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COMMONWEALTH OF PENNSYLVANIA
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April 14, 2004

Janet H. Shields, MSN, CRNP, CS, Chairperson
State Board of Nursing
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-5118 (IRRC #2383)
State Board of Nursing
Approval of Diploma Programs in Transition to Degree-Granting Status

Dear Chairperson Shields:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulation review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

sfn

Enclosure

cc: Honorable Thomas P. Gannon, Majority Chairman, House Professional Licensure Committee
Honorable William W. Rieger, Democratic Chairman, House Professional Licensure Committee
Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Pedro A. Cortes, Secretary, Department of State

Comments of the Independent Regulatory Review Commission
on
State Board of Nursing Regulation No. 16A-5118
Approval of Diploma Programs in Transition to Degree-Granting Status
April 14, 2004

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The State Board of Nursing (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on March 15, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

Section 21.51. Establishment. – Reasonableness; Implementation procedures; Need; Clarity.

Subsection (a) Accreditation agencies and leadership

Subsection (a) states that a nursing program shall be developed at a regionally accredited university or college, or a hospital approved by the Joint Commission on Accreditation of Hospitals (JCAHO), and under the leadership of a registered nurse. There are two areas of concern.

The House Professional Licensure Committee (House Committee) in its comments questioned whether a program transitioning from a hospital-based nursing education program would be required to be under the leadership of a registered nurse. This question relates both to the existing structure of Subsection (a) and the use of the phrase “except as follows” in the proposed regulation. According to the Board counsel, the intent is that all nursing education programs be under the leadership of a registered nurse. This is consistent with existing regulations at 49 Pa. Code §§ 21.71(b) and 21.74(b) which require advanced degrees in nursing and nursing experience for directors of both diploma and degree programs.

Since the requirement is in place elsewhere in existing regulations, inclusion of the phrase “under the leadership of a registered nurse” in Subsection (a) may be duplicative and unnecessary. To avoid confusion, the Board should consider amending the regulation in the final-form version by deleting this phrase or moving it to a separate subsection that states it is a requirement for all programs including ones in transition from diploma-granting to degree-granting status.

Second, a commentator suggested that the subsection identify both JCAHO and the Healthcare Facilities Accreditation Program (HFAP) as agencies that can approve hospitals. The

commentator noted that the federal government has approved both HFAP and JCAHO for hospital accreditation.

The shortage of nursing staff is a recognized and well-documented concern. The existence of more nursing education programs could stimulate greater entry by qualified people into the profession. Therefore, the Board should review the need to limit diploma programs to hospitals accredited by JCAHO when hospitals may receive accreditation from other organizations.

Subsection (a)(1) Approval status

Subsection (a)(1)(iii) states that a hospital-based nursing program must maintain “full approval status under § 21.33 (relating to types of approval) for at least 3 [three] years prior to the transition.” The process for accreditation and final approval for degree-granting status may take six years after an institution first receives initial approval by the Department of Education (Department). It is our understanding that the Board will require programs to achieve “full approval status” for three years before they start the transition. In the final-form regulation, the Board should amend Section 21.51(a)(1)(iii) to specify that programs need to have three years of “full approval status” before they apply to the Board to start the transition process.

Subsection (a)(2)(ii) and (iii) Transition requirements

Subsection (a)(2) sets forth requirements for programs in transition to degree-granting status. There are two concerns with these subsections.

First, Subsection (a)(2)(ii) requires programs in transition to submit annual progress reports. An existing provision at 49 Pa. Code § 21.124 already requires schools of nursing to file annual reports with the Board. In order to avoid duplicative language, we recommend that the final-form regulation be amended to delete the annual report requirement in Subsection (a)(2)(ii).

Second, Subsection (a)(2)(iii) states that the program shall be reviewed on-site, but does not identify what entity will do the review. It is also unclear when the review will take place. The final-form regulation should clearly state that the Board will perform the review. It should also reference Section 6.1 of the Professional Nursing Law (Act) (63 P.S. § 216.1) that requires a site visit to a nursing education program at least once every three years.

Subsection (a)(2)(iv) Time period for transition

This subsection requires programs in transition to continue on initial approval under Section 21.33 until the university or college achieves full approval status from the Department or for six years, whichever occurs first. There are two concerns with this subsection.

