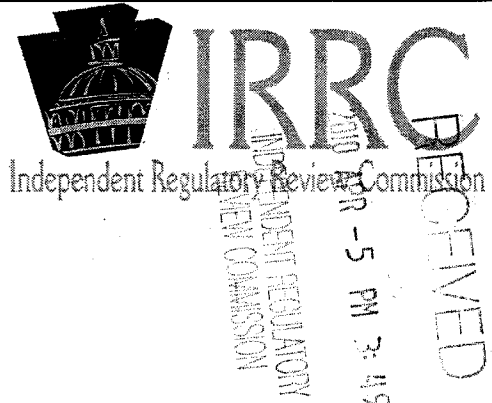


Regulatory Analysis Form

(Completed by Promulgating Agency)



SECTION I: PROFILE

(1) Agency:

Department of State, Bureau of Professional and Occupational Affairs, State Board of Examiners of Nursing Home Administrators

(2) Agency Number: 16A

Identification Number: 629

IRRC Number: 2678

(3) Short Title: **Temporary Permits**

(4) PA Code Cite: **49 Pa. Code §§39.1 and 39.4**

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Steven Wennberg, Regulatory Unit Counsel, One Penn Center, 2601 North Third Street, Third Floor, Harrisburg, PA 17110; Tele: (717) 783-7200; Fax: (717) 787-0251; E-mail: swennberg@state.pa.us

Secondary Contact: Joyce McKeever, Deputy Chief Counsel, One Penn Center, 2601 North Third Street, Third Floor, Harrisburg, PA 17110; Tele: (717) 783-7200; Fax: (717) 787-0251; E-mail: jmckeever@state.pa.us.

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The regulations clarify that a temporary permit to practice as a nursing home administrator is valid only for the individual and nursing home named on the permit application; that a permit holder who meets the education and experience requirements for licensure may apply to sit for the nursing home administrators licensing examination; that a permit will not be issued to an individual who has failed any part of the licensing examination; that a permit becomes void if the permit holder fails any part of the licensing examination or the nursing home obtains the services of a licensed administrator; and that a permit holder must immediately notify the Board of an event that voids the permit and return the permit to the Board.

(9) Include a schedule for review of the regulation including:

- | | |
|---|---------------|
| A. The date by which the agency must receive public comments: | N/A |
| B. The date or dates on which public meetings or hearings will be held: | N/A |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | June 26, 2010 |
| D. The expected effective date of the final-form regulation: | June 26, 2010 |
| E. The date by which compliance with the final-form regulation will be required: | June 26, 2010 |
| F. The date by which required permits, licenses or other approvals must be obtained: | N/A |

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

The Board regularly evaluates the effectiveness of regulations at its meetings. The Board holds at least six meetings each year.

Regulatory Analysis Form

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

Section 14 of the Nursing Home Administrators License Act, Act of June 22, 1970, P.L. 378, as amended, 63 P.S. §1114, empowers the Board to issue temporary permits, while Section 4(c) of the Act, 63 P.S. §1104(c), empowers the Board to adopt such regulations as are necessary for the performance of its statutory duties.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulations are not mandated by any federal or state law or court order.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulations are needed because they (1) help to ensure that only competent individuals are permitted to serve as temporary administrators of nursing homes in exigent circumstances until licensed administrators can be hired; (2) encourage nursing homes to act expeditiously in hiring licensed administrators to fill positions held by temporary administrators; (3) inform prospective applicants for temporary permits of events that would disqualify them from being issued permits or that would void permits already issued to them; and (4) inform prospective candidates for licensure who hold temporary permits that they may apply to sit for the licensing examination if they otherwise have qualifying education and experience for licensure. The primary beneficiaries of the regulations are residents of nursing homes and their families; the secondary beneficiaries of the regulations are nursing homes, licensed administrators, and candidates for licensure or temporary permits.

Regulatory Analysis Form

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

N/A

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The Board cannot identify any group that would be adversely affected by the regulations.

(16) 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.

