

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

11:05 Am

(1) Agency

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

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

16A-5131

IRRC Number: 2631.

(3) Short Title

Faculty Requirements for RN Programs

(4) PA Code Cite

49 Pa. Code, §§ 21.1 21.71, 21.72, 21.74, 21.75 and 21.124

(5) Agency Contacts & Telephone Numbers

Primary Contact: Teresa Lazo, 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.

The regulation sets forth the qualifications for the nurse administrator and faculty of nursing education programs. The regulation should increase the availability of qualified faculty to teach in nursing education programs, thereby increasing the capacity of the Commonwealth's nursing education programs.

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

Section 6.1 of the Professional Nursing Law (act) (63 P.S. § 216.1), authorizes the Board to establish standards for nursing education programs in the Commonwealth. Section 2.1 of the act authorizes the Board to promulgate regulations to effectuate the act.

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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.

The regulation is not mandated by any federal or state law.

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

The Pennsylvania Workforce Development Board completed a study of the nursing shortage in the Commonwealth and concluded that a major impediment to increasing the capacity of the Commonwealth's nursing education programs was the availability of qualified faculty. The organization communicated its findings to the State Board of Nursing, which in turn proposed this rulemaking. The rulemaking broadens the categories of faculty for nursing education programs and provides for less restrictive qualifications for nursing faculty while ensuring that faculty members are competent to teach in the areas in which they are hired.

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

The shortage of qualified nurses in the Commonwealth creates a serious risk to all citizens deprived of adequate nursing care. The Board's rulemaking will enable nursing education programs to hire more faculty and thereby increase enrollment, creating more qualified nurses to serve the citizens of the Commonwealth.

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

The general public will benefit from increased availability of nursing services in the Commonwealth.

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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 has not identified any particular groups that will 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.)

All nursing education programs will be required to comply with the regulation.

(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.

The Board requested and received input from stakeholders, including nursing education programs, the Pennsylvania State Nurses Association and the Hospital and Healthsystem Association of Pennsylvania.

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(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.

There are no costs or savings to the regulated community associated with compliance with this rulemaking.

(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 costs or savings to local governments associated with complying with the 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.

There are no costs or savings to state government associated with the implementation of the rulemaking because the Board is self-supporting.

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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 06-07	FY +1 Year 07-08	FY +2 Year 08-09	FY +3 Year 09-10	FY +4 Year 10-11	FY +5 Year 11-12
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
Total Savings	NA	NA	NA	NA	NA	NA
COSTS:						
Regulated Community	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
Total Costs	NA		\$	\$		
REVENUE LOSSES:						
Regulated Community	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
Total Revenue Losses	NA	NA	NA	NA	NA	NA

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

NA

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

Program	FY - 03-04	FY - 04-05	FY - 05-06	BUDGETED FY 06-07
State Board of Nursing	\$5,382,111	\$5,946,037	\$6,388,169	\$7,985,000

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

There are no costs associated with the regulation; therefore, a cost-benefit analysis is not a useful tool in analyzing this proposed rulemaking.

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

Because faculty requirements are already in regulation, the Board could consider only deleting the requirements completely or amending the requirements. As the Board is responsible for ensuring the quality of nursing education in the Commonwealth, the Board did not feel it would be appropriate to fail to regulate the qualifications for nursing education faculty.

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

See response to number 22.

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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.

No federal 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 regulation will not put Pennsylvania at a competitive disadvantage with other states. In virtually every state that assigns the duty of ensuring the quality of nursing education programs to the state board of nursing, the state board sets forth qualifications for faculty. The Board's proposal is consistent with the requirements of national accrediting bodies that accredit nursing education programs and are also consistent with other states' requirements.

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

The regulation will not affect 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 public was given 30 days to comment after the publication of proposed rulemaking. No other public comment period will be provided. No public hearings are scheduled. The Board discusses its regulatory initiatives at its regularly scheduled public meetings. Meeting dates are available on the Department of State's website: 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 require faculty to retain documentation of their continuing education and other professional activities that relate to their competence to teach in a particular subject area. It is likely that faculty members already retain this information.

(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.

No groups with particular needs have been identified.

(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 become effective on publication of the final-form rulemaking in the Pennsylvania Bulletin.

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

The Board continuously monitors its regulations at its meetings. Meeting dates are available on the Department of State's website, www.dos.state.pa.us.

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State Board of Nursing
(AGENCY)

BY: _____
Andrew C. Clark

DOCUMENT/FISCAL NOTE NO. 16A-5131

APR 29 2008

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: Mary E. Bowen
Mary E. Bowen, RN, DNS, CNAA

(Executive Deputy General Counsel
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
FACULTY REQUIREMENTS FOR NURSING EDUCATION PROGRAMS

The State Board of Nursing (Board) hereby amends §§ 21.1, 21.71, 21.72 21.75 and 21.124 and deletes § 21.74 (relating to faculty and staff requirements for diploma programs) to read as set forth in Annex A.

Notice of Proposed Rulemaking was published at 37 Pa. B. 4649 (August 25, 2007). Publication was followed by a 30-day public comment period during which the Board received comments from the public and stakeholders, including the Pennsylvania State Nurses Association, the Hospital and Healthsystem Association of Pennsylvania, various nursing education programs, and individual licensees. On September 26, 2007, the House Professional Licensure Committee (HPLC) submitted its comments. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) made no comments. The Independent Regulatory Review Commission (IRRC) submitted comments to the proposed rulemaking on October 24, 2007.

Summary of Comments and Responses to Proposed Rulemaking

Public/Stakeholder Comments

Harrisburg Area Community College (HACC) expressed concerns that the requirement that faculty assistants teach for a cumulative maximum period of 5 years without completing a graduate degree in nursing would exacerbate the nursing faculty shortage. HACC also expressed concern about what it perceived as “the large gap in minimum qualifications between the faculty assistant and the clinical preceptor.” HACC commented that the regulation will favor programs relying more on preceptor supervised experiences and will encourage programs to decrease instructor supervised clinical experiences in favor of clinical experiences supervised by preceptors.

Alvernia College (Alvernia) also expressed concern about what it perceived to be “the expanded enforcement of the 5 year timeline on faculty assistants.” Alvernia noted that bachelor’s prepared faculty assistants are typically highly competent and suggested that enforcement of the existing regulation would exacerbate faculty shortages. Alvernia suggested that the Board distinguish between faculty who teach didactic courses and faculty who teach clinical courses, noting that it is more difficult for programs to find part-time clinical instructors and that clinical instructors will be most affected by the 5-year deadline.

The 5-year limitation was adopted 32 years ago (See 6 Pa. Bulletin 2677 (October 22, 1976) at 2682). The Board has enforced this regulation throughout its existence. The Board does not know of any evidence compiled over this 32-year history that supports a conclusion that the regulation has caused or exacerbated the current nursing faculty shortage. Nevertheless, pursuant to section 35.18 of the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 35.18 (relating to petitions for issuance, amendments, waiver or deletion of regulations), the Board has entertained requests for waiver of the regulations to grant additional time to a faculty assistant who has been

unable to complete master's preparation in 5 years. The amendments will not affect the ability of individuals to request a waiver from the Board under § 35.18.

