking. To better serve stakeholders, the Department has made a determination that all commentators will receive a copy of the final-form rulemaking when it is made available to the Independent Regulatory Review Commission (IRRC) and the legislative standing committees.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 2, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance 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 the 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 Department, the General Assembly and the Governor of comments, recommendations or objections raised.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: 11-220. No fiscal impact; (8) recommends adoption.

(Editor's Note: See 34 Pa.B. 846 for a proposal related to this proposal.)

Annex A

TITLE 31. INSURANCE

PART VIII. MISCELLANEOUS PROVISIONS

CHAPTER 151. CONTINUING CARE PROVIDERS

§ 151.7. Disclosure statements.

* * * * *

(d) The certified financial statements required to be contained in disclosure statements, under section 7(a)(9) of the act (40 P.S. § 3207(a)(9)), shall be prepared in accordance with [generally accepted accounting principles and shall be signed by an independent certified public accountant in accordance with generally accepted auditing standards. The certified financial statements shall include the following as of the end of the providers two most-recent fiscal-years, or the period of time that the provider has been in existence, whichever is shorter.

(1) A balance sheet showing the assets, liabilities and equity.

(2) Statements of income, retained earnings or equity and changes in financial position.] Chapter 147 (relating to annual audited insurers' financial report required).

* * * * *

[Pa.B. Doc. No. 04-237. Filed for public inspection February 13, 2004, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Approval of Diploma Programs in Transition to Degree-Granting Status

The State Board of Nursing (Board) proposes to amend § 21.51 (relating to establishment) governing the establishment of approved programs of nursing for professional nurses (registered nurses (RNs)) to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

Section 6.1 of the Professional Nursing Law (act) (63 P.S. § 216.1) requires the Board to establish standards for the operation and approval of nursing education programs for the preparation of RNs. The Board is authorized to establish rules and regulations for the practice of professional nursing and the administration of the act under section 2.1(k) of the act (63 P.S. § 212.1(k)). Section 6 of the act (63 P.S. § 216) requires that every applicant for examination for licensure as an RN successfully complete an approved program of professional nursing. Prior to June 29, 2002, three classes of approved programs were listed under section 6 of the act: baccalaureate degree, associate degree and diploma programs. Under the act of June 28, 2002 (P.L. 651, No. 99)

(Act 99) (effective September 29, 2002), section 6 of the act was amended to include "programs in transition from approved diploma to degree granting programs."

C. *Background and Purpose*

This proposed rulemaking was initially generated by the Board in the fall of 2001 after it considered a request by the Lancaster Institute for Health Education to approve the transition of a hospital-based nursing program to a degree-granting program, where the nursing school would no longer be under the auspices of a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Under current § 21.51(a), the Board was unable to approve the request or assist a diploma nursing education program in this type of transition. A draft of this proposed rulemaking was sent on October 1, 2001, to 27 agencies, associations, health care entities and individuals who have been identified as interested parties or who have expressed an interest in proposed rulemakings by the Board. The Board reviewed their comments at its meetings of November 29-30, 2001, and January 10-11, 2002. Act 99 was subsequently enacted and explicitly includes programs in transition from approved diploma to degree granting programs in the category of Board-approved programs of professional nursing.

The Board seeks in this proposed rulemaking to accomplish the legislative intent of Act 99, which is to increase flexibility for hospital-based diploma programs to transition to degree-granting programs. At the same time, the Board seeks to set parameters for that transition to assure that students receive an educationally sound nursing education while maintaining eligibility for a license.

D. *Description of Amendments*

Under current § 21.51(a), a school of nursing to educate RNs must be developed under the authority of a regionally accredited university or college or a hospital approved by the JCAHO. Three types of programs currently exist to educate RNs: diploma programs, associate degree programs and baccalaureate degree programs. Diploma granting nursing education programs are conducted by hospitals, while associate and baccalaureate degree granting programs are conducted by regionally accredited universities or colleges. Hospitals wishing to establish their own degree-granting nursing education programs are unable to gain approval by the Board to operate a program until the school receives regional accreditation from the Department of Education (Department). However, a school of nursing may not receive regional accreditation until it graduates its first class. Moreover, it may take up to 6 years for an institution to gain regional accreditation from the Department. Nurses educated in this Commonwealth must satisfactorily complete a Board-approved nursing education program in order to sit for the nursing licensure examination. Thus, unless a hospital-based diploma program teams with an already-accredited college or university, it is unable to smoothly transition to degree-granting status and retain Board approval for its nursing education program.

The Board proposes to allow hospital-based diploma programs to transition to degree-granting status under the authority of a university or college pursuing regional accreditation, provided the controlling institution has begun the process of regional accreditation, in that it has been given initial approval by the Department to seek degree-granting status and shows that it continues to pursue regional accreditation. Only diploma programs

which are in good standing with the Board, maintaining full approval status under § 21.33 (relating to types of approval) for at least 3 years prior to the transition, may undertake to establish a degree-granting nursing education program. The Board proposes 3 years as a reasonable time period in which a diploma program must attain and maintain acceptable standards and adhere to the policies and regulations of the Board to undertake the transition. It is in the best interests of students and the public to ensure that the program undertaking the transition to a degree-granting nursing education program is stable, established and has maintained acceptable standards for a minimum time period.