The regulations directly affect holders of temporary permits and applicants for temporary permits. During the period from mid-2006 to April 2008, the Board received 21 applications for temporary permits and issued 16 temporary permits. A permit is valid for a maximum of 1 year and cannot be renewed. The number of active permit holders at any given time is small compared to the number of active licensed administrators, which is currently about 1,755.

Regulatory Analysis Form

SECTION III: COST AND IMPACT ANALYSIS

(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. Explain how the dollar estimates were derived.

The regulations will not result in any identifiable costs or savings to the regulated community.

(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. Explain how the dollar estimates were derived.

The regulations will not result in any identifiable costs or savings to local governments.

(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. Explain how the dollar estimates were derived.

The regulations will not result in any identifiable costs or savings to state government.

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:	None	None	None	None	None	None
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	None	None	None	None	None	None
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	None	None	None	None	None	None
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

Program	FY -3	FY -2	FY -1	Current FY
NHA Board	\$171,032	\$165,528	\$175,344 (projected)	\$208,000 (budgeted)

Regulatory Analysis Form

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulations make desirable revisions to the standards for temporary permits at no identifiable cost to the public at large, state and local governments, or the regulated community.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

In January 2005, the Board solicited comments from interested parties on a pre-proposal draft of the regulations. A list of the parties that received a copy of the pre-proposal draft is attached as Attachment 1.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Board did not consider any alternative regulatory provisions.

(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 regulations.

No federal standards apply to the subject matter of the regulations.

Regulatory Analysis Form

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The regulations are consistent with other states' requirements for temporary permits and will not put Pennsylvania at a competitive disadvantage with other states.

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

The regulations do not affect other existing or proposed regulations of the Board or any other state agency.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The regulations require a temporary permit holder to immediately notify the Board and surrender the permit if the holder fails any part of the licensing examination or if the nursing home obtains the services of a licensed administrator. The regulations do not require legal, accounting or consulting procedures.

(28) 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.

The regulations apply uniformly to all affected groups and individuals.

Question #22 on Regulatory Analysis Form

**List of Individuals and Entities Solicited for
Comment on Pre-Proposal Draft of Regulations**

- **Paula A. Bussard
Policy Regulatory Service
The Hospital Association of PA
4750 Lindle Road, P.O. Box 8600
Harrisburg, PA 17105-8600**

- **Community College of Allegheny County
625 Stanwix Street, 11th Floor
Pittsburgh, PA 15222**

- **Health Care Training Consultants
101 Greenwood Avenue, Suite 502
Jenkintown, PA 19046**

- **Indiana University of PA
Whitmyre Hall
Indiana, PA 15705**

- **Janet Negrecki
School of Continuing Education
Marywood University
2300 Adams Avenue
Scranton, PA 18509**

- **The Kendal Corporation
P.O. Box 100
Kennett Square, PA 19348**

- **Millersville University
P.O. Box 1002
Millersville, PA 17551-0302**

- **Tim Solomon
Director of Continuing Education
Robert Morris College
600 Fifth Avenue
Pittsburgh, PA 15219**

- **Slippery Rock University
Off-Campus Programs
Slippery Rock, PA 16057**
- **University of Scranton
St. Thomas Hall
Scranton, PA 18510**
- **York College of PA
Attn: Leroy N. Keeney
York, PA 17405-7199**
- **Aurora Weaver
Northampton Community College
3835 Green Pond Road
Bethlehem, PA 18017**
- **Robert Morris College
Narrows Run Road
Coraopolis, PA 15108-1189**
- **John R. Pratt
Director, LTC Management Institute
St. Joseph's College
278 White Bridge Road
Standish, ME 04084-5263**
- **Mark Smith
SEIU Local 668
1924 Spring Garden Street
Philadelphia, PA 19130**
- **William Van Slyke
President, Pennsylvania Chapter
American College of Health Care Administrators
200 South Main Street
Athens, PA 18810-1614**
- **Patricia A. Zeller
Pennsylvania Health Care Association
315 North Second Street
Harrisburg, PA 17101**