Alvernia did not dispute that the master's degree in nursing is the optimal preparation for nursing faculty, but suggested that the Board provide incentives for nurses to try teaching and persist in Master's education. The Board must operate within its statutorily defined duties. The Board is not aware of any incentive that it could provide to its licensees to try teaching. Alvernia could pursue legislative incentives to encourage individuals to pursue teaching while attaining a Master's degree in nursing similar to existing legislative incentives for individuals pursuing education for entry into the practice of nursing.

The director of the St. Luke's School of Nursing (St. Luke's), a diploma nursing education program, expressed concerns about the elimination of § 21.74 (relating to faculty and staff requirements for diploma programs). The Board is eliminating § 21.74 because with the amendments to § 21.71 (relating to nurse administrator, faculty and staff requirements), § 21.71 now applies to all nursing education programs, including diploma programs. As amended, § 21.71 sets the same standards for faculty and staff in diploma, baccalaureate degree and associate degree programs. Therefore, § 21.74 is no longer necessary.

St. Luke's also commented that the amended § 21.71(5) is vague, and suggested that the Board should require "no less than one full-time secretary and a full-time librarian." The Board is amending § 21.71(5) to reference a wider range of student support services that should be in place in all schools of nursing. The Board declines to provide such specific support personnel requirements as suggested by the commenter in favor of leaving the details of such administrative decisions to the educational program and sponsoring institution. The Board's approach provides needed flexibility should, for example, one or more full-time librarians staff a hospital library with adequate time to assist nursing students using the library, or where a program's students may use the financial aid office of the controlling institution.

The Pennsylvania State Nurses Association (PSNA) noted its overall support of the proposed amendments, and specifically approved of the Board's retention of the requirement that faculty assistants obtain a graduate degree in nursing within 5 years.

PSNA noted three areas of concern. First, PSNA proposed that the Board add educational requirements for clinical preceptors, requiring that they have the same educational background as the nursing faculty. There are currently no educational or experiential requirements for clinical preceptors. For many years, nursing education programs have been enhancing student learning experiences with clinical preceptors who do not hold a Master's degree in nursing; there is no evidence to suggest that clinical preceptors should now be required to hold a Master's degree in nursing. Section 21.71(c)(5) requires that the nursing faculty have involvement in the selection of preceptors and retain responsibility for planning and evaluating student learning experiences. This section has been reorganized for clarity. The selection and

employment of clinical preceptors is left to the sound judgment of the nursing education program. The Board declines to set minimum educational requirements for clinical preceptors.

Second, PSNA suggested that the Board provide a specific number of students who could be supervised by a clinical preceptor. Clinical preceptors have been used for many years without problems arising from preceptor-student ratios. The ratio may be set by the nursing education program, the preceptor (through his or her contract with the program) or the facility or agency where the clinical experience takes place. The Board does not find it necessary or advisable to set a specific ratio to govern the wide variety of settings where a student would work with a preceptor.

Third, PSNA requested clarification on the difference between a clinical preceptor and a faculty assistant. Section 21.71(c)(2) provides that a faculty assistant may teach nursing education courses, which would include both didactic and clinical courses, under the direct guidance of a faculty member when fully qualified faculty are not available. Section 21.71(c)(5) provides that a clinical preceptor may be used to enhance faculty-directed clinical learning experiences by guiding selected clinical activities. Therefore, clinical preceptors differ from faculty assistants in that clinical preceptors do not teach courses; clinical preceptors supervise nursing students in selected clinical learning experiences. Full-time faculty remains responsible for planning and evaluating the learning experiences.

A licensee commented that the Board should set forth guidelines regarding faculty responsibility for planning and evaluating student learning experiences when the student is with a clinical preceptor, and should require that nursing faculty be available by page. For many years, nursing education programs have utilized clinical preceptors to enhance the clinical learning experiences of nursing students. The Board has never set forth specific guidelines regarding faculty responsibility; the faculty is responsible for the student and this has been sufficient to ensure proper utilization of clinical preceptor experiences. The Board declines to set forth guidelines directing faculty how to plan and evaluate the wide variety of student learning experiences that occur when a student is with a clinical preceptor.

Regarding the availability of nursing faculty during a clinical preceptor experience, the Board has always required, when it approves a proposed clinical agency for use by a nursing education program, that whenever a faculty member is not physically present in the area in which students are practicing, that the faculty member be immediately available by telephone or some other means of telecommunication. The Board has added this requirement to § 21.71(c)(5).

The licensee also suggested that the Board require nursing education programs to employ a financial aid counselor. The Board declines to adopt this suggestion because some nursing education programs may have no need to employ a financial aid counselor as this service may be provided to all students through the controlling institution (university or college).

Finally, the licensee expressed concern that the Board's regulation would allow governing hospitals to require faculty to carry out duties unrelated to student experiences, nursing education or research for the benefit of furthering nursing education and noted that National League for Nursing Accrediting Commission (NLNAC), a nationally recognized specialized accrediting agency for all types of nursing education programs, limits other duties to 10% of job requirements. The Board has not made any amendment to its regulations that would have the effect suggested by the licensee. The Board believes that the nursing faculty is capable of negotiating, through the employment contract, their duties and job requirements and declines to set a specific limitation. The Board is confident that additional duties will be limited in order to meet the goals of the program.

Another licensee raised questions about the educational/experiential requirements for being a clinical preceptor and whether a clinical preceptor could have a lower degree than the students to whom the preceptor is assigned. The licensee suggested that clinical preceptors be required to hold at least a bachelor's degree in nursing and have at least two years of clinical experience in the area they will be supervising. Section 21.71(c)(5) requires that nursing faculty have input into the selection of preceptors. No other educational/experiential requirements are set; therefore, it is possible that a nurse with an associate's degree in nursing might act as a preceptor for a student in a baccalaureate degree program. In such a case, it would be expected that the preceptor have significant experience in his or her clinical area to merit appointment as a preceptor. The Board declines to set specific educational/experiential requirements for clinical preceptors.

The licensee asked whether there would be continuing education required for clinical preceptors. All RNs are required to complete a minimum of 30 hours of continuing education biennially. No additional continuing education is required for clinical preceptors.

The Hospital and Healthsystem Association of Pennsylvania (HAP) provided extensive comments and noted its appreciation of the Board's efforts to develop the most flexible and comprehensive regulations in response to the need for additional nurse educators. HAP commented that the Board should flesh out the responsibilities of the nurse administrator and require that the nurse administrator have sufficient time to devote to the operations of the nursing program. Each controlling institution and program defines the role of the nurse administrator to meet the needs of the specific institution and program; the duties of the nurse administrator are defined by the employment contract. The Board prefers to leave the specifics of the nurse administrator's duties to each individual program and administrator, which provides needed flexibility in meeting the broad goals defined by the Board.

HAP recommended additional detail be added to § 21.71(a)(5), related to support services in a nursing education program. The Board has adopted this suggestion, which was made in several of the comments received.

