

Regulatory Analysis Form

This space for use by IRRC

(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

IRRC Number: 2664

(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 proposed 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 licensing examination, provisional approval status, and removal from the Board's list of approved programs based on failure to maintain standards in accordance with the Board's regulations. 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).

Regulatory Analysis Form

(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 licensing examination are the least stringent standards in the nation when compared with the 32 other states that use the NCLEX passing rate as a criterion for approving a nursing education program. 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.

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

Nonregulation of nursing education programs would affect the public health and safety by permitting nursing students to be educated in programs that do not provide the highest quality education for safe and effective entry-level nursing practice. Nonregulation also risks the waste of resources of nursing students and of the Commonwealth, when a nursing education program is unable to prepare a substantial number of its graduates to pass the entrance examination into 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 proposed amendments would benefit both consumers of nursing services and nursing students in assuring that nursing education programs maintain high educational standards and prepare as many students as possible to attain nursing licensure. There were 130 Board-approved pre-licensure nursing education programs that filed annual reports with the Board in 2005 (80 for the preparation of registered nurses and 50 for the preparation of practical nurses).

Regulatory Analysis Form

(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, 2005, to September 30, 2006, 21 of the Commonwealth's 130 nursing education programs had examination pass rates below 80%. Nursing education programs with examination pass rates lower than 80% may continue to operate under the revised regulation, but would be placed on provisional approval status. These programs would be required to address the deficiencies in their programs in order to improve the performance of their graduates on the NCLEX in order to return to full approval status. 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 Board does not anticipate that any programs will be so adversely affected as to be removed from the approved list based on the increase in the minimum pass rate.

(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.

In accordance with Executive Order 1999-1, the Board sent a draft of this proposed rulemaking on April 23, 2004, to 29 agencies, associations, health care entities, and individuals who have been identified as interested parties or who have expressed an interest in proposed rulemaking by the Board and to all 128 prelicensure nursing education programs (78 RN and 50 LPN programs) which were approved by the Board as of December 22, 2003. The Board received three comments and considered these comments at its meeting on May 27-28, 2004, and made revisions to the draft as a result of those comments.

(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.

Regulatory Analysis Form

(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.

Regulatory Analysis Form

(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.

Regulatory Analysis Form

(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.

No alternative regulatory schemes were considered.

Regulatory Analysis Form

(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 education 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.

An early draft of this proposed rulemaking was sent out for public comment in accordance with paragraph (16) above. The Board holds monthly meetings at which all information relative to this rulemaking will 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.

Regulatory Analysis Form

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

The proposed 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 proposed amendments have not been given a sunset date. The Board would regularly evaluate the effectiveness of the proposed amendments following their adoption as final rulemaking.

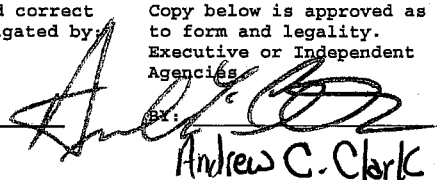
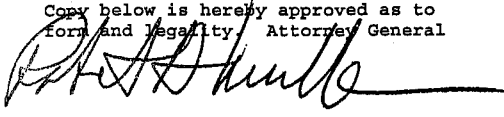
FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated by:

Copy below is approved as
to form and legality.
Executive or Independent
Agencies



BY: _____
(DEPUTY ATTORNEY GENERAL)

State Board of Nursing
(AGENCY)

BY: _____
Andrew C. Clark

DEC 24 2007

DOCUMENT/FISCAL NOTE NO. 16A-5123

NOV 30 2007

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: Mary E. Bowen
Mary E. Bowen, RN, CRNP

(Deputy General Counsel
(~~Chief Counsel,~~
Independent Agency
~~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.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF NURSING
49 PA. CODE, CHAPTER 21
NURSING EDUCATION PROGRAMS
EXAMINATION PASS RATES

The State Board of Nursing (Board) proposes to amend §§ 21.1, 21.26, 21.33, 21.34, 21.141 and 21.162 and to add §§ 21.33a, 21.33b, 21.162a, 21.162b and 21.166, to read as set forth in Annex A. The proposed rulemaking sets forth requirements and procedures for registered and practical nursing education programs on provisional approval status or subject to removal from approved lists and sets new minimum pass rates of program graduates on the licensing examination.