- **Department of Health
Bureau of Quality Assurance
Division of Nursing Care Facilities
526 Health and Welfare Building
Harrisburg, PA 17108**
- **Gordon E. Kutler
Institute for Continuing Education and Research
P.O. Box 339
Flourtown, PA 19031-0339**
- **Duncan MacLean, M.D., C.M.D.
Pennsylvania Medical Directors Association
Pinnacle Health System
2601 North Third Street
Harrisburg, PA 17110**
- **Coalition for Advocacy of Rights of Infirm
100 North 17th Street, Suite 600
Philadelphia, PA 19103**
- **Shirley Sharp
American Association of Retired Persons
225 Market Street
Harrisburg, PA 17101**
- **Department of Public Welfare
Office of Social Programs
Personal Care Homes
Bertolino Building, Third Floor
1401 North Seventh Street
Harrisburg, PA 17102-1422**
- **PA Association of Non-Profit Homes for the Aging
1100 Bent Creek Boulevard
Mechanicsburg, PA 17050**
- **Michael J. Wilt
PA Association of County Affiliated Homes
17 North Front Street
Harrisburg, PA 17101**

(Attachment 1 – page 3 of 4)

- **Health Administration Program**
University of Scranton
312 O'Hara Hall
Scranton, PA 18510
- **Health Care Management**
King's College
Wilkes-Barre, PA 18711
- **Richard Dumaresq**
Executive Director
PA Association of Private School Administrators
2090 Wexford Court
Harrisburg, PA 17112-1579
- **Sherry L. Shadduck, C.P.C.S.**
PA Association of Medical Staff Services
Hamot Medical Center
201 State Street
Erie, PA 16550

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

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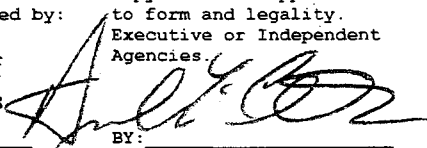
INDEPENDENT REGULATORY
REVIEW COMMISSION
DO NOT WRITE IN THIS SPACE

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.

State Board of Examiners of
Nursing Home Administrators



BY: _____
(DEPUTY ATTORNEY GENERAL)

(AGENCY)

BY: _____
Andrew C. Clark

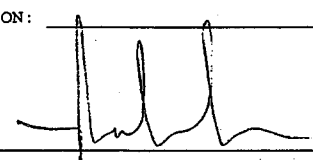
DOCUMENT/FISCAL NOTE NO. 16A-629

MAR 26 2010

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL



BY: _____
Robert A. Etchells

(Deputy General Counsel
~~Chief Counsel,~~
Independent Agency
~~(Strike inapplicable title)~~)

TITLE: Chairman
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if applicable. No Attorney General approval or objection within 30 days after submission.

FINAL RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS
(49 PA. CODE, CHAPTER 39)

Temporary Permits

PREAMBLE

The State Board of Examiners of Nursing Home Administrators (Board) amends Chapter 39 to read as set forth in Annex A.

The final-form rulemaking constitutes a revision of the Board's regulations relating to the issuance of temporary permits. Under the Nursing Home Administrators License Act (act) (63 P.S. §§ 1101-1114.2), the Board may issue a permit to an individual to serve as a nursing home administrator for a period of up to 1 year in the event of unusual circumstances such as the death, disability, resignation or dismissal of the licensed administrator.

The final-form rulemaking revises the definition of "temporary permit" in § 39.1 (relating to definitions) to clarify that only an individual may hold a permit and that the holder of a permit is authorized to serve as administrator only in the particular nursing home specified on the permit application. The final-form rulemaking also revises § 39.4 (relating to admission to practice; temporary permits) to clarify that the holder of a temporary permit who meets the education and experience requirements for licensure may apply to sit for the nursing home administrators licensing examination; that a temporary permit will not be issued to an applicant who has failed any part of the licensing examination; that a temporary permit becomes void if the holder fails any part of the licensing examination or the nursing home obtains the services of a licensed administrator; and that the holder of a temporary permit shall immediately notify the Board of an event that voids the permit and return the permit to the Board.

