

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

IRRC Number: 2664

(1) Agency

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

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

16A-5123

(3) Short Title

Nursing Education Programs Examination Pass Rates

(4) PA Code Cite

49 Pa. Code §§21.1, 21.26, 21.33, 21.33a, 21.33b, 21.34, 21.141, 21.162, 21.162a, 21.162b and 21.166

(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.

These revisions amend §§21.1, 21.26, 21.33-21.34, 21.141 and 21.162-21.166 to set forth further requirements for all nursing education programs regarding minimum pass rates of program graduates on the licensure examination, provisional approval status, and removal from the Board's list of approved programs based on failure to maintain standards. Beginning 1 year after publication of final rulemaking, nursing education programs will be required to attain a passing rate of 70% for graduates of the program who take the licensure examination (NCLEX-RN and NCLEX-PN) for the first time. Beginning 2 years after publication of final rulemaking, the minimum passing rate for graduates of a nursing education program will be 80%.

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

Section 6.1 of the Professional Nursing Law (RN act) (63 P.S. § 216.1) requires the Board to establish standards for the operation and approval of nursing education programs for the preparation of registered professional nurses. Section 9 of the Practical Nurse Law (LPN act) (63 P.S. § 659) authorizes the Board to approve all schools and institutions that train and educate practical nurses. The Board is further authorized to establish rules and regulations for the practice of professional and practical nursing and the administration of the acts under section 2.1(k) of the RN act and section 17.6 of the LPN act (63 P.S. § 212.1(k) and 63 P.S. § 667.6, respectively).

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

These regulations are not mandated by federal or state law, court order or federal regulations.

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

The public has an interest in a supply of well-educated and highly skilled professional nurses. The present Pennsylvania standards for nursing education programs regarding pass rates of program graduates on the licensure examination are the least stringent standards in the nation. Thirty-two states use the NCLEX pass rate as a criterion for approving nursing education programs. Under current standards a Pennsylvania nursing education program will maintain full approval status if more than 60% of its graduates pass the NCLEX on their first attempt. At least seven states have established 75% as the minimum passing rate, at least eight states have established 80% as the minimum, and at least four states have established 85% as the minimum. Other states have established a percentage of the national pass rate as the minimum standard for program approval, but in no case less than 10 % of the national pass rate (which was 87.01% for RNs and 88.21% for LPNs in 2003). The Board's current regulations do not provide adequate notice to the Commonwealth's nursing education programs regarding the requirements that may be placed on a program that is on provisional approval status or the procedure to be followed should the Board determine that it may be necessary to begin proceedings to remove a program from the approved list. The rulemaking clarifies a program's responsibilities and details the procedure for removal from the approved list.

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

Nonregulation of nursing education programs would adversely affect the public health and safety because programs would be allowed to educate students in a manner such that the students were unable to obtain licensure and practice the profession.

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

These amendments will benefit nursing students by assuring that nursing education programs maintain high educational standards and prepare at least 80% of their graduates in a manner that allows the program graduates to attain a nursing license and practice their chosen profession.

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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.)

For the examination year October 1, 2006, to September 30, 2007, 10 of the Commonwealth's 130 nursing education programs had examination pass rates below 70%. Nursing education programs with examination pass rates lower than 70% for the October 1, 2007, to September 30, 2008, examination period may be placed on provisional approval status and will be required to address the deficiencies in their programs. If a program fails to achieve the minimum pass rate after opportunity has been provided to correct deficiencies, the Board may begin proceedings to determine whether the program should be removed from the approved list. The regulation provides a two-year period for the correction of deficiencies, and provides that the period may be extended if a program is making progress during that period. The Board hopes that all programs will be able to improve their pass rates during the provisional period such that no program will be subject to the removal procedure.

(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 Board-approved prelicensure nursing education programs for both registered and practical nurses would be required to comply with these regulations. There are currently 80 Board-approved programs for registered nurses and 50 practical nursing education programs in the Commonwealth. Please see the Board's website at <http://www.dos.state.pa.us/bpoa/nurbd/nurprograms.htm> for the most current list of nursing education programs.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Board considered all comments received following publication of its proposed rulemaking and addressed the comments in the Preamble to its final rulemaking.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

It is not possible to provide a specific estimate of the costs or savings to the regulated community associated with complying with these regulations. Compliance should not involve any legal, accounting, or consulting procedures. It is the Board's understanding that programs with higher pass rates do not have more resources available to them than programs with lower pass rates. Therefore, the Board expects that the amendments will have minimal fiscal impact and will impose no additional paperwork on nursing education programs beyond what is already required for establishment and maintenance of a nursing education program.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

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

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The Department and the State Board of Nursing will not incur any additional costs to implement this regulation.

The Board's nursing education advisers, appointed in accordance with section 2.1(i) of the Act, 63 P.S. § 212.1(i), already review the Commonwealth's nursing education programs and work closely with programs to correct deficiencies.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

See paragraphs (17)-(19) above.

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

Program	FY—03-04	FY—04-05	FY—05-06	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.

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

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

No nonregulatory approaches were considered.

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

The Board discussed variations of the rulemaking, such as that proposed by the Hospital and Healthsystem of Pennsylvania. Given the long history of the Board's efforts to encourage and assist programs in increasing their pass rates, the Board determined that the timeline it originally proposed would best meet the goal.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

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

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

The Boards of Nursing or their oversight agencies of the six states surrounding the Commonwealth of Pennsylvania (Delaware, Maryland, New Jersey, New York, Ohio, and West Virginia) have the authority to approve nursing education programs. However, Ohio does not require a criterion percent of first-time examinees to pass the NCLEX in order for a nursing education program to maintain full approval. The remaining five states require a percentage of first-time examinees to pass the NCLEX in order for a program to maintain full approval. The pass rates for these states are as follows:

- New York—75% of first-time examinees
- New Jersey—80% of first-time examinees
- Maryland—5% below national pass rate
- Delaware—80% of first-time examinees for three consecutive years
- West Virginia—92.5% of national pass rate

This rulemaking is consistent with the law and regulations of New York, New Jersey, Maryland, Delaware and West Virginia and therefore will not put Pennsylvania at a competitive disadvantage with other states.

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

No other regulations of the Board or other state agencies would be affected by these regulations.

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

No public hearings or informational meetings are scheduled at this time. However, the Board's educational advisors hold annual meetings for the administrators of all nursing education programs in the Commonwealth to discuss items of interest. It is anticipated that the advisors will hold sessions regarding the rulemaking. In addition, the Board holds meetings every six weeks at which has been, and will continue to be, discussed. Meetings are held in the Board's offices at 2601 North Third Street, Harrisburg, Pennsylvania. A schedule of Board meeting dates is available from the Board administrator at (717) 783-7142 or on the Department of State's website at www.dos.state.pa.us/bpoa.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The amendments will not impose any additional paperwork requirements beyond what is already required for the establishment and maintenance of a nursing education program.

(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 of persons with special needs will be adversely affected by the proposed amendments.