Regarding faculty qualifications, HAP commented that the reference to “clinical nursing education courses” in § 21.71(c)(1) and (2) was confusing and suggested dropping the word clinical. The Board agrees that this terminology was confusing and that the intent was to reference both didactic and clinical content. The Board has deleted the word clinical.

HAP asked for clarification on when there might be a person other than a nurse with a graduate degree in nursing teaching a specialized area of nursing practice. The primary purpose of the Board’s rulemaking is to allow nursing education programs to expand their faculty complement to meet the demand for nursing education and produce more qualified nurses. To this end, the Board will allow nursing education programs, at their discretion, to employ persons other than a nurse with a graduate degree in nursing to teach a specialized area of health care practice. Some examples of subjects that might be taught by a person with a graduate degree in a major area other than nursing include pharmacology, genetics, informatics, clinical psychology, genomics, biotechnology, epidemiology and disaster planning.

HAP questioned to what extent a nursing education program that does not employ allied faculty would be accountable for ensuring that allied faculty members used to teach nutrition meet the education and licensure requirements in the regulations. For those programs that send students to another institution for some courses, the review process of the Board includes review of the agreements between a nursing education program and other institutions where students take courses. The agreement should include a clause specifying that instructors who meet the Board’s qualifications teach these courses.

HAP commented that it appreciated the Board’s restraint in not developing overly prescriptive regulations regarding how preceptor programs are implemented, but expressed concern over the inappropriate overuse of preceptor experiences, including the substitution of such experiences because of the lack of sufficient numbers of nurse faculty. HAP recommended that the board engage in dialogue with the field to develop more specific guidance with respect to the use of preceptor programs. The Board intends to conduct an informational meeting related to preceptor programs and develop guidelines, which will be promulgated in a future rulemaking, related to preceptor programs in nursing education.

HPLC Comments

The House Professional Licensure Committee (HPLC) met on September 26, 2007, and submitted comments for the Board’s consideration. HPLC asked if the term “director of the program” had a different meaning than the term “nurse administrator.” The term does not have a different meaning; the regulations are being modified to conform to current terminology in nursing education. HPLC questioned the use of the term “sufficient number” in § 21.71(a) and asked how this would be quantified. The Board has amended the section to refer to the objectives of the nursing education program’s curriculum and systematic evaluation plan. These are terms used in nursing education by, for example, the National League of Nursing. The term “systematic

evaluation plan” is now defined in § 21.1 (relating to definitions) as an organized, continuous analysis of all nursing education program components, such as curriculum, faculty, facilities, policies and outcome measures. Education programs use systematic evaluation plans to address standards or benchmarks to be achieved and to establish an action plan if those standards or benchmarks are not achieved. The Board’s addition of these terms clarifies its intent. Additionally, use of broad terminology is supported by the model practice act of the National Council of State Boards of Nursing for use by all state nursing boards.

HPLC suggested that § 21.71(a)(5) be amended to refer to persons to make it consistent with the other subsections. The Board has made this amendment, and expanded the list of support services covered by the section to include financial aid personnel, as suggested by another commenter.

HPLC suggested that the Board provide specific experiential requirements for the nurse administrator. The Board believes that each nursing education program should be permitted to hire a nurse administrator, within the general guidelines set forth by the Board, who has the experience the program seeks to implement the program’s educational objectives. Because the Board’s regulations apply to a variety of types of nursing education programs with different administrative needs, the Board does not believe it would be advantageous to substitute its judgment as to the particular experiential background of a potential administrator for that of the institution conducting the program. Therefore, the Board declines to provide specific experiential requirements for the nurse administrator.

HPLC questioned the adequacy of the 5-year time limit for a faculty assistant to teach, set forth in § 21.71(c)(2), and further suggested a mechanism whereby a faculty assistant could suspend the calculation of the 5-year period if the faculty assistant is no longer teaching for a period of time. The Board’s use of the word “cumulative” is intended to indicate that the calculation is based on the periods that the faculty assistant is teaching and does not include a sabbatical or leave of absence.

Finally, HPLC stated the following: “The Committee also notes the overall lowering of standards for a nursing teacher and questions if the result of the change in regulations would create substandard nurses.” The Board strongly disagrees that its regulation lowers the standards for nursing educators in the Commonwealth. As to full-time faculty, the Board sees no lowering of standards by permitting an individual who holds an earned doctorate degree in nursing to teach in a nursing education program as opposed to the current regulation which only permits an individual who holds a master’s degree in nursing to teach in a nursing education program. As to faculty assistants, the 5-year limitation on individuals who do not hold at least a master’s degree in nursing has been in place for 32 years; the Board’s regulation does not change this limitation. Quality would be compromised if the Board were to abandon the 5-year limitation as suggested by some commentators. As to allied faculty members, for those teaching basic sciences, the Board does not see it as a lowering of standards for an individual with a master’s or doctoral degree in chemistry to teach basic chemistry to nursing students

rather than having the basic chemistry course taught by an individual with a master's degree in nursing; and for individuals teaching specialized areas of nursing practice, the Board does not see it as a lowering of standards for an individual with a doctoral degree in genetics to teach genetics, a doctoral degree in pharmacy to teach pharmacology, or a master's degree in clinical psychology to teach that subject in place of individual with a master's degree in nursing. As to clinical preceptors, nursing education programs have utilized clinical preceptors to enhance faculty-directed clinical learning experiences since the beginning of nursing education. There is no change made by this regulation that lowers the standards for nursing education.

IRRC Comments

In addition to questions raised by the HPLC, IRRC asked "if the nursing program is a school or college, ... is the nurse administrator also the head of the school or college?" Under § 21.51 (relating to establishment of a nursing education program), a nursing education program may be developed under the authority of a regionally accredited university or college or under the authority of a hospital. Because the nursing education program is developed under the authority of an accredited university or college, it is unlikely that the nurse administrator will also be the head of the school or college.

IRRC questioned the amendment to § 21.71(a)(3), specifically the deletion of the reference to additional faculty members being employed as needed "to insure an educationally effective student-faculty ratio." The Board believes the amendment to § 21.71(a), which requires the nursing education program to employ sufficient personnel to accomplish the objectives of the curriculum and systematic evaluation plan, addresses this concern.

IRRC also requested that the final-form rulemaking address student-faculty ratios and, if the Board does not wish to set a minimum ratio, that the Board should require programs to document their rationale for, and effectiveness of, their student-faculty ratio. This information is already required to be submitted to the Board by any school whose NCLEX performance approaches the minimum standard set in § 21.26 (relating to failing rate of a school in examination). The Board does not believe it is effective to manage schools at the level of a required student-faculty ratio. The Board has always taken an outcome-based approach with minimal intervention by the Board so long as the school's graduates are performing at acceptable levels on the NCLEX examination. In addition, the optimum student-faculty ratio will vary depending on the course content, format and presentation strategy.