Statutory Authority

The final-form rulemaking is authorized under section 14 of the act (63 P.S. § 1114), which empowers the Board to issue temporary permits, and section 4(c) of the act (63 P.S. § 1104(c)), which empowers the Board to adopt such regulations as are necessary for the performance of its statutory duties.

Summary of Comments and Responses to Proposed Rulemaking

The Board published a notice of proposed rulemaking at 38 Pa. B. 1168 (March 8, 2008), with a 30-day public comment period. The Board received a general comment in support of the proposed rulemaking from the Pennsylvania Association of County Affiliated Homes.

The Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (House Committee) as part of their review of

proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.14). The Board did not receive comments from the Senate Committee on Consumer Protection and Professional Licensure (Senate Committee) as part of its review of proposed rulemaking under the Regulatory Review Act.

§ 39.1. Definitions

The proposed rulemaking's revised definition of "temporary permit" in § 39.1 provided as follows: "A permit issued by the Board which authorizes a person not licensed by the Board to serve as a nursing home administrator only in the particular facility indicated on the permit application for up to 1 year in the event of unusual circumstances affecting the administration of a nursing home, such as the death, disability, resignation or dismissal of the licensed administrator or other emergency as determined by the Board."

The House Committee recommended that the definition of "temporary permit" be further revised by substituting the word "individual" for "person." The House Committee noted that the word "person" is defined in section 1991 of the Statutory Construction Act (1 Pa.C.S. § 1991) to include entities such as a corporation and a limited liability company. Because a licensed nursing home administrator can only be an individual, not an entity, the Board agrees that the definition should be clarified to reflect that the holder of a temporary permit to serve as a nursing home administrator must be an individual. Accordingly, the final-form rulemaking incorporates the House Committee's recommendation.

§ 39.4. Admission to practice; temporary permits

The proposed rulemaking made an editorial change to § 39.4(3)(ii), which, as proposed, provided that the issuance of a temporary permit will not be construed to mean that the holder qualifies to sit for the nursing home administrators licensing examination.

The House Committee commented that while it understands that the mere possession of a temporary permit does not automatically qualify an individual to sit for the licensing examination, it recommended that § 39.4(3)(ii) be revised to clarify that a temporary permit holder who otherwise satisfies the requirements for admission to the licensing examination be allowed to do so. The Board agrees that this clarification is warranted. The final-form rulemaking further revises § 39.4(3)(ii) to provide that a temporary permit holder who meets the education and experience requirements set forth in § 39.5(b) (relating to requirements for admission to licensing examination; examination procedures) may apply to sit for the licensing examination.

§ 39.17 Temporary permit – statement of policy

Section 39.17 sets forth a statement of policy with regard to the issuance of temporary permits. The first sentence of current § 39.17 provides that the Board will not issue temporary permits to applicants who wish to fill positions that have been vacated for reasons such as promotions and transfers. The second sentence of current § 39.17 provides that the Board will not extend or reissue temporary permits to individuals who fail the nursing home administrators licensing examination.

The proposed rulemaking reorganized § 39.17 into two subsections. The proposed rulemaking relabeled the first sentence as subsection (a) and clarified that the referenced vacancies resulted from intracompany promotions and transfers. The proposed rulemaking deleted the second sentence of current § 39.17 in favor of adding new binding requirements, set forth in §§ 39.4(3)(iii) and (vi), that prohibit the issuance a temporary permit to an applicant who has failed any part of the nursing home administrators licensing examination and that void a temporary permit if the holder has failed any part of the examination. The proposed rulemaking added a new subsection (b), which provided that the issuance a temporary permit is not intended to create a suitable candidate for licensure and that the Board will not consider any experience gained in the practice of nursing home administration while serving under a temporary permit as counting toward the requirements set forth in § 39.5 for admission to the licensing examination.