Effective Date

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

Statutory Authority

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 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).

Background and Purpose

The proposed amendments result from the Board's ongoing review of nursing education programs and the regulations that govern the programs. On February 10, 2001, the Board published proposed rulemaking at 31 Pa.B. 809 representing a systematic revision of its registered nursing education program approval regulations. The proposed rulemaking included new requirements for continuing approval of registered nursing programs, including the pass rates of first-time examinees on the licensing examination. The Board withdrew proposed rulemaking on March 12, 2003, with the intention of republishing the regulation as proposed with a new public comment period.

On April 23, 2004, a draft of the current proposal was sent to 29 agencies, associations, health care entities, and individuals who have been identified as interested parties or who have expressed an interest in proposed rulemaking by the Board and to all 128 precicensure nursing education programs (78 RN and 50 LPN programs) which were on the Board's approved list as of December 22, 2003. The Board received three comments, which it reviewed at its meeting on May 27-28, 2004.

The Hospital and Healthsystem Association of Pennsylvania (HAP) supported the rulemaking and noted that percentages established by the Board were consistent with HAP's recommendations. HAP suggested that the Board clarify what actions a nursing education program would be required to take with regard to its enrolled students if a program were removed from the approved list. The Board has addressed this issue in §§ 21.34(b) and (c) and 21.166(b) and (c) (relating to removal from approved list).

A nurse from Avoca, Pennsylvania commented that the draft rulemaking was sound and reasonable.

The practical nursing education program at Wilson College expressed concern for schools that currently calculate pass rates on a quarterly, rather than annual, basis. The commenter also suggested that any program with a pass rate lower than the state average be forbidden from having flexible scheduling of classes and be required to use standard daytime programming. In response to the concerns of Wilson College the Board defined "examination year" in § 21.1 and 21.141 (relating to definitions). Proposed §§ 21.33a(d) and 21.162a(d) (relating to failure to comply with standards) would authorize the Board to place restrictions on nursing education programs that are on provisional approval status. One such restriction might be to restrict the school to standard daytime programming, if such a restriction appeared to advance the objective of bringing the school into compliance with the regulations.

The Board intends to revise the requirements for all nursing education programs regarding the pass rates of program graduates on the national licensure examination. Under existing § 21.26 (relating to failing rate of a school in examination), an approved school for registered nurses is placed on provisional status if less than 60% of its first-time examinees pass the examination. A nursing program which fails to correct deficiencies within 2 years may be removed from the Board's list of approved programs under existing § 21.33(c) (relating to types of approval). The regulations pertaining to the approval of practical nursing education programs at § 21.162 (relating to types of approval) do not currently provide for placement on provisional approval status of a licensed practical nursing school based on failure rates of first-time examinees. The proposed rulemaking would standardize requirements for both registered and practical nursing education programs. In addition, the Board proposes to increase the minimum pass rate over a 2-year period. The pass rate to be initiated in the second year is consistent with the minimum pass rates in other states.

Description of Amendments

The Board is charged with the responsibility of approving and regulating nursing education programs in the Commonwealth. The Board has a three-category approval system – a new program is on initial approval status until it has graduated its first class and demonstrated an acceptable pass rate on the national licensure examination. At that time the program is placed on full approval status. A program may be placed on provisional approval status if it fails to meet the standards set

forth in this chapter. Examples of reasons a program may be placed on provisional approval status include unacceptable student-faculty ratio, inability to conduct clinical educational experiences, or failure to meet the minimum pass rate standards. The Board proposes to add a new subsection (b) to § 21.33 (relating to types of approval) that requires a program to notify applicants for admission and students of the program's approval status.

One of the criteria used by the Board, as well as by many other state boards of nursing, in approving a nursing education program is the pass rate of graduates of the program who take the national licensure examination (NCLEX-RN and NCLEX-PN) for the first time. Under existing § 21.26 (relating to failing rate of a school in examination), the Board will downgrade a registered nursing (RN) education program from fully approved to provisionally approved status if 40% or more of its first time examinees fail the NCLEX. The Board proposes to delete § 21.26 and move the minimum pass rate to § 21.33b (relating to minimum rate for graduates of nursing education programs to pass the national licensure examination). The Board also proposes to create the same requirements for LPN education programs by the addition of § 21.162b (relating to minimum rate for graduates of nursing education programs to pass the national licensure examination).