IRRC commented that the Board should specify that allied faculty members are not required to hold a degree in nursing or a professional nursing license. The Board finds that the statement in § 21.71(c)(3), that allied faculty members must hold at least one graduate degree in a subject pertinent to their area of teaching sufficiently explains that allied faculty members are not required to hold a degree in nursing. In addition, the statement in § 21.71(c)(1), that faculty members teaching required nursing education

courses shall be currently licensed, and in § 21.71(c)(2), that faculty assistants must be currently licensed, is sufficiently clear to indicate that allied faculty members are not required to hold a professional nursing license. Also regarding allied faculty members, IRRC questioned what was meant by “as needed.” As with all faculty, the number of faculty and their qualifications must be sufficient to meet the objectives of the curriculum and the systematic evaluation plan, as set forth in § 21.71(a).

IRRC also suggested that the Board specify which areas of the curriculum must be taught by faculty with RN licenses and which areas may be taught by others. The Board has already indicated, in § 21.71(c)(3), that allied faculty may teach basic sciences or specialized areas of nursing practice and that faculty members and faculty assistants may teach required nursing education courses. The Board finds that no additional clarification is needed.

IRRC noted that two commentators from nursing education programs “expressed grave concern and warn that strict enforcement of the ‘5-year rule’ will only exacerbate the shortages in faculty and new licensees.” IRRC asked why, if a person was content as a faculty assistant, he or she should be “forced to enroll for additional degrees?” The Board is not aware of *any* other academic discipline where the faculty is not required to hold at least a master’s degree in the area in which they teach. At both the associate’s degree level and baccalaureate degree levels, a review of college and university catalogs demonstrates that faculty across disciplines hold at least a master’s degree. Nursing is no different. The Board is not alone in its thinking: the National Council of State Boards of Nursing Model Practice Act requires nursing faculty to hold a minimum of a master’s degree in nursing and the NLNAC requires nursing faculty to hold a minimum of a master’s degree in nursing for national accreditation of the nursing education program.

IRRC next questioned the use of the term preceptor. The term preceptor is well-established in nursing education and, as set forth in § 21.71(c)(5), is an individual who is utilized by a nursing education program to enhance the clinical experiences of nursing students. A clinical preceptor is directly responsible for patient care in a setting; the nursing education program is directly responsible for the nursing student; and nursing faculty must be available to the student during the experience. Nursing faculty is involved in the selection of preceptors and sets the overall goals for the experience. Faculty is also responsible for the evaluation of the student. As noted above, the Board will meet with interested parties to determine whether further amendments more fully delineating the use of preceptors in nursing education are needed.

IRRC also asked about the reference to out-of-state preceptor experiences, and wondered if programs could hire out-of-state nurses to be preceptors. For many, many years, nursing education programs have utilized both in-state and out-of-state sites to provide clinical experiences for nursing students. For example, nursing students enrolled in a Pennsylvania program may participate in a clinical experience with a preceptor in another state. The Board’s regulation requires that the clinical preceptor be licensed to practice nursing in the state where the clinical practice occurs. These individuals do not

need temporary practice permits in Pennsylvania because they are not practicing nursing in Pennsylvania.

Finally, IRRC noted that the Board had failed to update other sections that refer to the director of the school with the new term nurse administrator, specifically §§ 21.75(e) and 21.124(b) (relating to faculty policies; and custody of records). The Board made the change to § 21.124(b) as suggested. The Board did not make the suggested change to § 21.75(e) because this section should have been removed. This rulemaking standardizes the faculty and staff requirements for diploma, baccalaureate and associate degree programs in nursing. Section 21.72 was the section that set forth faculty policies for baccalaureate and associate degree programs; section 21.75 was the section that set forth faculty policies for diploma programs. Because the regulation standardizes faculty and staff requirements across programs by renaming § 21.71 to apply to all programs and deleting § 21.74, which had applied to diploma programs, section 21.75 is now duplicative. The Board has removed § 21.75 in final rulemaking.

Amendments by the Board

In addition to the amendments discussed above, the Board made formatting amendments to §§ 21.71(c)(3) and (c)(5) to make these paragraphs consistent with the formatting of §§ 21.71(c)(1) and (c)(2). The Board added subparagraphs (i) through (iii) to § 21.71(c)(5) for added clarity. The Board also added a new paragraph (d) to § 21.71 to address qualifications of support personnel. Finally, the Board amended § 21.72(g) (relating to faculty policies; additional responsibilities of faculty and faculty assistants) to loosen the requirement set forth in the proposed rulemaking for faculty assistants to provide documentation of their activities leading to the completion of a graduate degree in nursing. The Board currently requires that all nursing education programs submit this information with the compliance review, which occurs every 3 years. The Board will inquire of only those individuals who have not demonstrated any progress toward completing the requirement, rather than require all individuals to submit documentation of their progress toward the degree.

Statutory Authority

Section 6.1 of the act (63 P.S. § 216.1) authorizes the Board to establish standards for the operation and approval of nursing education programs. Section 2.1(k) of the act (63 P.S. § 212.1(k)) authorizes the Board to establish regulations to implement the standards established by the Board.

Fiscal Impact and Paperwork Requirements

The rulemaking will not have an adverse fiscal impact on the Commonwealth or its political subdivisions and will not impose additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on August 15, 2007, the Board submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 4649 (August 25, 2007), 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 _____, the final-form rulemaking was approved by the HPLC. On _____, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 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 State Board of Nursing finds that:

- (1) Public notice of intention to adopt a regulation at 49 Pa. Code, Chapter 21, was given under sections 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201-1202) and the regulations promulgated under those sections at 1 Pa. Code §§ 7.1-7.2.
- (2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.
- (3) The amendments made to the final-form rulemaking do not enlarge the original purpose of the proposed rulemaking as published under section 201 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1201).

- (4) These amendments to the regulations of the State Board of Nursing are necessary and appropriate for the regulation of the practice of professional nurses in the Commonwealth.

Order

The Board therefore ORDERS that:

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

Mary Bowen, RN, CRNP, DNP
Chairperson, State Board of Nursing

ANNEX A

PENNSYLVANIA CODE

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

GENERAL PROVISIONS

§ 21.1. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

SYSTEMATIC EVALUATION PLAN – AN ORGANIZED, CONTINUOUS ANALYSIS OF ALL NURSING EDUCATION PROGRAM COMPONENTS, SUCH AS CURRICULUM, FACULTY, FACILITIES, POLICIES AND OUTCOME MEASURES, THAT ADDRESSES STANDARDS OR BENCHMARKS TO BE ACHIEVED AND ESTABLISHES AN ACTION PLAN IF THOSE STANDARDS OR BENCHMARKS ARE NOT ACHIEVED.

* * * * *

ADMINISTRATIVE AND INSTRUCTIONAL PERSONNEL

§ 21.71. [Faculty] Nurse administrator, faculty and staff requirements [for baccalaureate and associate degree programs].

(a) A nursing education program shall employ a sufficient number of qualified faculty, faculty assistants, allied faculty and staff to accomplish the program objectives OF THE CURRICULUM AND THE SYSTEMATIC EVALUATION PLAN. The minimum faculty and staff requirements [for each program] are as follows:

- (1) Full-time [director of the program] nurse administrator.
- (2) Full-time [qualified] faculty members in the areas of [specialized] practice encompassed within the curriculum.
- (3) Additional faculty members as needed [to insure an educationally effective student-faculty ratio].
- (4) [A minimum of one full-time secretary and additional secretarial assistance as needed.] Allied faculty members as needed.
- (5) Program ADEQUATE PERSONNEL TO PROVIDE PROGRAM support services, including administrative, and clerical, LIBRARY, ADMISSIONS, FINANCIAL AID AND STUDENT services.