IRRC commented that inasmuch as a statement of policy, being a nonbinding norm, is not subject to the requirements of the Regulatory Review Act, the Board should not include revisions to § 39.17 as part of its final-form rulemaking unless the Board intends to delete or reserve § 39.17 and to relocate the remaining contents of the policy statement to § 39.4, where they would have binding effect as a regulation. The Board intends to retain a revised version of § 39.17 as a statement of policy. Accordingly, the final-form rulemaking does not seek to revise § 39.17. The Board will separately publish revisions to § 39.17 that are consistent with the final-form rulemaking.

The House Committee recommended that the revised § 39.17 should not contain language, set forth in the proposed rulemaking, stating that the issuance of a temporary permit is not intended to create a suitable candidate for licensure. The House Committee said the proposed language is unnecessary because any candidate for licensure must demonstrate his or her suitability and that it is implicit that a candidate's tenure as a temporary permit holder does not establish such suitability. The Board believes that the proposed language is useful because it provides reinforcement to prospective candidates for licensure that service as an interim administrator under authority of a temporary permit confers no advantage toward becoming a licensed administrator.

Disciplinary process

The House Committee asked the Board to provide information about (1) how often the Board

prosecutes or takes disciplinary action against temporary permit holders; (2) what are the bases for disciplinary action against permit holders; (3) what are the costs associated with taking disciplinary action against permit holders; and (4) whether disciplinary action taken against licensed administrators is the same as that taken against permit holders.

A temporary permit holder has never been the subject of a disciplinary proceeding before the Board. The Board would likely interpret the disciplinary provisions in sections 11 and 12 of the act (63 P.S. §§ 1111 and 1112) as applying with equal force to both licensees and permit holders. If disciplinary action were taken against a permit holder in the future, the cost of such action would depend on the circumstances of the case. In any event, the cost of any particular disciplinary action is defrayed by biennial renewal fees.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have an adverse fiscal impact on the regulated community, the general public or the Commonwealth and its political subdivisions.

The final-form rulemaking will not impose additional paperwork requirements on the regulated community, the general public or the Commonwealth and its political subdivisions.

Effective Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 27, 2008, the Board submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 1168, to IRRC and the chairpersons of the House and Senate Committees for review and comment.

Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Board provided IRCC and the House and Senate Committees with copies of comments received during the public comment period. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the House and Senate Committees, and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), the final-form rulemaking was approved by the House Committee on _____ 2010, and deemed approved by the Senate Committee on _____, 2010. Under section 5.1(e) of the Regulatory Review Act

(71 P.S. § 745.5a(e)), IRRC met on _____, 2010, and approved the final-form rulemaking.

Additional Information

Persons who desire additional information about the final-form rulemaking may submit inquiries to Christina Stuckey, Administrator, State Board of Examiners of Nursing Home Administrators, P.O. Box 2649, Harrisburg, PA 17105-2649. The Board's telephone number is (717) 783-7155 and its e-mail address is ST-NHA@state.pa.us.

Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L.769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The amendments to the final-form rulemaking do not enlarge the original purpose of the proposed rulemaking published at 38 Pa. B. 1168.
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

Order

The Board, acting under authority of the act, orders that:

- (a) The regulations of the Board, 49 Pa. Code, Chapter 39, are amended to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

ANNEX

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 39. STATE BOARD OF EXAMINERS OF

NURSING HOME ADMINISTRATORS

GENERAL

§ 39.1. Definitions.

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

* * * * *

Temporary permit—A permit [which may be] issued by the Board which authorizes a person AN INDIVIDUAL not licensed by the Board to serve as a nursing home administrator only in the particular facility indicated on the permit application for up to 1 year in the event of unusual circumstances affecting the administration of a nursing home, such as the death, disability, resignation or dismissal of the licensed administrator or other emergency as determined by the Board.

* * * * *

§ 39.4. Admission to practice; temporary permits.