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

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

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

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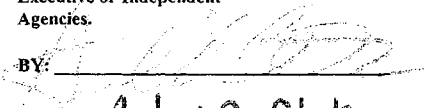
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(AGENCY)

BY: 
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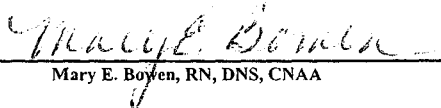
DOCUMENT/FISCAL NOTE NO. 16A-5123

NOV 13 2008

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: 
Mary E. Boyen, RN, DNS, CNA

(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

NURSING EDUCATION PROGRAMS; PROVISIONAL APPROVAL;
REMOVAL FROM APPROVED LIST; EXAMINATION PASS RATES

The State Board of Nursing (Board) adopts §§ 21.1, 21.26, 21.31, 21.33, 21.33a, 21.33b, 21.34, 21.141, 21.162, 21.162a, 21.162b, and 21.166, relating to approval of nursing education programs for professional nurses (RNs) and practical nurses (LPNs), to read as set forth in Annex A. These regulations will establish a new pass-fail rate for approved registered nursing and licensed practical nurse programs in the Commonwealth. Beginning one year after the regulation is promulgated, nursing education programs will remain on full approval status if at least 75% of the programs graduates pass the national licensure examination. Beginning two years after the regulation is promulgated, nursing education programs will remain on full approval status if at least 80% of the programs graduates pass the national licensure examination. The regulation provides for oversight and assistance to those programs whose pass rates fall below acceptable standards.

Notice of Proposed Rulemaking was published at 38 Pa. B. 344 (January 19, 2008). Publication was followed by a 30-day public comment period during which the Board received numerous comments from stakeholders. On February 13, 2008 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 March 20, 2008.

Statutory Authority

The final rulemaking is authorized under section 6.1 of the Professional Nursing Law (RN act) (63 P.S. § 216.1), which requires the Board to establish standards for the operation and approval of nursing education programs and for the preparation of professional nurses. Section 9 of the Practical Nurse Law (LPN act) (63 P.S. §659) authorizes the Board to approve all schools and institutions that educate practical nurses. The Board is further authorized to establish rules and regulations for the practice of professional nursing and the administration of the RN act under section 2.1(k) of the RN act (63 P.S. § 212.1(k)) and for the practice of practical nursing and the administration of the LPN act under section 17.6 of the LPN act (63 P.S. § 667.6).

Summary of Comments and Responses to Proposed Rulemaking

Comments from Stakeholders

The Board received comments from several nursing education programs. Butler County Community College (Butler) agreed with the proposal to increase the licensure passing rate requirements for nursing education programs. However, Butler suggested that the Board could support nursing education by identifying the appropriate faculty to student ratios for clinical courses. Butler suggested that this requirement would assist program administrators when requesting additional faculty positions. Second, Butler

suggested that a program that admits students annually in the fall semester would be including students from two different cohorts in their annual report, which is based on an examination year October 1 through September 30.

The Board has consistently declined to establish a minimum faculty to student ratio for clinical courses because it believes that each program is in the best position to make determinations regarding the effectiveness of its student to faculty ratio based on the program's instructors, the acuity of the patient population in a clinical program and the nature of the program's student body. While establishing the student to faculty ratio by regulation might assist some schools in successfully lobbying their administration for additional faculty positions, other schools might be placed in a position of justifying current faculty assignments and decrease faculty. The Board believes that the best way to ensure an effective student to faculty ratio is to allow each nursing education program to set its ratio consistent with meeting educational objectives.

The Board cannot dictate when program graduates sit for the licensure examination. Therefore, no matter what dates the Board might set for the examination year, it is possible that individuals from more than one cohort from a particular nursing education program may sit for any given administration of the examination. The Board obtains examination results from the National Council of State Boards of Nursing, which are provided quarterly. The Board chose the October 1 through September 30, examination year to capture the majority of each program's cohorts.

The Clearfield Campus of Lock Haven University (Lock Haven) wrote in support of the increase to 70 percent, but commented that the additional increase to 80 percent two years following the first increase would not provide nursing education programs ample time to implement and evaluate strategies and their effectiveness. For at least ten years, the Board has written to all programs with pass rates between 60.1% and 80% and notified these programs that the Board has been planning to raise the minimum pass rate. Included with this notice, the Board provided suggestions for self-assessment and correction and offered assistance from its education advisors. The Board believes that it has given nursing education programs sufficient notice of its intention to increase the minimum pass rate and that the programs will be able to implement and evaluate strategies and their effectiveness.

Lock Haven also commented that the proposal would force nursing programs to "implement stringent admission criteria, decrease enrollment, increase GPA requirements, increase grading scales, and utilize standardized exams as a means to weed out students prior to graduation" and suggested that these changes "could affect the numbers of potential registered nurses in the Commonwealth, and have a direct impact on the nursing shortage." The Board disagrees with Lock Haven's conclusion. There are many reasons why a nursing education program's graduates cannot pass the licensure examination. Rather than decreasing enrollment, a program could evaluate its status related to having an adequate number of qualified faculty, a well-defined faculty development plan, and a sound curriculum plan as evidenced through program outcomes in its systematic evaluation plan.

The Board's proposal to increase the minimum pass rate will positively impact the number of potential registered nurses in the Commonwealth. If at least 70 percent, and, after two years, at least 80 percent, of the graduates of every nursing program in the Commonwealth pass the licensure examination, enabling them to become licensed nurses practicing in the Commonwealth, there will be more nurses than if only 60 percent of the graduates of the programs pass the licensure examination and become licensed nurses practicing in the Commonwealth.

The Board received two comments from Thomas Jefferson University (TJU). The Dean of the School of Nursing expressed support for the increase in the minimum pass rates for program graduates as essential to ensuring the quality of nursing education programs in the Commonwealth and assuring the safety of the public and the integrity of the nursing profession. The Dean requested that the Board consider establishing regulations to require an individual who was unsuccessful after twice taking the licensure examination to meet additional educational requirements prior to repeating the examination and to require graduates to sit for the examination within three years of completing their nursing education. The Board will take up these recommendations at its meetings and consider regulations in these areas.

The Assistant Dean of the School of Nursing sent the second letter from TJU. This letter also expressed support for the Board's proposal to raise the minimum passing standard. The writer proposed that the Board amend its rulemaking to add another type of approval. The writer suggested that a program that is on provisional approval status and is not improving after two years should be placed on probationary approval status for another period of time prior to the program being removed from the approved list. The Board does not agree that adding another step in the process would improve schools' compliance with the regulations.

Comments from other interested parties

The Executive Director of the Pennsylvania Association of County Affiliated Homes (PACAH) wrote in support of the regulation raising the pass rates to around the national average, noting that Pennsylvania had been behind most states in regards to this issue. PACAH suggested that the Board place additional restrictions on nursing education programs to ensure that the programs contain the essential elements/instructional processes to support their students. As part of the process of granting initial approval to nursing education programs, the Board performs a detailed review of the program's curriculum, faculty, resources and clinical sites. The Board's assessment of these areas is ongoing through the annual and triennial reports that programs are required to file with the Board.

