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

October 24, 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-5131 (IRRC #2631)
State Board of Nursing
Faculty Requirements for Nursing Education Programs

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-5131 (IRRC #2631)

Faculty Requirements for Nursing Education Programs

October 24, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the August 25, 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. General. - Statutory authority; Clarity.

In the Preamble, the Board states that its statutory authority to promulgate this regulation is found in section 6.1 of the Professional Nursing Law (Law)(63 P.S. § 216.1). This provision gives the Board the authority to develop standards, which are different from regulations. See *Main Line Health, Inc. v. CAT Fund*, 738 A.2d 66 (Pa. Cmwlth. 1999), *aff'd* 777 A.2d 1048 (Pa. 2001). The authority to promulgate this regulation is actually located in 63 P.S. § 212.1(k). The Board should include a reference to Section 2.1 of the Law in the Preamble of the final-form regulation.

2. Section 21.71. Nurse administrator, faculty and staff requirements. - Fiscal impact; Reasonableness; Implementation procedure; Clarity.

Subsection (a) – Nurse administrator, faculty and staff requirements

Subsection (a) includes new language which reads:

A nursing education program shall employ a **sufficient number** of qualified faculty, faculty assistants, allied faculty and staff to accomplish the program objectives.

[Emphasis added.]

The House Professional Licensure Committee (House Committee) submitted comments dated September 26, 2007, questioning the use of the phrase “sufficient number” and requesting information on how this amount would be quantified. If a national standard exists that provides guidance, the House Committee recommended that the regulation reference the standard. We agree that the phrase is vague and needs to be clarified in the final-form regulation.

The main paragraph of Subsection (a) ends with the sentence: “The minimum faculty and staff requirements are as follows.” Subsections (a)(1)-(5) describe these minimum requirements.

Subsection (a)(1) lists a "full-time nurse administrator" as a minimum requirement for a nursing education program. This is a new term which replaces the existing term "director of the program." The House Committee requested more information concerning the basis for this change. The Board should explain the need for this change and whether it is a substantive change in direction for this position. Another question is if the nursing program is a school or college, then is the nurse administrator also the head of the school or college? The Board should consider adding a definition for this term in the final-form regulation.

Subsection (a)(3) reads: "Additional faculty members as needed." In the existing regulations, the word "needed" is followed by phrase "to insure an educationally effective student-faculty ratio." However, the latter phrase is being deleted by the proposed regulation. How will programs determine when additional faculty members are needed? While we understand the need for flexibility, the regulation should provide some guidance. Rather than note a possible need for additional faculty, this subsection in the final-form regulation should address student-faculty ratios. If the Board does not want to establish a minimum ratio, then it should require that nursing education programs submit their ratios to the Board and document the rationale for, and the effectiveness of, their approach to student-faculty ratios.

Another new term appears in Subsection (a)(4), which reads: "Allied faculty members as needed." Based on the requirements for this position and discussion of the term in the Preamble, it appears that members of the "allied faculty" do not need to have degrees in nursing. They are required by Subsection (c)(3) to have "at least one graduate degree in a subject area pertinent to their area of teaching" and "may teach basic sciences or specialized areas of nursing practice." Unlike the other faculty positions, there is no requirement that "allied faculty" hold a license as a registered nurse (RN) in Pennsylvania. The Preamble offers an example of this term by stating:

... 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.

If members of the "allied faculty" are not required to hold degrees in nursing or RN licenses, this should be clarified in the final-form regulation.

There is another question concerning "allied faculty." What is meant by "as needed" in this subsection? Are allied faculty "needed" only when an RN with the appropriate degree is unavailable? Does the Board intend that there be a preference for faculty candidates who are also licensed RNs? The Board should specify which areas of the curriculum must be taught by faculty with RN licenses and which areas may be taught by others.

