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

June 28, 2007

Mary E. Bowen, R.N., C.R.N.P., Chairperson
State Board of Nursing
2601 North 3rd Street
Harrisburg, PA 17110

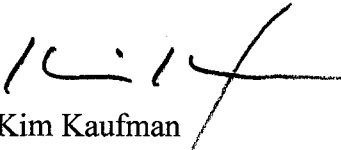
Re: Regulation #16A-5130 (IRRC #2608)
State Board of Nursing
Continuing Education for Professional Nurses

Dear Chairperson Bowen:

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 regulatory 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 me.

Sincerely,


Kim Kaufman
Executive Director
wbg
Enclosure

cc: 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 P. Michael Sturla, Majority Chairman, House Professional Licensure Committee
Honorable William F. Adolph, Jr., Minority Chairman, House Professional Licensure Committee
Honorable Pedro A. Cortes, Secretary, Department of State

Comments of the Independent Regulatory Review Commission

on

State Board of Nursing Regulation #16A-5130 (IRRC #2608)

Continuing Education for Professional Nurses

June 28, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the April 28, 2007 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Nursing (Board) to respond to all comments received from us or any other source.

1. Section 21.5. Fees. - Reasonableness; Implementation procedure; Clarity.

The new fee of \$75 for “request for approval of 1 hour of continuing education for a professional nurse” generated confusion. The House Professional Licensure Committee (House Committee) requested clarification of this fee.

It is our understanding that the fee only applies to programs or courses not already approved by the Board in Section 21.134(a) and would only be charged for new courses or programs submitted by a provider or registered nurse (RN) licensee for Board review under Section 21.134(b). The description of the fee should be amended to indicate that it does not apply to education courses or programs approved by the Board under Section 21.134(a).

In addition, why is this fee limited to “one hour”? What if a RN or provider submitted an application for approval of several programs or courses from a single provider? Could the Board approve a particular provider, or a specific slate of courses or programs, rather than “one hour” of credit?

2. Section 21.29. Expiration and renewal of license. - Implementation procedure; Clarity.

Under Subsection (c)(3), how does a licensee “verify” compliance with the continuing education requirement? Will the form provided by the Board give direction on how to verify compliance? If so, the substance of the verification process needs to be explained in this regulation. For example, existing regulations at 49 Pa. Code § 23.87 require optometrists to report the following continuing education course information with their renewal application:

- (1) Dates attended.
- (2) Continuing education hours claimed.
- (3) Title of course, including the course number assigned by the Board, if applicable, and description of content. For those courses which are approved to meet the requirements

for therapeutic or glaucoma certification, the licensee claiming credit shall ensure that the certificate of attendance includes the course number and number of hours that apply toward the requirement for therapeutic or glaucoma certification.

(4) School, clinical hospital, medical center, optometric center or organization sponsoring course, clinical conference, clinical rounds or preceptor training.

(5) Instructor.

(6) Name of licensee.

In other chapters of the existing regulations, licensure boards require their licensees to sign statements certifying completion of the continuing education courses. The final-form regulation should set forth the process of verification that RNs will be required to use.

3. Section 21.131. Continuing education. - Consistency with the statute; Implementation procedure; Clarity.

This section contains seven subsections. They include topics such as "Exception," "Reinstatement" and "Waiver." The latter are very similar to the language of the Professional Nursing Law (Law) at 63 P.S. §§ 222(d) and (e). However, there is nothing in the proposed regulation that reflects the provision of the Law for school nurses at 63 P.S. § 222(g)(2). This statutory provision reads:

In lieu of meeting the requirements of this section:

* * *

(2) School nurses who as certified education specialists are required to obtain continuing professional education under section 1205.2 of the act of March 10, 1949 (P.L. 30, No. 14), known as the "Public School Code of 1949" [24 P.S. § 12-1205.2], and under this act [Law] shall be **permitted** to submit evidence of the completion of education courses approved for their certification by the school district. (Emphasis added.)

School nurses expressed confusion over the impact of the proposed regulation on their profession. The House Committee recommended that the Board address this issue.

As noted above, nothing in the proposed regulation reflects Subsection 12.1(g)(2) of the Law or contains a reference to this statutory provision. In addition, the continuing education requirements for school certification and licensure renewal are different. To maintain school certification, school nurses are required to obtain 180 hours of continuing education over five years. Under Section 12.1(b) of the Law, RNs are required to complete 30 hours of continuing education every two years. School RNs are given no guidance on how to respond to these different requirements.