PACAH expressed concern about the impact on students if a program is removed from the approved list, and asked for more information about transitioning students to another program. The Board's educational advisors monitor all nursing education programs on provisional status. However, it is the responsibility of the controlling

institution to provide for the completion of the program for students currently enrolled either by placing the students in an approved program or continuing the enrolled classes until completion.

The Pennsylvania State Nurses Association (PSNA) wrote to support increasing the pass rates over the two-year period and downgrading programs to provisional approval status if their pass rate falls below 80%. PSNA noted that the revision would align Pennsylvania with other states that mandate higher standards and will motivate programs that hover near marginal levels to improve. PSNA also wrote in support of the procedures developed by the Board for removal of a program from the approved list.

PSNA asked that the Board further investigate whether individuals who successfully take the licensure examination on the first try are safer practitioners than those who pass on their second attempt. The Board has never collected data to correlate the efficacy of practitioners and the number of times practitioners took the licensure examination nor is the Board aware of any research that even suggests a correlation between safe practice and number of times an individual examined. Nevertheless, it is not clear to the Board that any relation that might be revealed would indicate the quality of particular nursing education programs. To the Board's knowledge, all states consider only first time test takers when evaluating the success of their nursing education programs.

The Hospital and Healthsystem Association of Pennsylvania (HAP) wrote in support of increasing the accountability of nursing education programs for achieving increased pass rate standards, but expressed concern that the regulation might have the unintended effect of negatively impacting the supply of nurses in the Commonwealth. The Board believes that the increased pass rate standard will increase the number of nurses licensed in the Commonwealth. By way of illustration, the Board compared the number of nurses eligible for licensure from programs with pass rates below 80% during the October 1, 2006, through September 30, 2007, period to the number of nurses eligible for licensure if those programs met the 80% pass rate. During this period of time, 1,962 students from nursing programs with a pass rate below 80% took the examination and 1,422 passed the examination. If, during this same period of time, 1,962 students from nursing programs with a pass rate of 80% took the examination, 1,570 would have passed, resulting in an increase of 148 new nurses who could be licensed in the Commonwealth.

HAP suggested that the Board amend its rulemaking to provide a three-year phase in of the 80% standard in order to give programs more time to meet the upgraded standards. HAP opined that "it generally takes considerable effort – often over several years time – to assess what . . . issues [have resulted in low pass rates], develop plans for correction, implement changes, and monitor those changes to evaluate effectiveness." As noted above, the Board has, for at least ten years, notified all programs with pass rates between 60.1% and 80% of the Board's intention to raise the minimum pass rate. Also, it has requested that the programs assess the factors contributing to the low pass rate and

address those factors. The Board does not believe that programs need more time to implement changes; rather, by virtue of the new regulation, programs that do not assess shortcomings and implement changes will be faced with the consequence of being placed on provisional approval status. Once on provisional status, the programs will be subject to a timetable for assessing the programs' weaknesses and improving the program so that at least 80% of program graduates are prepared to pass the licensure examination and begin their careers as nurses.

HAP also suggested that the Board determine a program's pass rate based on a three-year average. The vast majority of states evaluate programs based on annual NCLEX performance. Several states consider NCLEX performance of program graduates over more than one year.

Delaware Board of Nursing, which uses an 80% pass rate standard, places a program on provisional approval status if pass rates are below 80% for two consecutive years. Looking at examination results for Pennsylvania programs for the examination year October 1, 2005, through September 30, 2006, 16 programs failed to achieve a minimum 80% pass rate and would be subject to provisional approval status. Using Delaware's standards, that is, schools below the 80% minimum in the 2005 – 2006 year and still below the 80% minimum in the October 1, 2006, through September 30, 2007, examination year, 15 programs would be subject to provisional approval status.

Georgia Board of Nursing also uses 80% as the minimum pass rate standard. If a program fails to meet the 80% standard in any given year, the Board will consider a four-year average of the program's pass rates. Applying Georgia's standard to Pennsylvania, 16 programs failed to achieve the minimum 80% standard in the 2005-2006 examination year. Seventeen programs failed to achieve the minimum 80% standard when all four years of examination score data, from 2003-2004 through 2006-2007, were considered.

North Carolina Board of Nursing uses 95% of the national pass rate as its minimum pass rate standard, but uses a three-year average to determine a program's pass rate. Using North Carolina's system, 21 programs would fall below the minimum pass rate in the 2005-2006 examination year, as compared to 16 that would fall below the proposed Pennsylvania standard in the same year. In addition, using the three-year average, over 16 programs would be subject to provisional approval status in the 2005-2006 examination year under the North Carolina Standard.

Maryland Board of Nursing uses 90% as the minimum pass rate standard. Applying Maryland's rules in Pennsylvania during the 2005-2006 examination year, 47 programs would have been placed on "warning status" and given only one year to improve performance. Using the model proposed by the Board, only 16 programs would have been placed on provisional status and given two years to improve performance.

In short, the Board is aware that there are different approaches by the states to calculate and evaluate pass standards as one method of evaluating the effectiveness of the state's nursing education programs. Remediation programs also vary from state to state.

The Board considered other states' regulatory schemes. The Board is satisfied that its proposal, which emphasizes early intervention with programs experiencing difficulty and the emphasis on a plan to ensure improvement so that programs can be returned to full approval status, will be an effective method to improve the quality of nursing education programs in the Commonwealth.

Regarding HAP's comments about the licensure examination and test plan, the Board is confident that the examination, which is used in by every Board of Nursing in the United States, has not placed graduates of Pennsylvania nursing programs in a negative position in comparison with their colleagues in other states. Changes to the test plan and passing standard occur through a rigorous scientific methodology in accordance with psychometric principles at most once every three years. The 2005 RN Practice Analysis conducted by the National Council of State Boards of Nursing demonstrated that the RNs surveyed "worked an average of 3.64 months as RNs" and not the six to 12 months asserted. In addition, approximately one-third of Pennsylvania programs experienced an increase in their pass rate in the October 2006 – September 2007 reporting period as compared to the prior reporting period. Of the Pennsylvania programs whose pass rates declined in the October 2006 – September 2007 reporting period, approximately one-third experienced a decline in their pass rate of less than two percentage points.

HAP next questioned whether the Board would have sufficient resources to monitor and assist programs on provisional approval status. The Board is committed to having appropriate resources available for monitoring all nursing education program with the intent to assure regulatory compliance and overall program quality provided in the education of nurses in the Commonwealth.

HAP next recommended that the Board use the pass rate only as a first-level screening tool to determine whether any nursing education program should be placed on provisional status, and that the Board "fully consider other data" before placing a program on provisional status. Specifically, HAP suggested that the Board consider the pass rate of program graduates who tested in another state. When a candidate applies for licensure by examination, the candidate must provide on the application the Program Code assigned by NCSBN to the nursing education program. This program code identifies the program the candidate graduate from and their results are reported to that respective program. The Board already considers the test results reported to each program, which includes program graduates who tested in another state.