Admission to the practice of nursing home administration in this Commonwealth will be granted by the Board as follows:

* * * * *

(3) By issuance of a temporary permit to an applicant who meets the requirements of section 14 of the act (63 P. S. § 1114) and of this chapter. The issuance of a temporary permit is subject to the following conditions:

* * * * *

(ii) The issuance of a temporary permit will not be construed to mean that the holder qualifies to sit for the nursing home administrators licensing examination. HOWEVER, IF THE HOLDER MEETS THE EDUCATION AND EXPERIENCE REQUIREMENTS OF § 39.5(b) (RELATING TO REQUIREMENTS FOR ADMISSION TO LICENSING EXAMINATION; EXAMINATION PROCEDURES), THE HOLDER MAY APPLY TO SIT FOR THE NURSING HOME ADMINISTRATORS LICENSING EXAMINATION.

(iii) The Board will not issue a temporary permit to an applicant who has failed to pass any part of the nursing home administrators licensing examination.

(iv) Public notice of the issuance of a temporary permit will be given by the Board in accordance with 45 Pa.C.S. §§ 301—310 (relating to the Newspaper Advertising Act), with the cost of advertising the notice to be paid by the holder of the temporary permit. The public notice concerning the temporary permit will be advertised in a daily newspaper published in the county where the nursing

home is located, once a week for 3 consecutive weeks, and will contain the following information: the name and address of the holder of the temporary permit, the name and address of the nursing home which the holder of the temporary permit is permitted to serve, the reason for the issuance of the temporary permit, the period for which the temporary permit is issued, the date the temporary permit expires and other information the Board may require as relevant.

[(iv)] (v) Prior to the issuance of a temporary permit, the applicant shall appear before the Board accompanied by the manager, owner or representative of the governing body of the facility in which the applicant will be acting as a nursing home administrator if the permit is issued.

(vi) A temporary permit becomes void if either the holder fails to pass any part of the nursing home administrators licensing examination or the facility obtains the services of a licensed nursing home administrator and the holder must cease performing his duties as a temporary nursing home administrator immediately upon the occurrence of either event.

(vii) The temporary permit holder shall notify the Board and immediately return the temporary permit to the Board if the holder fails to pass any part of the nursing home administrators licensing examination or when the facility obtains the services of a licensed nursing home administrator.

* * * * *

STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

[49 PA. CODE CH. 39]

Temporary Permits

The State Board of Examiners of Nursing Home Administrators (Board) proposes to amend §§ 39.1, 39.4 and 39.17 (relating to definitions; admission to practice; and temporary permits—statement of policy) to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

Section 14 of the Nursing Home Administrators License Act (act) (63 P. S. § 1114) authorizes the Board to issue temporary permits. The Board is also authorized under section 4(c) of the act (63 P. S. § 1104(c)) to make rules and regulations as may be necessary for the proper performance of its duties.

C. Background and Need for Amendments

The Board is authorized to issue temporary permits to applicants in the event of unusual circumstances affecting the administration of a nursing home. The permits are issued without examination and permit the holder to serve as a nursing home administrator only in the particular facility indicated on the application for a period not to exceed 1 year. The proposed amendments would clarify, update and expand on the temporary permit requirements.

D. Description of Proposed Amendments

§ 39.1 (relating to definitions)

Section 39.1 defines a temporary permit as a permit issued by the Board for up to 1 year in the event of unusual circumstances affecting the administration of a nursing home. The Board proposes to amend the definition to clarify that the permit authorizes a person not licensed by the Board to serve as a nursing home administrator only in the particular facility indicated on the permit application for up to 1 year. The Board believes that this amended definition will remove the ambiguity in the current regulation by specifying that it is an unlicensed person who may be authorized to serve as a nursing home administrator.

§ 39.4 (relating to admission to practice; temporary permits)

The proposed amendments to § 39.4 expand, clarify and refine the conditions and requirements for the issuance of temporary permits. The Board is proposing to add three new substantive subparagraphs to § 39.4(3) and to renumber the remaining subparagraphs.