The Law allows school RNs to submit evidence of continuing education obtained for school certification "in lieu of meeting the requirements" for continuing education for licensure renewal. However, the proposed regulation does not establish the procedures for submitting this "evidence." Consistent with our comment on Section 21.29(c)(3), the final-form regulation should specify the documentation that school RNs need to submit for biennial renewal of their licenses with the Board.

4. Section 21.132. Continuing education hours. - Implementation procedure; Clarity.

The House Committee requested clarification regarding the basis for three hours of “course-related clinical practice” being listed as equivalent to one hour of continuing education in Subsection (b)(1). In addition, the Board should define the term “course-related clinic practice” in the final-form regulation or provide examples for this term in the Preamble.

5. Section 21.133. Continuing education content. - Reasonableness; Implementation procedure; Clarity.

Subsection (d) includes the phrase “if approved by the Institutional Review Board.” In discussing this provision, the Preamble states: “Research must be approved by the sponsoring facility's Institutional Review Board to be creditable.” The use of the term “Institutional Review Board” in the proposed regulation without a similar reference to a “sponsoring facility” is unclear. Furthermore, what type of institution can be the “sponsoring facility”? Does this term include licensed or accredited health care facilities and nursing schools at regionally accredited universities or colleges? The final-form regulation should clarify that the “Institutional Review Board” is a facet of a “sponsoring facility” and define the term “sponsoring facility.”

6. Section 21.134. Continuing education sources. - Reasonableness; Fiscal impact; Implementation procedure; Clarity.

Subsection (a) – Preapproved providers and programs

The opening paragraph of this subsection states that the “following providers of continuing education and credentialing organizations ... are approved.” However the list in Subsection (a) includes both programs and providers. There are three issues.

First, the opening paragraph of Subsection (a) should be amended to refer to both providers and programs, or the subsection should be divided into separate lists, one for providers and the other for programs, in the final-form regulation.

Second, who are the approved providers for the programs in Subsections (a)(1) and (a)(2)? Does the Board maintain a list of approved providers on its website? If not, it should. In addition, the list of approved providers or a reference to the website location of the list should be included in the final-form regulation.

Third, what specific organizations or providers are covered by Subsections (a)(6) and (a)(7)? Existing provisions for continuing education in Section 21.334(a)(1) include the full names of organizations such as the American Nurses Credentialing Center’s Commission on Accreditation and American Medical Association. The names of organizations approved by the Board as providers should be included in the final-form regulation or, as indicated above, in the list of approved providers available on the website that is referenced in the final-form regulation.

The Pennsylvania Health Care Association and Pennsylvania Homecare Association submitted comments asking whether their programs would qualify as continuing education credits. The Board should clarify whether they are included in Subsection (a). If not, it should consider amending Subsection (b) and the new fee in Section 21.5 to allow such organizations to apply for

pre-approval as providers. There are examples in existing regulations of other boards allowing providers to apply for registration or approval by a board (see 49 Pa. Code §§ 33.403(d), 39.41 and 43, and 23.84).

Subsection (b) – Procedures for Board review and approval of programs not covered by Subsection (a)

This subsection lists the contents for an application submitted by a provider or a RN licensee for Board approval of a new source or program for continuing education. Subsection (b)(14) reads: “Other information requested by the Board.” How and when will the Board inform the applicant of the “other information” that it requires? The final-form regulation should state the Board will notify the applicant of its request for additional information in writing.

Subsection (d) – Number of continuing education hours awarded to new programs

This subsection states:

Upon approval of a continuing education activity under subsection (b), the Board will determine the number of continuing education hours awarded for the activity.

Will the Board’s determination affect the total charged pursuant to the new fee of \$75 “for approval of 1 hour of continuing education for a professional nurse”? How will this fee be assessed? What if an applicant claims that it is only for one hour of continuing education when it submits the application but the Board determines that the program or activity equals two or more hours? Will the Board send a bill to the applicant for the unpaid portion of the fee? The Board needs to specify how the new fee in Section 21. 5 will be charged to applicants.

Finally, as noted by the House Committee, the proposed regulation uses different terms such as “programs” and “sources” and “activity” interchangeably in different parts of this section. Sections 21.133(b) and (c) also use the term “course” for a similar purpose. The Board needs to clarify its use of terms such as program, course, source, or activity, and what courses or activities will qualify as “continuing education.”

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Cynthia Montgomery
Agency: Department of State
Licensing Boards and Commissions
Phone: 3-7200 or 3-3394 (Cynthia)
Fax: 7-0251
Date: June 28, 2007
Pages: 6

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Nursing's regulation #16A-5130 (IRRC #2608). 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:

Date:

6/28/07