HAP also suggested the Board consider whether the examination year test results included a mixing of cohort groups. The Board is not clear why this is a concern, considering HAP's suggestion to average three years of pass rates, which would clearly involve mixing cohort groups. The Board does not have a method to track individual cohorts from programs, nor does the Board require individuals to test at any particular time. The Board does not believe that having examination year results include students from several cohorts decreases the validity of the pass rate data. HAP next suggested that

the Board consider the diversity of the program's student population. The Board is not clear how HAP foresees a regulatory scheme to address any relationship that might exist between the diversity of a program's student population and NCLEX performance.

Next, HAP suggested that the Board recalculate the pass rate of programs by considering second-time pass rate success due to generational differences and approaches to the examination. First, the Board has no way to correlate the age of the test takers with their scores. Second, the NCLEX has been a computer based examination for 14 years. The Board knows of no basis for HAP's suggestion that some students view the first time taking of the NCLEX as a practice examination. The cost of the examination is around \$200; the Board has not received reports that students view it as a "practice" examination.

HAP then suggested that the Board should consider the number of students that sat for the examination. The Board is aware that if only a small number of students sit for the examination, even a small number of failures will affect the pass rate. However, percentage-based assessment inherently treats large and small programs with equality. The Board's education advisors consider the size of the graduating class and the program's historic pass rate performance when working with a program to improve performance.

Finally, HAP suggested that the Board consider the retention rates of the programs. HAP stated that some schools have implemented periodic testing throughout the program to "weed out students before graduation to ensure that the school attains the NCLEX pass rate standards." Students pay tuition to the program with the intention of gaining an education that will permit them to successfully pass the NCLEX, obtain licensure, and work in their chosen profession. The Board does not agree with HAP's implication that a program should continue to take tuition payments from students in a nursing education program when the program has every indication that the student will not be able to pass the licensure examination and practice the profession. In fact, the Board believes that a program that does so is doing a disservice to the student, who should either be given the tools to succeed in the program or encouraged to choose another course of study that will enable the student to find employment upon graduation. By increasing the minimum pass rate standard, the Board is requiring nursing education programs to be more responsible and accountable to their students by providing a high quality educational program that will ultimately lead graduates to the practice of the profession.

Next, HAP suggested that there may be serious unintended consequences of the Board's regulation, including having nursing programs institute more stringent admission criteria resulting in the acceptance of fewer nursing students, particularly fewer minority students, into the programs; limiting the pool of applicants for admission by excluding those that don't perform as well on standardized tests such as the SAT; limiting the number of diverse students because demographically, certain populations of students don't perform well on standardized tests; and encouraging schools to "weed out" students before graduation. HAP suggested that these unintended consequences would exacerbate

the current nursing shortage. The Board disagrees with HAP's predictions. It is the responsibility of the school to determine its admissions criteria. Programs should provide sound, ongoing evaluation for students' progression through the program to ensure that graduates will be prepared to enter the workforce.

HAP also suggested exploring the implementation of a monitoring program that could be used to assist at-risk programs. For at least the past 10 years, the Board has been notifying programs that the Board has identified as at-risk and offering suggestions and assistance to these programs in identifying and correcting factors that might have led to substandard pass rates. A monitoring program has been in place for many years.

HAP next suggested that the requirement that nursing programs apprise applicants and students whenever the program's approval status changes would place an operational burden on schools. The Board believes that programs must be responsible for and accountable to their students. Moreover, the Board believes that prospective students and current students should be aware of the approval status of programs they are intending to enroll in or in which they are currently enrolled. The Board purposefully left to the programs the means by which this notification would be made in order to give programs flexibility. At the request of IRRC, the Board will clarify the means of notification. The Board does not believe that the requirement places an undue burden on nursing education programs.

Finally, HAP proposed that programs be given three years to correct deficiencies. The Board stands by its proposal that programs be required to correct deficiencies in two years, and has allowed that an extension of time may be granted if a program is showing progress toward correction.

HPLC Comments

The House Professional Licensure Committee (HPLC) submitted nine comments to the Board. HPLC asked if a program that had been removed from the approved list could reapply to be placed on the approved list and the procedure the program would follow. A program that has been removed from the approved list would be treated the same as any other program that does not have Board approval, that is, as if a new program were being established under § 21.51. If approved, the program would be placed on initial approval status, as set forth in § 21.33.

HPLC noted that the Board used the numeral "2" in §§ 21.33a(a) and 21.162a(g). The Board's usage appears to be consistent with § 4.11 of the Pennsylvania Code and Bulletin Style Manual. The Board is confident that if its usage is erroneous, the editors of the Pennsylvania Code will make an appropriate correction.

HPLC suggested that the informal process to correct deficiencies should be separated from the formal process for removal in §§ 21.33a and 21.162a. The Board has deleted the last part of subsections (a), (d) and (e) from these subsections, which seem to mingle the informal process and the process when a program is on provisional approval

with the removal process. As the entire section relates to failure to comply with standards, the last part of subsections (a), (d) and (e) is more properly placed in its own subsection. The Board has created a new subsection (k) for the provision.

HPLC noted that Wilson College had commented on the regulation during the pre-draft comment period and requested that certain restrictions, such as only daytime programming, be placed on schools on provisional approval status. The Board noted in the preamble to proposed rulemaking that the Board already imposes restrictions as appropriate. HPLC asked what other restrictions the Board might impose and how they might improve pass rates. The Board has imposed a variety of restrictions, such as requiring a program to institute a program of student testing in order to identify deficiencies in the curriculum, collecting data to correlate pre-admission GPA and student performance, raising the GPA admission standard, and instituting tutoring programs for at-risk students. Identifying deficiencies in the curriculum allows a program to make targeted improvements in teaching methodology and/or personnel, correlating pre-admission GPA to student performance allows a program to determine if remedial programs for students will improve NCLEX performance.

HPLC next asked for examples of the additional reports that may be required of a program on provisional approval status under §§ 21.33a(e) and 21.162a(e). Different reports may be required depending on the status of the program's self-assessment of the underlying causes for failing to meet the regulations and the educational advisor's identified deficiencies. Reports might include detail from the program's systematic evaluation plan, such as curriculum plans, admission and progression policies and competency determination tools.

HPLC noted that §§ 21.33a(g) and § 21.162a(g) provide for a two-year period for a program to become compliant with the Board's regulations. HPLC asked whether the Board had considered a period of time for correction of deficiencies. The Board has used the terms come into compliance or become compliant and correct deficiencies interchangeably. The same time period applies. The Board has rewritten these subsections for clarity.

HPLC's next comment related to a draft copy of the rulemaking that was corrected by the Pennsylvania Code and Bulletin editors prior to publication as proposed rulemaking.

HPLC asked at what specific points in time a program could appeal the Board's decision that a program has a deficiency. Specifically, HPLC asked if there could be an appeal before formal action was taken and whether the restrictions in §§ 21.33a(g) and 21.162a(g) were appealable. Finally, HPLC asked the Board to enumerate the appeals process in the regulation. Sections 21.33a(j) and 21.162a(j) provide that a program may appeal the decision to place the program on provisional status in accordance with 1 Pa. Code § 35.20. This section of the General Rules of Administrative Practice and Procedure applies to appeals from actions taken by administrative agency staff, such as actions of the Board's nursing education advisors. The section allows a party to appeal

the action of staff within 10 days after service of notice of the action by the staff. The appeal would be filed with the Board. The General Rules of Administrative Practice and Procedure contemplate the appeal of all staff action; therefore, the Board believes that a program could appeal any restriction placed on the program by Board staff. These sections have been expanded to further explicate the appeal process provided by the General Rules of Administrative Practice and Procedure.