New subparagraph (iii) would move, refine and clarify the Board's present policy contained in § 39.17 (relating to policy statement regarding temporary permits) that the Board will not issue temporary permits to applicants who fail to pass the nursing home administrators licensing examination. If an individual has previously failed to pass the licensure examination, the Board believes that individual is unqualified to hold a temporary permit and to

act as a nursing home administrator. Because the examination consists of both a National and State component, the Board makes it clear that applicants failing either part will not be granted a temporary permit.

New subparagraph (vi) would provide that a temporary permit will become void if the holder fails to pass any part of the nursing home administrators licensing examination. The Board receives many requests for permits from individuals who apply for licensure as a nursing home administrator either concurrently or subsequent to obtaining a temporary permit. Those individuals will be taking the licensure examination. As stated previously, if an individual fails to pass the licensure examination, that individual is unqualified to hold a temporary permit and to act as a nursing home administrator.

New subparagraph (vii) would clarify the current policy of the Board, which requires the temporary permit holder to relinquish and return the permit once the condition which necessitated the issuance of the temporary permit ceases or when the permit holder fails any part of the examination.

The Board proposes to retain and renumber the subparagraphs requiring public notice of the grant of temporary permit and requiring that the applicant and owner or representative of the governing body of the nursing home must appear before the Board prior to the issuance of a temporary permit.

§ 39.17 (relating to temporary permits—statement of policy)

Current § 39.17 is a policy statement regarding temporary permits. Subsection (a) clarifies that temporary permits will not be issued to fill positions that have been vacated due to intracompany promotions and transfers. The Board believes that temporary permits are for the benefit of facilities experiencing an unusual situation affecting the immediate administration of the nursing home and that intracompany transfers do not satisfy this requirement.

Subsection (b) clarifies that experience gained while holding a temporary permit will not be credited toward the experience requirement in § 39.5 (relating to requirements for admission to licensing examination; examination procedures). The Board believes that the temporary permit is for the benefit of the facility experiencing an unusual circumstance and not for the benefit of an individual applying to take the nursing home administrator examination. The Board has carefully considered the examination requirements and does not want those requirements circumvented with the use of a temporary permit.

E. Fiscal Impact

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions because the costs of the Board's activities are supported by fees charged to licensees and others who benefit from specific activities of the Board.

F. Paperwork Requirements

The proposed amendments will impose no additional paperwork requirements upon the Commonwealth or its political subdivisions or the private sector.

G. Sunset Date

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

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 27, 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 and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

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

I. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Christina Stuckey, Administrator, State Board of Examiners of Nursing Home Administrators, P. O. Box 2649, Harrisburg, PA 17105-2649, (cstuckey@state.pa.us) within 30 days following publication of this proposed rulemaking in the Pennsylvania Bulletin. Please reference No. 16A-629 (Temporary Permits) when submitting comments.

BARRY S. RAMPER, II, NHA,
Chairperson

Fiscal Note: 16A-629. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 39. STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS
GENERAL

§ 39.1. Definitions.

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

* * * * *

Temporary permit—A permit [which may be] issued by the Board which authorizes a person not licensed by the Board to serve as a nursing home administrator only in the particular facility indicated on the permit application for up to 1 year in the event of unusual circumstances affecting the administration of a nursing home, such as the death, disability, resignation or dismissal of the licensed administrator or other emergency as determined by the Board.

§ 39.4. Admission to practice; temporary permits.

Admission to the practice of nursing home administration in this Commonwealth will be granted by the Board as follows:

* * * * *

(3) By issuance of a temporary permit to an applicant who meets the requirements of section 14 of the act (63

P. S. § 1114) and of this chapter. The issuance of a temporary permit is subject to the following conditions:

* * * * *

(ii) The issuance of a temporary permit will not be construed to mean that the holder qualifies to sit for the nursing home administrators licensing examination.

(iii) The Board will not issue a temporary permit to an applicant who has failed to pass any part of the nursing home administrators licensing examination.