(b) [Faculty] The nurse administrator's credentials shall be submitted to the Board for approval. The nurse administrator's qualifications are as follows:

- (1) The [director] nurse administrator of a baccalaureate degree nursing education program[, employed for the first time after January 1, 1986,] shall hold [a master's] at least one graduate degree in nursing [and]. The nurse administrator shall hold an earned doctoral

degree or have a specific plan for completing doctoral preparation within 5 years of appointment. The [director] nurse administrator shall have experience in [the areas of] nursing practice, nursing education [within an institution of higher education] and [educational] administration. [Candidates who have made outstanding contributions to nursing education shall be considered on an individual basis.] A professional nurse who does not hold at least one graduate degree in nursing, but who has experience in nursing practice, nursing education and administration may be considered on an individual basis.

(2) The [director] nurse administrator of an associate degree or diploma program shall hold [the minimum of a master's] at least one graduate degree in nursing. The [director] nurse administrator shall have experience in [the areas of] nursing practice, nursing education and [educational] administration. A professional nurse who does not hold at least one graduate degree in nursing, but who has experience in nursing practice, nursing education and administration may be considered on an individual basis.

(3) The length of appointment of [temporary and] an interim or acting [heads] nurse administrator of a nursing education [programs] program may not exceed 1 year.

(4) [Nurse faculty members] The nurse administrator shall hold either a temporary practice permit to practice professional nursing or be currently licensed as [nurses] a professional nurse in this Commonwealth.

(c) Faculty qualifications are as follows:

[(5)](1) Faculty members teaching required clinical nursing education courses shall [have master's degrees] hold at least one graduate degree in nursing, [with graduate preparation relevant to their clinical areas of responsibility;] shall be currently licensed as professional nurses in this Commonwealth, and [they] shall [give evidence of maintaining] have expertise in their [clinical or functional] areas of [specialization] instruction.

[(6)] (2) Faculty members [with less than a master's] without a graduate degree in nursing [may be employed if qualified candidates are not available; they shall function for a maximum of 5 years as assistants] shall be designated faculty assistants. Faculty assistants shall be currently licensed as professional nurses in this Commonwealth. Faculty assistants may teach required clinical nursing education courses only when fully qualified faculty are not available and shall teach under the direct guidance of a faculty member [fully] qualified [in the specific teaching area] as set forth in paragraph (1). [These] Faculty assistants shall have [a minimum of] a baccalaureate degree in nursing[,] and [they] shall give evidence of [actively pursuing a master's] a plan for obtaining a graduate degree in nursing. [The lack of availability of qualified faculty shall be documented by, among other things, copies of advertisements placed in appropriate professional journals and newspapers, copies of recruitment letters to appropriate institutions of higher learning, and records of job interviews] A person may teach as a faculty assistant in a nursing education program in this Commonwealth for a maximum cumulative period of 5 years.

(3) FACULTY MEMBERS WITHOUT A DEGREE IN NURSING, BUT WHO HOLD AT LEAST ONE GRADUATE DEGREE IN A SUBJECT AREA PERTINENT TO THEIR AREA OF TEACHING, SHALL BE DESIGNATED AS ALLIED FACULTY

MEMBERS. Allied faculty members may teach basic sciences or specialized areas of nursing HEALTH CARE practice. Allied faculty members shall hold at least one graduate degree in a subject area pertinent to their area of teaching.

[(7)] (4) Faculty employed to teach [nutrition must be registered dietitians (R.D.) and eligible for membership in the American Dietetic Association] dietetics-nutrition shall be currently licensed to practice dietetics-nutrition in this Commonwealth.

(5) A clinical preceptor may be used to enhance AN INDIVIDUAL WHO ENHANCES faculty-directed clinical learning experiences by guiding selected clinical activities SHALL BE DESIGNATED AS A CLINICAL PRECEPTOR. A clinical preceptor shall hold a current license to practice professional nursing in the state of the clinical experience. Faculty shall retain responsibility for planning and evaluating student learning experiences and shall have input into the selection of preceptors.

(I) FACULTY SHALL HAVE INPUT INTO THE SELECTION OF PRECEPTORS.

(II) FACULTY SHALL RETAIN RESPONSIBILITY FOR PLANNING AND EVALUATING STUDENT LEARNING EXPERIENCES WHEN STUDENTS ARE ENGAGED IN CLINICAL ACTIVITIES WITH A PRECEPTOR.

(III) IF A FACULTY MEMBER IS NOT PHYSICALLY PRESENT IN THE AREA IN WHICH STUDENTS ARE PRACTICING, A FACULTY

MEMBER SHALL BE IMMEDIATELY AVAILABLE BY TELEPHONE OR OTHER MEANS OF TELECOMMUNICATION WHEN STUDENTS ARE ENGAGED IN CLINICAL ACTIVITIES WITH A PRECEPTOR.

(D) PROGRAM SUPPORT PERSONNEL SHALL BE QUALIFIED BY EDUCATION AND EXPERIENCE TO SERVE IN THE CAPACITY IN WHICH THEY ARE EMPLOYED.

§ 21.72. Faculty policies; additional responsibilities of faculty and faculty assistants.

* * * * *

(d) Teaching hours and additional duties of nurse faculty shall be consistent with the policies of the controlling institution. [Seminar, discussion and laboratory contact hours shall be equated. Where additional expectations in terms of research, counseling, committee work or other institutional responsibilities are present, the teaching load shall be decreased accordingly.]

(e) The nurse administrator and nursing faculty shall be afforded the time and opportunity to engage in leadership activities within their profession commensurate with [the responsibilities inherent in the role of institutions of higher education in our society] their responsibilities.

(f) There shall be a planned and active faculty development program designed to meet the [perceived] needs of the faculty. Faculty members shall maintain a record of participation in continuing education, professional self-development and other activities that promote the maintenance of expertise in their respective areas of teaching.

(g) Faculty assistants shall maintain a record of their activities leading to the completion of a graduate degree in nursing and WHICH shall submit a current transcript of courses and other activities completed toward the degree BE SUBMITTED to the Board at least annually UPON REQUEST.

* * * * *

§ 21.74. [Faculty and staff requirements for diploma programs] (Reserved).

[(a) The minimum faculty and staff requirements for each program shall be as follows:

(1) When the responsibility of the director encompasses nursing service as well as responsibility for the school, there shall be a full-time person who is responsible for the operation of the school.

(2) Full-time faculty member for each clinical nursing course.

(3) Additional faculty members as needed to insure an educationally effective student-faculty ratio.

(4) Minimum of one full-time secretary and additional secretarial assistants as needed.

(5) A full-time librarian.

(b) Faculty qualifications are as follows:

(1) The director of the school shall have a master's degree in nursing applicable to directors. School directors appointed after July 1, 1977, shall have a master's degree in

nursing and experience in the areas of nursing practice, nursing education and educational administration. Candidates who have made outstanding contributions to nursing education will be considered on an individual basis.