Finally, HPLC asked why the regulation does not require notice to current students of the changes in approval status or provide students the opportunity to transfer to another program with full approval status. Sections 21.33(b) and 21.162(b) require a program to notify applicants and students whenever the program's approval status changes. The provisions assume that the students know the status of the program upon enrollment. The Board does not have any authority to "provide students the opportunity to transfer to another program." Students, as consumers of educational services, are free to apply to other programs and, if accepted, transfer, at any time.

IRRC Comments

IRRC first addressed the clarity of §§ 21.31(d) and 21.162(c), noting that the word "approval" was confusing. The Board's nursing education advisors are authorized to move a program from initial approval status to full approval status. In addition, the Board's nursing education advisors conduct the compliance review and monitor the performance and improvement plan processes on behalf of the Board. Only the Board may grant initial approval status to a program or remove a program from the approved list. Based on comments received, the Board has amended this section to include, as a function solely of the Board, the authority to extend the two-year maximum period for the correction of deficiencies. These sections have been rewritten for clarity.

IRRC next suggested that the Board provide a time period for the notice programs are required to give to applicants and students under §§ 21.33(b) and 21.162(b). The Board will add a 30-day time period for the notice. In addition, the Board will add direction concerning the methods of acceptable notice, as requested by IRRC.

IRRC suggested that §§ 21.33a(a) and 21.162a(a) specifically provide that the Board provide written notice to the program describing the reported deficiencies. The Board had anticipated that written notice would be provided and has added this provision. IRRC also asked, regarding the notice provision in subsections (b), whether this was a different notice than that in subsection (c). Depending on the circumstances, the education advisors may provide one notice or separate notices. In some cases, multiple notices may be provided. The process is intended to remain informal to permit the programs to address concerns without a formal, public proceeding. To this end, the Board seeks to encourage a collegial flow of information between the program director and the educational advisors.

IRRC asked whether the provisions of subsections (c) and (g) were in conflict. The Board has amended subsection (g) to clarify that only the Board, and not the education advisors, may extend the correction period beyond two years.

IRRC requested that the Board provide that its education advisors will provide written notice and requests in subsections (d) and (e). The Board anticipated that these requests would be in writing and has added the requested provisions.

Many of the questions raised by IRRC under its question number 4 have been addressed in response to other commenters' concerns. IRRC also asked if the Board had any information on how many programs will be able to reach the 80% standard in two years, and what kind of changes would be required to meet the standard. As noted previously, programs with a pass rate between 60.1% and 80% have been receiving communication and assistance from the Board for the past 10 to 12 years. In answering IRRC's question, the Board considered the pass rates for the Commonwealth's nursing education programs for the examination years 2003-2004, 2004-2005, 2005-2006 and 2006 to 2007.

Exam Year	PN programs below 75%	PN programs 75.1 – 79.9%	RN programs below 75%	RN programs 75.1 – 79.9%
2003-2004	2	3	12	13
2004-2005	0	2	6	9
2005-2006	2	2	7	9
2006-2007	4	2	19	11

Of the RN programs with pass rates below 80% for the 2003-2004 examination year, 15 programs increased their pass rate to over 80% in the 2004-2005 examination year, an additional 5 increased their pass rate to over 80% by the 2005-2006 examination year, and all but one of the programs was in compliance with the 80% pass rate by the 2006-2007 examination year. Based on this historic data, it appears that virtually all RN programs will be able to reach the 80% standard within two years.

Of the PN programs with pass rates below 80% over the four examination years considered, only one was unable to improve its pass rate to above 80% within one examination year; that program improved its pass rate to over 90% in the second year after initiating corrective measures. Based on this historic data, it appears that all PN programs will be able to reach the 80% standard within two years.

Only three programs have had pass rates below 80% for four consecutive examination years. These programs include two baccalaureate degree programs (with rates of 60% - 74.42% - 74.24% - 74.58% for a total of 183 students sitting for examination over the four year period, and 50% - 76.92% - 47.37% - 47.52% for a total of 61 students sitting for examination over the four year period), and one diploma program (with rates of 75% - 64.29% - 64% - 63.16% for a total of 101 students sitting for examination over the four year period). The Board anticipates that the second BSN

program and the diploma program will need to make significant improvements across their programs to meet the 80% standard. Because programs have never been subject to the 80% pass rate or a timetable for coming into compliance with the new pass rate, it is impossible to anticipate whether all three of these programs would be able to reach the goal.

IRRC next noted that HAP recommended two additional approaches to meeting the 80% standard; first, phasing in the standard over a three-year period and second, using a three-year average to calculate the pass rate. As noted above, the Board has notified programs for ten years that a change would be coming to increase pass rates. The Board does not believe that programs need another year of notice that pass rate standards are increasing. The Board fully discussed the three-year average suggestion in its response to HAP's comments. It is also interesting to note that two of the three programs identified above would be placed on provisional approval status after one year under HAP's recommendation, and that all three of the programs would be placed on provisional approval status after two years under HAP's recommendation. The Board does not anticipate that its approach will be grossly overinclusive.

IRRC commented that it agreed with other commenters who had suggested that the Board consider examining the success rate of second time test takers and, if there were a question about the nexus between the program and a second time test taker's success, the Board could require that applicants report and document additional course work. The Board's statutory authority is to approve, and disapprove, nursing education programs. Even if the Board reviewed and analyzed information about the study habits of applicants for reexamination, it is not clear that the Board could distinguish what made an applicant successful or unsuccessful on reexamination. Moreover, it is important to note that all states base the determination of an educational program's effectiveness on the pass rate of first time test takers.

Regarding removal from the approved list, IRRC, following up on a question from HPLC, asked if in the past any programs had been removed from the approved list and later inquired about submitting an application for reinstatement. The Board has never removed a program from the approved list. Should a program be removed, it could reapply for initial approval by the Board.

IRRC next questioned the responsibility of the controlling institution to students set forth in §§ 21.34(b) and 21.166(b). This provision requires the controlling institutions to maintain support from the program until currently enrolled students have graduated or been placed in other programs. The provisions that make the controlling institution responsible for students in the institution's program is found in § 21.41(c) (related to completion of program) for professional nursing education programs and in § 21.173(c) (related to discontinuance or interruption of practical nursing education programs).

Finally, IRRC suggested that the Board include in its regulation a reference to section 6.2(a) of the RN Law (63 P.S. § 216.2(a)). Section 6.2(a) provides that a student who obtained part of his or her nursing education from a program that was removed from

the proposed list shall be granted credit for that course work by another program into which the student transfers. The Board has references this section of the RN Law in § 21.34(d).