(iv) Public notice of the issuance of a temporary permit will be given by the Board in accordance with 45 Pa.C.S. §§ 301—310 (relating to the Newspaper Advertising Act), with the cost of advertising the notice to be paid by the holder of the temporary permit. The public notice concerning the temporary permit will be advertised in a daily newspaper published in the county where the nursing home is located, once a week for 3 consecutive weeks, and will contain the following information: the name and address of the holder of the temporary permit, the name and address of the nursing home which the holder of the temporary permit is permitted to serve, the reason for the issuance of the temporary permit, the period for which the temporary permit is issued, the date the temporary permit expires and other information the Board may require as relevant.

[(iv)] (v) Prior to the issuance of a temporary permit, the applicant shall appear before the Board accompanied by the manager, owner or representative of the governing body of the facility in which the applicant will be acting as a nursing home administrator if the permit is issued.

(vi) A temporary permit becomes void if either the holder fails to pass any part of the nursing home administrators licensing examination or the facility obtains the services of a licensed nursing home administrator and the holder must cease performing his duties as a temporary nursing home administrator immediately upon the occurrence of either event.

(vii) The temporary permit holder shall notify the Board and immediately return the temporary permit to the Board if the holder fails to pass any part of the nursing home administrators licensing examination or when the facility obtains the services of a licensed nursing home administrator.

§ 39.17. [Policy statement regarding temporary]
Temporary permits—statement of policy.

(a) The Board will not issue temporary permits to applicants who wish to fill positions that have been vacated for reasons such as intracompany promotions and transfers. [The Board will not extend or reissue temporary permits to applicants who fail to pass the Nursing Home Administrators Licensing Examination.]

(b) The issuance of a temporary permit is not intended to create a suitable candidate for licensure. The Board will not consider any experience gained in the practice of nursing home administration while serving under a temporary permit to qualify an applicant for licensure by examination under § 39.5 (relating to requirements for admission to licensing examination; examination procedures).

[Pa.B. Doc. No. 08-397. Filed for public inspection March 7, 2008, 9:00 a.m.]

**LIST OF NAMES AND ADDRESSES OF PUBLIC
COMMENTATORS FOR REGULATION 16A-629**
(1 Pa. Code §307.2(c)(6))

- (1) Michael J. Wilt
Executive Director
Pennsylvania Association of County Affiliated Homes
17 North Front Street
Harrisburg, PA 17101



STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

P.O. Box 2649
Harrisburg, PA 17105-2649

Telephone: (717) 783-7155
Fax: (717) 787-7769
Website: www.dos.state.pa.us/nursinghome
E-Mail: st-nha@state.pa.us

Courier Address:
2601 North Third Street
Harrisburg, PA 17110

April 5, 2010

The Honorable Arthur Coccodrilli
Chairman, Independent Regulatory Review Commission
Harristown II, 14th Floor
333 Market Street
Harrisburg, PA 17101

RE: Final Rulemaking of the State Board of Examiners of Nursing Home
Administrators Relating to Temporary Permits (16A-629)

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Board of Examiners of
Nursing Home Administrators relating to temporary permits.

The Board stands ready to provide whatever information or assistance your Commission
may require during its review of this final rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Etchells".

Robert A. Etchells, Chairman
State Board of Examiners of Nursing
Home Administrators

RAE:SW
Enclosure

cc: Hon. Basil L. Merenda, Deputy Secretary of the Commonwealth
for Regulatory Programs and Commissioner of the Bureau of
Professional and Occupational Affairs

Peter V. Marks, Sr., Executive Deputy Chief Counsel
Department of State

Joyce McKeever, Deputy Chief Counsel
Department of State

Cynthia K. Montgomery, Senior Counsel in Charge
Department of State

Steven Wennberg, Regulatory Unit Counsel
Department of State

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




I.D. NUMBER: 16A-629
 SUBJECT: TEMPORARY PERMITS
 AGENCY: DEPARTMENT OF STATE
 STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

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

RECEIVED
 APR -5 PM 3:50
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
4-5-10		MAJORITY CHAIRMAN <u>The Honorable</u> Michael P. McGeehan
4-5-10		SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN <u>The Honorable</u> Robert M. Tomlinson
4/5/10		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)