Under the proposal, the existing 60% minimum pass rate will continue in effect and will apply to practical nursing education programs on the effective date of this rulemaking. Beginning 1 year after final rulemaking is implemented, a nursing education program will be downgraded from full approval status to provisional approval status if less than 70% of its graduates pass the NCLEX when they take it the first time. Beginning 2 years after final rulemaking is implemented, a nursing education program will be downgraded from full approval status to provisional approval status if less than 80% of its graduates pass the NCLEX when they take it the first time.

The Board proposes this change for the following reasons. Pennsylvania's minimum pass rate is the least stringent standard in the nation when compared with the 32 other states that use the NCLEX pass rate as a criterion for approving a nursing education program. At least seven states have established 75% as the minimum pass rate, at least eight states have established 80% as the minimum and at least four states have established 85% or greater 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. (Source: National Council of State Boards of Nursing Member Board Profiles.)

For the examination year October 1, 2005, to September 30, 2006, 21 of 56 jurisdictions had NCLEX-RN pass rates below that of Pennsylvania. The overall pass rate for first time examinees applying for registered nursing licensure in Pennsylvania who were educated in Pennsylvania programs during the examination year October 1, 2005, to September 30, 2006, was 87.00%. The overall pass rate for the United States in the same period was 88.11%.

For the examination year October 1, 2005, to September 30, 2006, 20 of 56 jurisdictions had NCLEX-PN pass rates below that of Pennsylvania. The overall pass rate for first time examinees applying for practical nursing licensure in Pennsylvania who were educated in Pennsylvania programs during the examination year October 1, 2005, to September 30, 2006, was 90.53%. The overall pass rate for the United States in the same period was 88.22%.

For the examination year October 1, 2005, to September 30, 2006, 16 of Pennsylvania's 80 RN education programs had examination pass rates below 80%. Of these, four were associate degree programs, seven were baccalaureate programs and four were hospital-based diploma programs. For the examination year October 1, 2005, to September 30, 2006, five of Pennsylvania's 50 LPN education programs had examination pass rates below 80%. Of these, three were vocational-technical schools and two were private licensed schools. If the amendments were in effect and pass rates were raised to 80% as proposed, these 21 programs would be placed on provisional status. These programs would be required to correct the deficiencies in the program that hinder the program's graduates from satisfactory performance on the NCLEX. If a program were to fail to achieve the minimum pass rate by a date specified, removal proceedings would commence in accordance with §§ 21.34 and 21.166 (relating to removal from approved list). Removal proceedings include notice to the program and an opportunity for the program to show why it should not be removed. The Board considered lowering the proposed pass rates, but after consultation with the Board's education advisors, the Board believes that the schools are ready to meet the challenge of the higher pass rate and that the higher pass rate will benefit students in nursing education programs by ensuring the best chance of passing the examination and obtaining licensure. In addition, none of the schools of nursing provided negative comments regarding the proposed amendment to the minimum pass rate.

The proposed amendments will bring Pennsylvania nursing education programs in line with nationwide standards and will motivate any marginal programs to improve to the benefit of the students and the general public. A nursing education program unable to prepare at least 80% of its graduates to pass the entrance examination to the profession does its students, recipients of nursing care, and the resources of the Commonwealth, a great disservice. The Board believes that a number of programs are not providing sufficient support services for students which results in lower pass rates for their graduates. It is the Board's understanding that programs with higher pass rates do not necessarily have more resources available to them than programs with lower pass rates, these schools are simply more effective in using their resources. Programs will be given 2 years from the effective date of the regulations to improve pass rates to 80%, so that existing program approval will not be affected. For these reasons, the Board does not anticipate that any programs will necessarily be removed from the approved list based on these increased requirements.