(2) Nurse faculty members shall be currently licensed as nurses in this Commonwealth.

(3) Faculty members appointed after January 1, 1986, shall have master's degrees in nursing with graduate preparation relevant to their clinical, or clinical and functional, areas of responsibility; and they shall give evidence of maintaining expertise in their clinical, or clinical and functional, areas of specialization.

(4) Faculty members with less than a master's degree in nursing may be employed if qualified candidates are not available; they shall function for a maximum of 5 years as assistants under the direct guidance of a faculty member fully qualified in the specific teaching area. Assistants shall have a minimum of a baccalaureate degree in nursing, and they shall give evidence of actively pursuing their academic preparation. The lack of availability of qualified faculty shall be documented.

(5) Faculty members shall give evidence of participation in continuing education and self development as individuals and as a faculty group.

(6) Faculty members employed to teach Nutrition must be registered dietitians (R.D.) and eligible for membership in the American Dietetic Association.]

§ 21.75. [Faculty policies.] RESERVED.

- [(a) Policies for selection, appointment and promotion of faculty shall be defined in writing.
- (b) Functions and responsibilities of each faculty member shall be defined in writing.
- (c) Personnel policies for the hospital are in effect for faculty members, with adjustments made for differences that may be required in an educational program.
- (d) The faculty shall assume the responsibility for planning, implementing and evaluating a program of inservice education designed to meet their perceived needs.
- (e) The director of the school and nursing faculty shall be afforded the time and opportunity to engage in leadership activities within their profession, commensurate with their responsibilities.
- (f) In determining the teaching load of the faculty the following criteria shall be considered:
 - (1) Number of individual courses or units of study assigned to individual faculty members, giving consideration to differences in scope and depth.
 - (2) Number and size of scheduled weekly classes, including laboratory and clinical teaching contact hours.
 - (3) Additional assignments relative to the functions and responsibilities of the individual faculty member, such as guidance students, student evaluation, class and laboratory preparation, program revision, improvement of teaching methods and participation in the activities of the faculty organization.]

* * * * *

RECORDS

* * * * *

§ 21.124. Records to be filed with Board.

* * * * *

(b) Upon completion of the entire program, a transcript or photocopy of the final record of the student shall be submitted along with the application for admission to the licensing examination. The transcript shall bear the impression of the school seal and signature of the ~~director of the school~~ NURSE ADMINISTRATOR or authorized representative.

* * * * *

edge to provide the testimony as a result of active involvement in or full-time teaching of medicine in the applicable subspecialty or a related field of medicine within the previous 5-year time period.

(f) *Application of Board's own expertise.* Nothing in this subsection shall be construed to preclude the Board from applying its own expertise in determining the applicable standard of care in disciplinary matters before the Board.

[Pa.B. Doc. No. 07-1550. Filed for public inspection August 24, 2007, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Faculty Requirements for Nursing Education Programs

The State Board of Nursing (Board) proposes to amend §§ 21.71 and 21.72 (relating to faculty and staff requirements for baccalaureate and associate degree programs; and faculty policies) and to delete § 21.74 (relating to faculty and staff requirements for diploma programs) to read as set forth in Annex A. This proposed rulemaking is intended to remove unnecessary restrictions on appointments of faculty for nursing education programs.

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized by section 6.1 of the Professional Nursing Law (63 P. S. § 216.1), which provides that the Board establish standards for the operation and approval of nursing education programs.

Background and Need for the Proposed Rulemaking

The Nursing Education Capacity Working Group, an ad hoc committee of the Pennsylvania Center for Health Careers (Center), suggested that the Board amend its regulations regarding nursing education faculty. Following a series of roundtables held throughout this Commonwealth to discuss the nursing shortage and through research and discussion with experts, the Center concluded that this Commonwealth needs to expand, as quickly as possible, the supply of qualified nurse educators without compromising the quality of nursing education. This suggestion addresses the nursing shortage because one of the impediments to this Commonwealth's goal of an adequate nurse workforce is the inability of nursing schools to meet the demand for enrollment due to faculty shortages. The Board now proposes these amendments to allow nursing education programs greater leeway in hiring qualified faculty to educate nursing students.

Description of Proposed Amendments

The Board proposes to amend § 21.71, which sets forth the faculty and staff requirements for baccalaureate and associate degree nursing education programs, so that it applies to all nursing education programs (baccalaureate and associate degree programs, programs in transition and diploma programs). The Board proposes to delete § 21.74, which currently sets forth the faculty and staff

requirements for diploma nursing education programs. In this proposed rulemaking, the Board has reorganized § 21.71. Proposed subsection (a) provides the general requirement that a nursing education program employ a sufficient number of adequately qualified faculty, faculty assistants and staff to accomplish the program objectives. Proposed subsection (b) sets forth the qualifications for the nurse administrator of the nursing education program. Proposed subsection (c) sets forth the qualifications for faculty, faculty assistants and allied faculty in the nursing education program.

The Board proposes to amend § 21.71(b) to provide that the nurse administrator's credentials shall be submitted for Board approval. This requirement is not new; proposals for new nursing education programs must already include the administrator's credentials for approval. The Board proposes in paragraphs (1) and (2) to permit nursing education programs to employ an administrator with at least one graduate degree in nursing rather than "a master's degree in nursing." The Board anticipates that this change will greatly increase the pool of applicants qualified to serve as nurse administrator.

The Board's current regulations require that nursing faculty hold a master's degree in nursing. The current regulations also allow employment of a faculty assistant, who does not hold a master's degree in nursing, provided the faculty assistant provides evidence of actively pursuing a master's degree in nursing.

This proposed rulemaking would create three categories of nursing faculty: faculty, faculty assistants and allied faculty. Faculty teaching required clinical nursing courses will be required to hold at least one graduate degree in nursing. This requirement is much less restrictive than the current requirement of a master's degree in nursing because it allows individuals with a nursing-related master's degree and a doctoral degree in nursing to teach required clinical nursing courses. For example, under the current regulation, an individual with a bachelor's degree in nursing, a master's degree in public health and a doctoral degree in nursing is precluded from faculty posts until the individual obtains a master's degree in nursing. Under the proposed rulemaking, this individual would be considered fully qualified to teach required clinical nursing courses.

Faculty assistants, that is, individuals who do not hold at least one graduate degree in nursing, will continue to be permitted to teach required clinical nursing courses only if qualified candidates are not available. The Board will retain the requirement that faculty assistants work under the direct guidance of a faculty member fully qualified in the specific teaching area.

The Board has always intended to restrict faculty assistants to a maximum of 5 years as a faculty assistant before obtaining a graduate degree in nursing. However, the current wording has allowed individuals to continue to teach in nursing education programs in this Commonwealth indefinitely without obtaining a graduate degree by moving from school to school in this Commonwealth, or moving out-of-State and then returning to this Commonwealth, at least once every 5 years. The Board proposes to clarify the limitation by providing, in proposed § 21.71(c)(2), that faculty assistants may teach in this Commonwealth for a maximum cumulative period of 5 years without obtaining a graduate degree in nursing. To further advance this objective, the Board proposes to amend § 21.72 by adding subsection (g), which requires faculty assistants to maintain a record of their activities leading to the completion of a graduate degree in nursing

and to submit to the Board, at least annually, a transcript of courses completed toward the degree. As schools of nursing in this Commonwealth are required to obtain and maintain Board approval, a school that employs a faculty assistant who does not submit the required materials to the Board or who fails to complete a graduate degree in nursing within the specified time frame, may be subject to placement on the list of provisionally approved schools.