First, the House Committee questions the intent of this subsection and what happens after six years if the program does not obtain full approval from the Department. We share the House Committee’s concern and note that Section 21.33(a) does not include a specific time limit for initial approval.

If the program does not obtain full approval from the Department within six years, the next step is unclear. What happens to the program and its students? Will the program in transition be required to follow the provisions in Section 21.41, relating to discontinuance of a school of

nursing, or will it revert back to a hospital-based program? The final-form regulation should specify the consequences of not meeting the six-year time limit.

Second, the Preamble indicates that it may take up to six years for a college or university to obtain "full approval for regional accreditation." However, it is our understanding that six years is the approximate time it takes. It could take less or more time for a legitimate institution to achieve accreditation. The six-year time frame is an estimate. Is it necessary to use six years as a time limit? The programs are already required to file annual reports with the Board and the Board is required to do on-site reviews at least once every three years. Therefore, the Board should be able to monitor their progress. Retaining the six-year time frame could force the Board to close an educational program that was actually on the verge of receiving accreditation.

Subsections (a)-(e) Nursing education programs, procedures and requirements

In the existing regulation, Subsection (a) states that colleges, universities and hospitals must be accredited to establish nursing education programs. Subsections (b)-(e) set forth procedures and requirements for these programs. The proposed regulation adds a new nursing education program option and its procedures and requirements to Subsection (a). We have three concerns.

First, the new language in Subsection (a) identifies the programs in transition as an exception. In contrast, the Act includes these programs in its list of "approved programs" for nursing education. The last sentence of Section 6(a) of the Act (63 P.S. § 216(a)) reads:

Approved programs shall include baccalaureate degree, associate degree, diploma nursing programs and programs in transition from approved diploma-to degree-granting programs when all other requirements of the Board have been met.

Hence, the diploma programs in transition are not an exception in the Act. They are approved programs. Subsection (a) should reflect the Act by listing the different types of approved nursing education programs.

Second, Subsection (a)(1) begins with a lengthy and complex sentence followed by a list of requirements. The long sentence seeks to describe programs in transition by using numerous modifiers. If the basic definition of the programs in transition is moved to Subsection (a), then the standards and requirements for these programs could be a separate provision. The unique contents of Subsections (a)(1) and (2) could be set forth in a separate subsection in the same way that requirements for the existing programs are contained in Subsections (b)-(e).

Third, it is unclear whether the existing requirements in Subsections (b)-(e) will also apply to programs in transition, since they are identified as exceptions. The final-form regulation should specify whether these programs must also comply with Subsections (b)-(e).

Miscellaneous Clarity

In the course of our review, we identified the following issues relating to clarity.

The first paragraph of Section 21.51(a) uses the term "nursing program" and this term is also used in existing language in Sections 21.51(b)(1)(ii) and (iii). Subsections 21.51(a)(1) and (2) use the term "nursing education program." If "nursing program" and "nursing education program" are the same type of program, then the regulation should use just one of the two terms.

Second, the word "wishing" is not standard regulatory language. It is used in Subsections (a)(1) and (2) in the proposed regulation. The final-form regulation should state that diploma-granting programs may be modified into degree-granting programs if they meet the specified requirements.

Third, Section 21.51(a)(1)(iii) refers to "full approval status" under Section 21.33. There are three different types of approval identified in the existing regulations in Section 21.33. Full approval is described in Section 21.33(b). Section 21.51(a)(1)(iii) should identify the specific subsection (§ 21.33(b)) that defines full approval for nursing education programs. In addition, the reference in Subsection 21.51(a)(2)(iv) to "initial approval" under Section 21.33 should specifically refer to Section 21.33(a).

Fourth, Subsection (a)(2)(i) refers to "all other Board regulations pertaining to nursing education programs." Would this provision be necessary if these programs were considered another version of an approved nursing education program rather than an exception? If it is necessary, then it should reference the regulations in Subchapter A of Chapter 21.



Facsimile Cover Sheet

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To: Suzanne Hoy
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Phone: 7-2628
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Date: 4/14/04
Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Nursing regulation #16A-5118 (IRRC #2383). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:

Suzanne Hoy

Date:

4/15/04