A program wishing to transition from diploma to degree-granting status must comply with all other Board regulations pertaining to nursing education programs and submit annual progress reports to the Board. The Board does not intend to single out nursing education programs in transition for increased monitoring, but will monitor the programs to ensure that the transition is occurring smoothly and to ensure the quality of the education program. To that end, the program in transition must undergo a site visit and review by a nursing education advisor after the first class graduates and results of the licensing examination have been received. This requirement is consistent with the current practice for any new nursing education program approved by the Board, where the nursing education program is established within an existing college or university. Section 21.33 gives the Board the authority to grant initial approval status to new schools with evidence that acceptable standards are being met, for a period of time necessary to evaluate the results of the licensing examination taken by the first graduates of the school. Presuming it meets all other requirements of the regulations, the program in transition will be maintained on initial approval status for a maximum of 6 years or until it receives full approval from the Department, whereupon it may be granted full approval by the Board. The Board bases this 6-year time frame on information it received from the Department indicating that an institution may need up to 6 years to achieve full approval for regional accreditation. The Board wishes to emphasize the importance of the role of the Department in approving institutions for degree-granting status. The Board does not intend in any way to usurp the duties and powers of the Department, and, in fact, in this proposed rulemaking defers to the requirements that the Department has established for degree-granting institutions.

While the Board does not anticipate a rush by hospital-based diploma programs to begin their own degree-granting schools of nursing, the Board wishes to remove unnecessary restrictions which impede that transition, while ensuring that the quality of nursing education remains high.

E. *Fiscal Impact and Paperwork Requirements.*

The proposed rulemaking will have no fiscal impact and will not impose additional paperwork on the private sector, the general public and the Commonwealth and its political subdivisions. The proposed rulemaking will have no fiscal impact on programs seeking to transition and will impose only minimal additional paperwork on those programs beyond what is already required for establishment of a nursing education program.

F. *Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 2, 2004, 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 the 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.

H. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Martha Brown, Counsel, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference (16A-5118) Programs in Transition when submitting comments.

JANET HUNTER SHIELDS, MSN, CRNP, CS,
Chairperson

Fiscal Note: 16A-5118. 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 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES

APPROVED PROGRAMS OF NURSING

§ 21.51. Establishment.

(a) A nursing program shall be developed under the authority of a regionally accredited university or college, or hospital approved by the Joint Commission on Accreditation of Hospitals, and under the leadership of a registered nurse[.], **except as follows:**

(1) A Board-approved hospital-based diploma nursing education program wishing to transition to an associate or baccalaureate degree nursing education program may be developed under the authority of a university or college pursuing regional accreditation, if:

(i) The university or college has initial approval for degree-granting status from the Department of Education.

(ii) The university or college provides documentation of its pursuit of regional accreditation.

(iii) The hospital-based diploma nursing education program has maintained full approval status under § 21.33 (relating to types of approval) for at least 3 years prior to the transition.

(2) A nursing education program wishing to transition under paragraph (1) shall:

(i) Comply with all other Board regulations pertaining to nursing education programs.

(ii) Submit annually to the Board a written report of its progress and may be asked to appear before the Board to respond to questions or concerns which arise from the annual progress report.

(iii) Be reviewed onsite, after the first class has completed the new program and the results of the licensing examination taken by the first graduates within 1 year of graduation have been received.

(iv) Continue on initial approval under § 21.33 until the university or college has full approval for degree-granting status from the Department of Education or for 6 years, whichever occurs first.

* * * * *

[Pa.B. Doc. No. 04-238. Filed for public inspection February 13, 2004, 9:00 a.m.]

STATE POLICE

[37 PA. CODE CH. 42]

Use of Unmarked Vehicles

The act of June 26, 2001 (P. L. 734, No. 75) (Act 75) requires the State Police, in consultation with the Department of Transportation (Department), to promulgate regulations for the use of unmarked vehicles by police officers. The effective date of Act 75 was August 25, 2001. The proposed rulemaking requires officers using unmarked vehicles to carry identification and display it upon request, unless it would jeopardize their safety. Officers using unmarked vehicles for patrol duties must be in uniform; officers using unmarked cars for duties that are likely to involve vehicle stops shall wear clothing bearing the specific name of the law enforcement agency or task force. When making a stop in an unmarked vehicle, the officer shall choose the safest location possible. In a vehicle pursuit, officers in an unmarked vehicle shall have audible and visual signals that comply with regulations of the Department, and unmarked vehicles shall relinquish the lead in pursuit as soon as marked vehicles are available.

Effect

The proposed rulemaking will affect all Commonwealth law enforcement agencies that use unmarked vehicles.

Fiscal Impact

The proposed rulemaking will have a minimal fiscal impact.

Paperwork Requirements

The proposed rulemaking will not require the completion of additional forms, reports or other paperwork.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 4, 2004, the State Police 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 House Judiciary Committee and the Senate



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF NURSING
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7142

September 30, 2005

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

Re: Final Regulation
State Board of Nursing
16A-5118: Approval of Diploma Programs in Transition to Degree-Granting Status

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Nursing pertaining to approval of diploma programs in transition to degree-granting status.

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

Sincerely,

Janet Hunter Shields, MSN, CRNP, CS

Janet Hunter Shields, MSN, CRNP, CS, Chairperson
State Board of Nursing

JHS/TLM:apm

Enclosure

c: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Albert Masland, 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
Teresa Lazo-Miller, Counsel
State Board of Nursing
State Board of Nursing

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

I.D. NUMBER: 16A-5118

SUBJECT: State Board of Nursing: Approval of Diploma Programs in Transition to
Degree-Granting Status

AGENCY: DEPARTMENT OF STATE

2383

TYPE OF REGULATION

- Proposed Regulation
- X 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
9/30/05	<i>Sandra J. Harper</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
9/30/05	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
9/30/05	<i>Stephen J. Smith</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
9/30/05	<i>Steph J. Smith</i>	ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

September 22, 2005