Under proposed § 21.71(c)(3), a nursing education program will be authorized to employ allied faculty to teach courses in the basic sciences or specialized areas of nursing practice. Allied faculty shall hold at least one graduate degree in a subject area pertinent to the area of teaching. For example, this amendment will permit a nursing education program to employ an individual with a graduate degree in chemistry to teach chemistry courses and will allow a program to employ an individual with a doctoral degree in pharmacy to teach pharmacology.

The Board also proposes to address the use of clinical preceptors by nursing education programs in proposed § 21.71(c)(5). A clinical preceptor is a licensed professional nurse who serves as a clinical instructor and mentor to a very limited number of students placed at a particular practice site where the clinical preceptor is employed. The Board proposes to specifically authorize the use of clinical preceptors and to provide that faculty shall retain responsibility for planning and evaluating student learning experiences and also have input into the selection of preceptors.

The Board is also proposing amendments to § 21.72. The Board proposes to amend § 21.72(f) to require faculty members to maintain records of their participation in continuing education, professional self-development and other activities that promote the maintenance of expertise in their respective areas of teaching. As already explained, the Board also proposes to require faculty assistants to provide the Board with annual progress reports related to their progress toward an appropriate degree.

Input from the Regulated Community

The Board requested input from nursing education programs and other interested parties. The Board finds that the proposed rulemaking addresses a compelling public interest as described in this preamble.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will not have an adverse fiscal impact on the Commonwealth or its political subdivisions as the Board is self-supporting. The proposed rulemaking will not impose additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector.

Sunset Date

The Board continuously monitors the cost-effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 15, 2007, 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 House Professional Licensure Committee and the Senate Consumer Protection and 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 must 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.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Ann Steffanic, Board Administrator, 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*.

MARY E. BOWEN, R. N., CRNP,
Chairperson

Fiscal Note: 16A-5131. 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

ADMINISTRATIVE AND INSTRUCTIONAL PERSONNEL

§ 21.71. [Faculty] Nurse administrator, faculty and staff requirements [for baccalaureate and associate degree programs].

(a) A nursing education program shall employ a sufficient number of qualified faculty, faculty assistants, allied faculty and staff to accomplish the program objectives. The minimum faculty and staff requirements [for each program] are as follows:

(1) Full-time [director of the program] nurse administrator.

(2) Full-time [qualified] faculty members in the areas of [specialized] practice encompassed within the curriculum.

(3) Additional faculty members as needed [to insure an educationally effective student-faculty ratio].

(4) [A minimum of one full-time secretary and additional secretarial assistance as needed] Allied faculty members as needed.

(5) Program support services, including administrative and clerical services.

(b) [Faculty] The nurse administrator's credentials shall be submitted to the Board for approval. The nurse administrator's qualifications are as follows:

(1) The [director] nurse administrator of a baccalaureate degree nursing education program [, employed for the first time after January 1, 1986,] shall hold [a master's] at least one graduate degree

in nursing [and]. The nurse administrator shall hold an earned doctoral degree or have a specific plan for completing doctoral preparation within 5 years of appointment. The [director] nurse administrator shall have experience in [the areas of] nursing practice, nursing education [within an institution of higher education] and [educational] administration. [Candidates who have made outstanding contributions to nursing education shall be considered on an individual basis.] A professional nurse who does not hold at least one graduate degree in nursing, but who has experience in nursing practice, nursing education and administration may be considered on an individual basis.

(2) The [director] nurse administrator of an associate degree or diploma program shall hold [the minimum of a master's] at least one graduate degree in nursing. The [director] nurse administrator shall have experience in [the areas of] nursing practice, nursing education and [educational] administration. A professional nurse who does not hold at least one graduate degree in nursing, but who has experience in nursing practice, nursing education and administration may be considered on an individual basis.

(3) The length of appointment of [temporary and] an interim or acting [heads] nurse administrator of a nursing education [programs] program may not exceed 1 year.

(4) [Nurse faculty members] The nurse administrator shall hold either a temporary practice permit to practice professional nursing or be currently licensed as [nurses] a professional nurse in this Commonwealth.

(c) Faculty qualifications are as follows:

[(5)] (1) Faculty members teaching required clinical nursing education courses shall [have master's degrees] hold at least one graduate degree in nursing, [with graduate preparation relevant to their clinical areas of responsibility;] shall be currently licensed as professional nurses in this Commonwealth, and [they] shall [give evidence of maintaining] have expertise in their [clinical or functional] areas of [specialization] instruction.

[(6)] (2) Faculty members [with less than a master's] without a graduate degree in nursing [may be employed if qualified candidates are not available; they shall function for a maximum of 5 years as assistants] shall be designated faculty assistants. Faculty assistants shall be currently licensed as professional nurses in this Commonwealth. Faculty assistants may teach required clinical nursing education courses only when fully qualified faculty are not available and shall teach under the direct guidance of a faculty member [fully] qualified [in the specific teaching area] as set forth in paragraph (1). [These] Faculty assistants shall have [a minimum of] a baccalaureate degree in nursing[,] and [they] shall give evidence of [actively pursuing a master's] a plan for obtaining a graduate degree in

nursing. [The lack of availability of qualified faculty shall be documented by, among other things, copies of advertisements placed in appropriate professional journals and newspapers, copies of recruitment letters to appropriate institutions of higher learning, and records of job interviews.] A person may teach as a faculty assistant in a nursing education program in this Commonwealth for a maximum cumulative period of 5 years.

(3) Allied faculty members may teach basic sciences or specialized areas of nursing practice. Allied faculty members shall hold at least one graduate degree in a subject area pertinent to their area of teaching.

[(7)] (4) Faculty employed to teach [nutrition must be registered dietitians (R.D.) and eligible for membership in the American Dietetic Association] dietetics-nutrition shall be currently licensed to practice dietetics-nutrition in this Commonwealth.

(5) A clinical preceptor may be used to enhance faculty-directed clinical learning experiences by guiding selected clinical activities. A clinical preceptor shall hold a current license to practice professional nursing in the state of the clinical experience. Faculty shall retain responsibility for planning and evaluating student learning experiences and shall have input into the selection of preceptors.

§ 21.72. Faculty policies; additional responsibilities of faculty and faculty assistants.

* * * * *

(d) Teaching hours and additional duties of nurse faculty shall be consistent with the policies of the controlling institution. [Seminar, discussion and laboratory contact hours shall be equated. Where additional expectations in terms of research, counseling, committee work or other institutional responsibilities are present, the teaching load shall be decreased accordingly.]