Fiscal Impact and Paperwork Requirements

The final rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final rulemaking will impose only minimal additional paperwork requirements upon the Board, and none upon any political subdivisions. Nursing education programs may incur additional costs in conforming to the regulation.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 18, 2007, the Board submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 1980 (April 28, 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 at 38 Pa. B. 344.
- (4) That 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:

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

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

ANNEX A

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
SUBPART A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 21. STATE BOARD OF NURSING**

Subchapter A. REGISTERED NURSES

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:

* * * * *

Examination year – The period beginning on October 1st of a year through September 30th of the following year.

* * * * *

LICENSES

* * * * *

§ 21.26. [Failing rate of a school in examination] (Reserved).

[If 40% or more of the first-time examinees of a school of nursing writing the examination in this Commonwealth fail the examination, the school will be placed on provisional approval status. The Board may consider additional documented statistics concerning the examination scores received in other states by Commonwealth graduates in determining the status of the school.]

* * * * *

APPROVAL OF [SCHOOLS OF] NURSING EDUCATION PROGRAMS

§ 21.31. Surveys; list of approved ~~schools~~ NURSING EDUCATION PROGRAMS.

* * * * *

(d) For purposes of activities relating to the approval and status of nursing education programs, the term “Board” used in this subchapter may mean the Board’s educational advisors appointed under section ~~2.1(i)~~ 2.1(J) of the act (63 P.S. § ~~212.1(i)~~ 212.2(I)). Only the Board may, BY A MAJORITY VOTE, confer initial approval status on a proposed nursing education program, EXTEND THE MAXIMUM TWO YEAR PERIOD FOR CORRECTION OF DEFICIENCIES ~~and only the Board may~~ OR remove a program from the approved list.

* * * * *

§ 21.33. Types of approval.

(a) The Board grants the following types of approval to nursing education programs:

(1) *Initial.* The Board may grant initial approval to a new [schools] nursing education program, with evidence that [acceptable] the standards of this subchapter are being met, for a period of time necessary to evaluate the results of the licensing examination taken by the [first] FIRST COHORT OF graduates ~~from the program’s first examination year.~~ A program will not be placed on full approval status until it has graduated its first class and the class has achieved an acceptable rate of passing the national licensure examination, as set forth in §21.33b (relating to minimum rate for graduates of nursing education programs to pass the national licensure examination). A program on initial

approval status that fails to achieve an acceptable rate of passing the national licensure examination upon graduation of its first class will be placed on provisional approval status.

[(b)] (2) *Full.* The Board will place on full approval [those schools] a nursing education program which [attain] attains and [maintain the acceptable] maintains the standards [and adhere to the policies and regulations of the Board considered essential for a sound program of nursing education] of this subchapter.

[(c)] (3) *Provisional.* The Board may place on provisional approval a [school] nursing education program not meeting the [acceptable] standards of this subchapter. A nursing education program on full approval status will be placed on provisional approval status if the program fails to meet the provisions of § 21.33b. [A period of 2 years will be the maximum time allowed for the correction of deficiencies resulting in provisional approval. If the standards are not met within this designated time, the school will be removed from the approved list.]

(b) A nursing education program shall notify applicants for admission of the program's approval status and, WITHIN 30 DAYS OF A CHANGE OF STATUS, shall notify applicants and students whenever BY ELECTRONIC MAIL OR FIRST CLASS MAIL THAT the program's approval status changes HAS CHANGED. The program shall provide the Board with a copy of the notice sent to applicants and students. A program shall provide additional notice to applicants and students at the direction of the Board.

§ 21.33a. Failure to comply with standards.

(a) ~~Whenever~~ IF the Board receives information suggesting that a nursing education program has not maintained the standards of this subchapter, the Board WILL VALIDATE THE INFORMATION AND WILL NOTIFY THE PROGRAM, IN WRITING, OF THE ALLEGED DEFICIENCY. THE BOARD may request information from the program or conduct a AN ANNOUNCED OR UNANNOUNCED site visit BEFORE NOTIFYING THE PROGRAM OF THE ALLEGED DEFICIENCY. ~~and~~ THE BOARD may informally resolve any deficiency. ~~The failure of a program to cooperate will be considered a violation of this section and may result in immediate referral of the program for removal from the approved list as provided in § 21.34 (relating to removal from approved list).~~

(b) ~~If the Board determines that a nursing education program should be placed on provisional approval status, the~~ THE Board will notify the A program, in writing, that the program ~~has been~~ WILL BE placed on provisional approval status.

(c) ~~If the Board places a nursing education program on provisional approval status, the~~ THE Board will notify the A program ON PROVISIONAL APPROVAL STATUS, in writing, of the deficiencies and the amount of time that will be allowed for correction of the deficiencies that resulted in the program's placement on provisional approval status. The Board may extend the time period for correction of deficiencies at its discretion if the program is making demonstrable progress toward the correction of deficiencies. If additional deficiencies are identified, the existing provisional period may be extended at the discretion of the Board.

(d) The Board may place restrictions on a nursing education program on provisional approval status as deemed necessary by the Board to bring the program into compliance with this subchapter AND WILL NOTIFY THE PROGRAM, IN WRITING, OF THE RESTRICTIONS.

~~The failure of a program to adhere to the restrictions mandated by the Board will be considered a violation of this section and may result in immediate referral of the program for removal from the approved list as provided in § 21.34.~~

(e) The Board may require that a nursing education program on provisional approval status prepare and submit additional reports AND WILL NOTIFY THE PROGRAM, IN WRITING, OF THE REPORTS REQUIRED. ~~The failure of a program to timely provide reports required by the Board will be considered a violation of this section and may result in immediate referral of the program for removal from the approved list as provided in § 21.34.~~

(f) The Board may make announced or unannounced site visits to a nursing education program on provisional approval status.

(g) A period of 2 years will be the maximum time PERIOD allowed for the correction of deficiencies resulting in provisional approval status THAT RETURNS THE PROGRAM TO COMPLIANCE WITH THE REGULATIONS. A PROGRAM MAY PETITION THE BOARD FOR EXTENSION OF THE MAXIMUM PERIOD AND THE BOARD MAY, BY MAJORITY VOTE, EXTEND THE PERIOD FOR GOOD CAUSE DEMONSTRATED BY THE PROGRAM.

(h) If the standards of this subchapter are met within the designated time, the nursing education program will be removed from provisional approval status and returned to the approved list. The Board will notify the program in writing of this action.

(i) If the standards of this subchapter are not met within the designated time, the nursing education program will be removed from the approved list as provided in §21.34.

(j) WITHIN 10 DAYS OF SERVICE OF A REQUEST UNDER SUBSECTION (A) OR (E) OR NOTICE OF THE IMPOSITION OF A RESTRICTION UNDER SUBSECTION (D), A nursing education program may appeal the decision to place the program on provisional approval status in accordance with ACTION OF THE STAFF AS PROVIDED IN 1 Pa. Code § 35.20.