The Board also proposes to clarify the requirements for a nursing education program on provisional approval status in §§ 21.33a and 21.162a (relating to failure to comply with standards). Sections §§ 21.34 and 21.166 (relating to removal from approved list) will be amended to provide the detailed procedure the Board will follow in removal proceedings. Under the current §21.34, the Board gives "sufficient" notice of its intent to remove a program. The LPN regulations are silent on

the procedure. The proposed amendments will expand and clarify the Board's procedure for RN education programs and create a parallel section for PN education programs. The proposed amendments will provide the nursing education program 45 days notice of the Board's intent to remove the program. The proposed amendments will specify that the program may appear at a hearing and that post-hearing briefs may be filed. The proposal also clarifies that the Board will issue a written decision that may be appealed according to the Pennsylvania Rules of Appellate Procedure. Finally in §§ 21.34 (b) and (c) and 21.166 (b) and (c), the Board proposes amendments to set forth a program's responsibilities to students should the program be removed from the approved list.

Fiscal Impact and Paperwork Requirements.

The amendments may have a fiscal impact on nursing education programs that fall below the minimum requirements and will impose no additional paperwork on those programs beyond what is already required for the maintenance of the nursing education program. The amendments will not otherwise have any fiscal impact nor impose additional paperwork on the private sector, the general public and the Commonwealth and its political subdivisions.

Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 9, 2008, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days from the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations and objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Ann Steffanic, Board Administrator, State Board of Nursing, P.O. Box 2649, Harrisburg, Pennsylvania 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference (16A-5123) Nursing Education Programs Examination Pass Rates when submitting comments.

Mary E. Bowen, RN, DNS, CNAA
Chairperson

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.

* * * * *

(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(j) of the act (63 P.S. § 212.1(j)). Only the Board may confer initial approval status on a proposed nursing education program and only the Board may 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] 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 shall notify applicants and students whenever the program's approval status changes. 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 the Board receives information suggesting that a nursing education program has not maintained the standards of this subchapter, the Board may request information from the program or conduct a site visit 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 § 21.34 (relating to removal from approved list).

(b) If the Board determines that a nursing education program should be placed on provisional approval status, the Board will notify the program, in writing, that the program has been 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. 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. 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 allowed for the correction of deficiencies resulting in provisional approval status.
- (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) A nursing education program may appeal the decision to place the program on provisional approval status in accordance with 1 Pa. Code § 35.20.

§ 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).

* * * * *

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] 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 shall notify applicants and students whenever the program's approval status changes. 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 confer initial approval status on a proposed nursing education program and only the Board may remove a program from the approved list.

§ 21.162a. Failure to comply with standards.

(a) Whenever the Board receives information suggesting that a nursing education program has not maintained the standards of this subchapter, the Board may request information from the

program or conduct a site visit 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 Board will notify the program, in writing, that the program has been 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. 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. 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 allowed for the correction of deficiencies resulting in provisional approval status.

(h) If the standards of this subchapter are met within the designated time, the nursing education program will be removed

(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) A nursing education program may appeal the decision to place the program on provisional approval status in accordance with 1 Pa. Code § 35.20.

§ 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: July 5, 2007

SUBJECT: Proposed 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 certify that 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.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF NURSING
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7142

January 9, 2008

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

Re: Proposed Regulation
State Board of Nursing
16A-5123: Nursing Education Programs Examination Pass Rates

Dear Chairman Coccodrilli:

Enclosed is a copy of a proposed rulemaking package of the State Board of Nursing pertaining to nursing education programs 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 cursive script that reads "Mary E. Bowen".

Mary E. Bowen, RN, CRNP, Chairperson
State Board of Nursing

MEB/TAL:klh

Enclosure

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

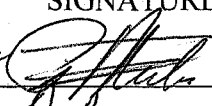



TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

I.D. NUMBER: 16A-5123
SUBJECT: NURSING EDUCATION PROGRAMS EXAMINATION PASS RATES
AGENCY: DEPARTMENT OF STATE
STATE BOARD OF NURSING

TYPE OF REGULATION

- X Proposed Regulation
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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
1-9-08		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <u>Sturla</u>
1/9/08		SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <u>Tomlinson</u>
1/9/08		INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL (for Final Omitted only)
1/9/08		LEGISLATIVE REFERENCE BUREAU (for Proposed only)