(e) The nurse administrator and nursing faculty shall be afforded the time and opportunity to engage in leadership activities within their profession commensurate with [the responsibilities inherent in the role of institutions of higher education in our society] their responsibilities.

(f) There shall be a planned and active faculty development program designed to meet the [perceived] needs of the faculty. Faculty members shall maintain a record of participation in continuing education, professional self-development and other activities that promote the maintenance of expertise in their respective areas of teaching.

(g) Faculty assistants shall maintain a record of their activities leading to the completion of a graduate degree in nursing and shall submit a current transcript of courses and other activities completed toward the degree to the Board at least annually.

§ 21.74. [Faculty and staff requirements for diploma programs] (Reserved).

[(a) The minimum faculty and staff requirements for each program shall be as follows:

(1) When the responsibility of the director encompasses nursing service as well as responsibility for the school, there shall be a full-time person who is responsible for the operation of the school.

(2) Full-time faculty member for each clinical nursing course.

(3) Additional faculty members as needed to insure an educationally effective student-faculty ratio.

(4) Minimum of one full-time secretary and additional secretarial assistants as needed.

(5) A full-time librarian.

(b) Faculty qualifications are as follows:

(1) The director of the school shall have a master's degree in nursing applicable to directors. School directors appointed after July 1, 1977, shall have a master's degree in nursing and experience in the areas of nursing practice, nursing education and educational administration. Candidates who have made outstanding contributions to nursing education will be considered on an individual basis.

(2) Nurse faculty members shall be currently licensed as nurses in this Commonwealth.

(3) Faculty members appointed after January 1, 1986, shall have master's degrees in nursing with graduate preparation relevant to their clinical, or clinical and functional, areas of responsibility; and they shall give evidence of maintaining expertise in their clinical, or clinical and functional, areas of specialization.

(4) Faculty members with less than a master's degree in nursing may be employed if qualified candidates are not available; they shall function for a maximum of 5 years as assistants under the direct guidance of a faculty member fully qualified in the specific teaching area. Assistants shall have a minimum of a baccalaureate degree in nursing, and they shall give evidence of actively pursuing their academic preparation. The lack of availability of qualified faculty shall be documented.

(5) Faculty members shall give evidence of participation in continuing education and self development as individuals and as a faculty group.

(6) Faculty members employed to teach Nutrition must be registered dietitians (R.D.) and eligible for membership in the American Dietetic Association.]

[Pa.B. Doc. No. 07-1551. Filed for public inspection August 24, 2007, 9:00 a.m.]

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27]

Sales of Hypodermic Needles and Syringes

The State Board of Pharmacy (Board) proposes to amend § 27.18 (relating to standards of practice) to read as set forth in Annex A. The proposed rulemaking would alter the current requirements regarding the sale of hypodermic needles and syringes in pharmacies. The proposed rulemaking would permit a pharmacist to sell

up to 30 hypodermic needles and syringes to persons 18 years of age or older without a prescription.

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized under sections 4(j) and 6(k)(1) and (9) of the Pharmacy Act (act) (63 P. S. §§ 390-4(j) and 390-6(k)(1) and (9)).

Background and Need for Proposed Rulemaking

In February 2005, Pennsylvanians for the Deregulation of Syringe Sales petitioned the Board under 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations) to amend § 27.18(s)(2) to eliminate the prescription requirement for the sale of hypodermic needles and syringes. The Board subsequently heard testimony in support of the proposed amendment at its August 16-17, 2005, meeting from Dr. Scott Burriss of Pennsylvania Coalition to Save Lives Now; Renee Cox of Prevention Point Pittsburgh; and Janice Kopelman, Director of the Department of Health's Bureau of Communicable Diseases.

Under the current regulation, which has not been amended for a number of years, the sale of hypodermic needles and syringes in pharmacies in this Commonwealth may only occur under the presentation of a prescription. More recently, studies have shown that increased access to clean needles and syringes has been proven to reduce the transmission of hepatitis C and HIV. The evidence also suggests that drug use will not increase if the prescription requirement is removed. See Douglas A. McVay, (ed.), *Drug War Facts 2006*, (citing National Commission on AIDS, *The Twin Epidemics of Substance Abuse and HIV* (Washington, DC: National Commission on AIDS, 1991); General Accounting Office, *Needle Exchange Programs: Research Suggests Promise as an AIDS Prevention Strategy* (Washington, DC: US Government Printing Office, 1993); Lurie, P. & Reingold, A.L., et al., *The Public Health Impact of Needle Exchange Programs in the United States and Abroad* (San Francisco, CA: University of California, 1993); Satcher, David, MD, (Note to Jo Ivey Bouffard), *The Clinton Administration's Internal Reviews of Research on Needle Exchange Programs* (Atlanta, GA: Centers for Disease Control, December 10, 1993); National Research Council and Institute of Medicine, Normand, J., Vlahov, D. & Moses, L. (eds.), *Preventing HIV Transmission: The Role of Sterile Needles and Bleach* (Washington, DC: National Academy Press, 1995); Office of Technology Assessment of the U. S. Congress, *The Effectiveness of AIDS Prevention Efforts* (Springfield, VA: National Technology Information Service, 1995); National Institutes of Health Consensus Panel, *Interventions to Prevent HIV Risk Behaviors* (Kensington, MD: National Institutes of Health Consensus Program Information Center, February 1997).

In 2000, the National Association of Boards of Pharmacy encouraged boards of pharmacy to revise laws and regulations to permit the sale and distribution of sterile needles and syringes. The Commonwealth is one of only four states that still prohibit the sale of hypodermic needles and syringes in pharmacies without a prescription. Through 2004, this Commonwealth was the seventh leading state reporting the highest number of cumulative AIDS cases among residents, with 30,174 cases. See Centers for Disease Control and Prevention, *HIV/AIDS Surveillance Report, 2004*, Vol. 16. Atlanta: United States Department of Health and Human Services, Centers for

16A-5131 Faculty Requirements
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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF NURSING

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May 1, 2008

2631.
The Honorable Arthur Coccodrilli, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Nursing
16A-5131: Faculty Requirements for Nursing Education Programs

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Board of Nursing pertaining to faculty requirements for nursing education programs.

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

Sincerely,

Mary E. Bowen, R.N., C.R.N.P., Chairperson
State Board of Nursing

MEB/TAL:klh

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Albert H. Masland, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Cynthia Montgomery, Senior Counsel in Charge
Department of State
Teresa Lazo, Counsel
State Board of Nursing
State Board of Nursing

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

I.D. NUMBER: 16A-5131
 SUBJECT: FACULTY REQUIREMENTS FOR NURSING EDUCATION PROGRAMS
 AGENCY: DEPARTMENT OF STATE
 STATE BOARD OF NURSING

TYPE OF REGULATION

RECEIVED

- 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

MAY - 1 REC'D

INDEPENDENT REGULATORY
REVIEW COMMISSION

11:05 AM

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
5/1/08	Maudene Hemmel	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
5/1/08	Maudene Hemmel	MAJORITY CHAIRMAN <u>Sturla</u>
5/1/08	Mary Welmer	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN <u>Tomlinson</u>
5/1/08	Kathy Cooper	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)