(K) THE FAILURE OF A PROGRAM TO COOPERATE WITH THE BOARD BY FAILING TO PROVIDE REQUESTED INFORMATION OR REPORTS, BY REFUSING OR LIMITING A SITE VISIT, OR BY REFUSING TO ADHERE TO RESTRICTIONS MANDATED BY THE BOARD WILL BE CONSIDERED A VIOLATION OF THE STANDARDS FOR NURSING EDUCATION PROGRAMS AND MAY RESULT IN IMMEDIATE REFERRAL OF THE PROGRAM TO THE PROSECUTION DIVISION TO CONSIDER FORMAL ACTION TO REMOVE THE PROGRAM FROM THE APPROVED LIST AS PROVIDED IN § 21.34 (RELATING TO REMOVAL FROM APPROVED LIST).

§ 21.33b. Minimum rate for graduates of nursing education programs to pass the national licensure examination.

A nursing education program shall prepare its graduates to pass the national licensure examination at a rate at least equal to the minimum rate set by the Board. The minimum rate for graduates to pass the national licensure examination are as follows:

- (1) A nursing education program shall achieve and maintain a minimum pass rate of 60% or more of its first-time examinees during an examination year.
- (2) Beginning on October 1, _____ [Editor's note: The blank refers to the first October 1 that occurs after the effective date of this section], a nursing education program

shall achieve and maintain a minimum pass rate of 70% or more of its first-time examinees during an examination year.

(3) Beginning on October 1, _____ [Editor's note: The blank refers to the date 1 year after the date in § 21.33b(2)], a nursing education program shall achieve and maintain a minimum pass rate of 80% or more of its first-time examinees during an examination year.

§21.34. Removal from approved list.

[The Board will give sufficient notification of intent of removal from the approved list and provide an opportunity for school officials to show cause as to why approval should not be withdrawn.]

(a) The Board may remove a nursing education program from the approved list in accordance with the following procedures if the program fails to meet and maintain minimum standards, including the minimum passing rates on the national licensure examination, as established by this subchapter.

(1) The Board will give a nursing education program notice of its intent to remove the program from the approved list.

(2) The notice of intent to remove a program from the approved list will set forth the alleged violations of the standards for nursing education programs.

(3) A program served with notice of intent to remove will be given 45 days in which to file a written answer to the notice.

- (4) The nursing education program will be provided an opportunity to appear at a hearing to demonstrate why approval should not be withdrawn.
- (5) The nursing education program and the Commonwealth will be provided an opportunity to file post-hearing briefs.
- (6) The Board will issue a written decision which will set forth findings of fact and conclusions of law.
- (7) The Board's written decision is a final decision of a governmental agency subject to review under the Administrative Agency Law, 2 Pa. C.S. § 702.
- (b) If a nursing education program is removed from the approved list, the controlling institution shall provide for the completion of the program for students currently enrolled by placing the students in an approved program.
- (c) If a nursing education program is removed from the approved list, the controlling institution shall make provision for permanent retention of student and graduate records in conformance with §§ 21.123 and 21.125 (related to access and use of records; and custody of records).
- (D) IF A NURSING EDUCATION PROGRAM IS REMOVED FROM THE APPROVED LIST, THE PROGRAM SHALL GIVE STUDENTS NOTICE OF THE PROTECTION GRANTED BY SECTION 6.2(A) OF THE ACT (63 P.S. § 216.2(A)).

* * * * *

Subchapter B. PRACTICAL NURSES

* * * * *

GENERAL PROVISIONS

§ 21.141. Definitions.

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

* * * * *

Examination year – The period beginning on October 1st of a year through September 30th of the following year.

* * * * *

APPROVAL OF PRACTICAL NURSING PROGRAMS

* * * * *

§ 21.162. Types of approval.

- (a) The Board grants the following types of approval to nursing education programs:
- (1) *Initial.* The Board may grant initial approval to a new [program] nursing education program, with evidence that [acceptable] the standards of this subchapter are being met, for a period of time necessary to evaluate the results of the licensing examination [taken] by the [first] FIRST COHORT OF graduates from the program's first examination year. A program will not be placed on full approval status until it has graduated its first class and the class has achieved an acceptable rate of passing the national licensure

examination, as set forth in § 21.162b (relating to minimum rate for graduates of nursing education programs to pass the national licensure examination). A program on initial approval status that fails to achieve an acceptable rate of passing the national licensure examination upon graduation of its first class will be placed on provisional approval status.

[(b)] (2) *Full*. The Board will place those nursing education programs on full approval status which attain and maintain the [acceptable] standards [and adhere to the policies and regulations of the Board considered essential for a sound program of practical nursing education.] of this subchapter.

[(c)] (3) *Provisional*. The Board may place on provisional approval a nursing education program not meeting [acceptable] the standards of this subchapter. A nursing education program on full approval status will be placed on provisional approval status if the program fails to meet the provisions of § 21.162b. [Full approval status will not be granted until acceptable standards are met. If acceptable standards are not met, the program will be removed from the approved list.]

(b) A nursing education program shall notify applicants for admission of the program's approval status and, WITHIN 30 DAYS OF A CHANGE OF STATUS, shall notify applicants and students ~~whenever~~ BY ELECTRONIC MAIL OR FIRST CLASS MAIL THAT the program's approval status ~~changes~~ HAS CHANGED. The program shall provide the Board a copy of the notice sent to applicants and students. A program shall provide additional notice to applicants and students at the direction of the Board.

(c) For purposes of activities relating to the approval and status of nursing education programs, the term “Board” used in this subchapter may mean the Board’s educational advisors appointed under section 2.1(j) of the act (63 P.S. § 212.1(j)). Only the Board may, BY A MAJORITY VOTE OF A QUORUM, confer initial approval status on a proposed nursing education program, EXTEND THE MAXIMUM TWO YEAR PERIOD FOR CORRECTION OF DEFICIENCIES OR ~~and only the Board may remove a program from the approved list.~~

§ 21.162a. Failure to comply with standards.

(a) Whenever IF the Board receives information suggesting that a nursing education program has not maintained the standards of this subchapter, the Board WILL VALIDATE THE INFORMATION AND NOTIFY THE PROGRAM, IN WRITING, OF THE ALLEGED DEFICIENCY. THE BOARD may request information from the program or conduct a AN ANNOUNCED OR UNANNOUNCED site visit BEFORE NOTIFYING THE PROGRAM OF THE ALLEGED DEFICIENCY. THE BOARD MAY ~~and may~~ informally resolve any deficiency. The failure of a program to cooperate will be considered a violation of this section and may result in immediate referral of the program for removal from the approved list as provided in § 21.166 (relating to removal from approved list).

(b) If the Board determines that a nursing education program should be placed on provisional approval status, the THE Board will notify the A program, in writing, that the program has been WILL BE placed on provisional approval status.

(c) If the Board places a nursing education program on provisional approval status, the Board will notify the program, in writing, of the deficiencies and the amount of time that will be

allowed for correction of the deficiencies that resulted in the program's placement on provisional approval status. The Board may extend the time period for correction of deficiencies at its discretion if the program is making demonstrable progress toward the correction of deficiencies. If additional deficiencies are identified, the existing provisional period may be extended at the discretion of the Board.