Subsection (a)(5) reads: "Program support services, including administrative and clerical services." Commentators expressed concern with this change since it replaces existing language in Subsection (a)(4) which required a minimum of one full-time secretary. In addition, there is a concern with the deletion of a similar requirement in Section 21.74(a)(4). The new language does not set a minimum standard and provides no direction concerning the level of support services. In addition, there is no guidance concerning library, financial aid, or admissions services. A nursing program associated with an accredited college or university may be able to

obtain services from the other institution. However, a diploma program in a hospital or other facility may not have similar access. The minimum requirements for these services should be set forth in the final-form regulation.

Subsection (b) – Nurse administrator qualifications

The Hospital and Healthsystems Association of Pennsylvania (HAP) expressed concern with the administrative functions and other responsibilities of the nurse administrator. Subsections (b)(1) and (2) describe the qualifications for this position. They mention the need for “experience in nursing practice, nursing education and administration.” However, there is no indication of the level of experience necessary. In addition, there is no indication of the need for training or education in administrative or managerial functions. The House Committee also noted a concern over the lack of detail in the experience requirements for this position. The final-form regulation should provide more detail regarding the administrative duties, functions, qualifications and experience requirements for nurse administrators.

Subsection (c) – Faculty qualifications

Commentators expressed concerns with two basic changes in this subsection.

First, current faculty at two different college nursing programs and the House Committee expressed concern with the provisions for “faculty assistants” in the proposed regulation. The two commentators from the education programs expressed grave concern and warn that strict enforcement of the “five-year rule” will only exacerbate the shortages in faculty and new licensees. The new language maintains the existing requirement that these assistants can only teach for a cumulative period of five years without obtaining a graduate degree. The commentators claim that this requirement will force many experienced and qualified people out of these positions, especially in clinical courses. If a person is content as a faculty assistant, why must he or she be forced to enroll for additional degrees? The Board needs to justify retaining the five-year rule or delete it from the regulation.

Second, Subsection (c)(5) introduces the term “preceptor” into this segment of the Board’s existing regulations. Previously, the term “preceptor” was only used in the Board’s regulations for certified registered nurse practitioners (see Sections 21.334(e) and 21.373(c)(3)(ii) and (iii)). Generally, a preceptor is defined as a teacher or instructor. Why is the Board using the term “preceptor” rather than “instructor” or “teacher”?

In addition, the Pennsylvania State Nurses Association, HAP and other commentators express serious concerns with the lack of details in the language describing “clinical preceptors.” Many commentators express confusion over the purpose of this position. The Board should work with the commentators and regulated community in resolving these concerns. The education and experience requirements for this position need to be specified in the final-form regulation.

Finally, Subsection (c)(5) includes this sentence: “A clinical preceptor shall hold a current license to practice professional nursing in the state of the clinical experience.” The intent of this sentence is unclear. Would programs be allowed to hire out-of-state nurses to be preceptors? Would they need temporary practice permits?

3. General - Fiscal impact; Protection of the public health, safety and welfare; Reasonableness; Clarity.

The House Committee expressed concern with an “overall lowering of standards” in nursing education programs via this proposed regulation. The Board needs to review each provision in the regulation and develop a detailed explanation of how the provisions provide additional flexibility and more opportunities for greater enrollment of new nursing students while not lowering the quality of nursing education programs.

4. Miscellaneous - Clarity.

Other sections of the Board’s existing regulations include the term “director of the school” with language relating to schools for RNs. The meaning of the term “director of the school” appears to be similar to the meaning of “director of program,” which is being replaced in this proposed regulation by the term “nurse administrator.” For example, Section 21.75(e) reads:

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.

In addition, Section 21.124(b) includes these requirements for documentation:

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 or authorized representative.

If the term “director of the school” in these sections is equivalent to “nurse administrator” in the proposed regulation, then the term “director of the school” should be replaced with the new term in the final-form regulation to ensure that terms are used consistently in the Board’s regulations.

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To: Tom Blackburn
Cynthia Montgomery
Agency: Department of State
Licensing Boards and Commissions
Phone: 3-7200 or 3-3394 (Cynthia)
Fax: 7-0251
Date: October 24, 2007
Pages: 6

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Nursing's regulation #16A-5131 (IRRC #2631). 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: Cynthia K. Montgomery Date: 10/24/07