(d) The Board may place restrictions on a nursing education program on provisional approval status as deemed necessary by the Board to bring the program into compliance with this subchapter AND WILL NOTIFY THE PROGRAM, IN WRITING, OF THE RESTRICTIONS. The failure of a program to adhere to the restrictions mandated by the Board will be considered a violation of this section and may result in immediate referral of the program for removal from the approved list as provided in § 21.166.

(e) The Board may require that a nursing education program on provisional approval status prepare and submit additional reports AND WILL NOTIFY THE PROGRAM, IN WRITING, OF THE REPORTS REQUIRED. The failure of a program to timely provide reports required by the Board will be considered a violation of this section and may result in immediate referral of the program for removal from the approved list as provided in § 21.166.

(f) The Board may make announced or unannounced site visits to a nursing education program on provisional approval status.

(g) A period of 2 years will be the maximum time PERIOD allowed for the correction of deficiencies resulting in provisional approval status THAT RETURNS THE PROGRAM TO COMPLIANCE WITH THE BOARD'S REGULATIONS. A PROGRAM MAY PETITION THE BOARD FOR EXTENSION OF THE MAXIMUM PERIOD AND THE BOARD MAY,

BY MAJORITY VOTE EXTEND THE PERIOD FOR GOOD CAUSE DEMONSTRATED BY THE PROGRAM.

(h) If the standards of this subchapter are met within the designated time, the nursing education program will be removed from provisional approval status and returned to the approved list. The Board will notify the program in writing of this action.

(i) If the standards of this subchapter are not met within the designated time, the nursing education program will be removed from the approved list as provided in §21.166.

(j) WITHIN 10 DAYS OF SERVICE OF A REQUEST UNDER SUBSECTION (A) OR (E) OR NOTICE OF THE IMPOSITION OF A RESTRICTION UNDER SUBSECTION (D), A nursing education program may appeal the decision to place the program on provisional approval status in accordance with ACTION OF THE STAFF AS PROVIDED IN 1 Pa. Code § 35.20.

(K) THE FAILURE OF A PROGRAM TO COOPERATE WITH THE BOARD BY FAILING TO PROVIDE REQUESTED INFORMATION OR REPORTS, BY REFUSING OR LIMITING A SITE VISIT, OR BY REFUSING TO ADHERE TO RESTRICTIONS MANDATED BY THE BOARD WILL BE CONSIDERED A VIOLATION OF THE STANDARDS FOR NURSING EDUCATION PROGRAMS AND MAY RESULT IN IMMEDIATE REFERRAL OF THE PROGRAM TO THE PROSECUTION DIVISION TO CONSIDER FORMAL ACTION TO REMOVE THE PROGRAM FROM THE APPROVED LIST AS PROVIDED IN § 21.34 (RELATING TO REMOVAL FROM APPROVED LIST).

§ 21.162b. Minimum rate for graduates of nursing education programs to pass the national licensure examination.

A nursing education program shall prepare its graduates to pass the national licensure examination at a rate at least equal to the minimum rate set by the Board. The minimum rate for graduates to pass the national licensure examination are as follows:

(1) A nursing education program shall achieve and maintain a minimum pass rate of 60% or more of its first-time examinees during an examination year.

(2) Beginning on October 1, _____ [Editor's note: The blank refers to the first October 1 after the effective date of this section], a nursing education program shall achieve and maintain a minimum pass rate of 70% or more of its first-time examinees during an examination year.

(3) Beginning on October 1, _____ [Editor's note: The blank refers to the date 1 year after the date in § 21.162b(2)], a nursing education program shall achieve and maintain a minimum pass rate of 80% or more of its first-time examinees during an examination year.

* * * * *

§ 21.166. Removal from approved list.

(a) The Board may remove a nursing education program from the approved list in accordance with the following procedures if the program fails to meet and maintain minimum standards, including the minimum passing rates on the national licensure examination, as established by this subchapter.

(1) The Board will give a nursing education program notice of its intent to remove the program from the approved list.

- (2) The notice of intent to remove a program from the approved list will set forth the alleged violations of the standards for nursing education programs.
- (3) A program served with notice of intent to remove will be given 45 days in which to file a written answer to the notice.
- (4) The nursing education program will be provided an opportunity to appear at a hearing to demonstrate why approval should not be withdrawn.
- (5) The nursing education program and the Commonwealth will be provided an opportunity to file post-hearing briefs.
- (6) The Board will issue a written decision which will set forth findings of fact and conclusions of law.
- (7) The Board's written decision will be a final decision of a governmental agency subject to review under the Administrative Agency Law, 2 Pa. C.S. § 702.
- (b) If a nursing education program is removed from the approved list, the controlling institution shall provide for the completion of the program for students currently enrolled by placing the students in an approved program.
- (c) If a nursing education program is removed from the approved list, the controlling institution shall make provision for permanent retention of student and graduate records in conformity with §§ 21.233 and 21.234 (relating to custody or records; and access and use of records).

* * * * *

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

DATE: September 9, 2008

SUBJECT: Final Rulemaking
State Board of Nursing
Nursing Education Programs Examination Pass Rates (16A-5123)

TO: Andrew C. Clark, Deputy General Counsel
Office of General Counsel

FROM: Teresa Lazo, Counsel *TL*
State Board of Nursing

This rulemaking increases the minimum rate at which graduates from nursing education programs must pass the national licensure examination in order for the education programs to remain on full approval status with the Board. The rulemaking proposes to raise the minimum passing rate from 60% to 80% over a 2-year period. Although this change is significant, it brings the Commonwealth's minimum passing rate in line with the rest of the nation.

I have reviewed this regulation for form and legality, that I have discussed any legal and policy issues with the administrative officers responsible for the program, and that all information contained in the preamble and annex is correct and accurate.

16A-4313: Education Programs; Provisional Approval;
Removal from Approved List; Examination Pass Rates
Commentators List

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
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February 6, 2009

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

Re: Final Regulation
State Board of Nursing
16A-5123: Nursing Education Programs; Provisional Approval; Removal from
Approved List; Examination Pass Rates

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Board of Nursing pertaining to 16A-5123: Nursing Education Programs; Provisional Approval; Removal from Approved List; Examination Pass Rates

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

Sincerely,

A handwritten signature in black ink, appearing to read "Ann L. Sullivan".

Ann L. Sullivan, PhD FFAN, CRNP, Chairperson
State Board of Nursing

ALS/TL:rs

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Peter V. Marks, Executive Deputy Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel & 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-5123

SUBJECT: NURSING EDUCATION PROGRAMS; PROVISIONAL APPROVAL; REMOVAL FROM APPROVED LIST; EXAMINATION PASS RATES

AGENCY: DEPARTMENT OF STATE - STATE BOARD OF NURSING

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

INDEPENDENT REGULATORY
REVIEW COMMISSION

2009 FEB -6 AM 10:31

RECEIVED

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/9/09	<i>Madeleine Hammond</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <i>Michael P. McGeehan</i>
2/10/09	<i>Jim [unclear]</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <i>Robert M. Tomlinson</i>
2/16/09	<i>Kathy Coops</i>	INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)