

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

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

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

16A-629

IRRC Number:

2678

(3) Short Title

Temporary Permits

(4) PA Code Cite

49 Pa. Code §§39.1, 39.4, and 39.17

(5) Agency Contacts & Telephone Numbers

Primary Contact: Roberta L. Silver, Counsel
State Board of Examiners of Nursing Home
Administrators (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
 Final Order, Proposed Rulemaking
Omitted

(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.

Section 14(a) of the Nursing Home Administrators License Act (act) (63 P.S. § 1114) authorizes the Board to issue, without examination, a temporary permit to practice as a nursing home administrator. Current §§ 39.1, 39.4 and 39.17 (relating to definitions; admission to practice; and policy statement regarding temporary permits) establish the parameters for temporary permits. The proposed amendments clarify, update and expand on those provisions.

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

The regulatory amendments are adopted under sections 4(c) and 14 of the Nursing Home Administrators License Act, Act of June 22, 1970, P.L. 378, as amended, 63 P.S. §§ 1104(c) and 1114.

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

No.

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

The proposed amendments clarify, update and expand on current temporary permit requirements. Specifically, the amendments provide that temporary permits are only valid for the individual and facility named on the application, inform applicants that experience gained with a temporary permit will not be credited toward the experience requirements to sit for the licensure exam, require the temporary permit to be returned to the Board when the condition which necessitated the permit ceases or the permit holder fails the licensure exam, and prohibits the issuance of a temporary permit to an applicant who has failed the licensure exam.

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

Without this regulation, nursing homes that have lost an administrator will have insufficient direction with respect to appointing an interim individual to serve as a nursing home administrator until a new administrator can be hired. This regulation insures that no one who has failed the licensure exam may hold a temporary permit and encourages nursing homes to expedite their search for a new administrator by limiting the duration of temporary permits. Additionally, this regulation requires that the temporary permit is valid only for the person and facility indicated on the permit. This prevents facilities from changing interim administrators without coming before the Board and obtaining Board approval.

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

Patients in nursing homes, their families, and nursing homes will benefit from the regulation because the temporary permit requirements assure that when a nursing home has lost its administrator due to unusual circumstances, a competent individual will be permitted to act as nursing home administrator until a licensed administrator can be hired. Applicants will benefit from this regulation because they will know in advance that the experience gained with a temporary permit will not be credited toward the experience requirements to sit for the licensure exam.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No groups of individuals or entities are known to be subject to adverse effects as a consequence of these regulations.

(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.)

There are 1,912 actively licensed nursing home administrators as of June, 2007. Temporary permit applicants will be required to comply with the temporary permit requirements. Since mid-2006, there have been nine temporary permit applicants.

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

The Board sought input from the public by disseminating numerous drafts of the proposed regulation to the entities listed on the attached list.

(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.

No additional costs are anticipated as a result of implementing these regulations. The costs for processing temporary permits are borne by the temporary permit applicant population through temporary permit application fees. In addition to the temporary permit application processing costs, some costs may be incurred in processing any disciplinary matter against a temporary permit holder for any violation of the act or the Board's regulations.

Currently, applicants pay \$145.00 to apply for a temporary permit.

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

Local governments will not be affected by this regulation.

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

The Board will not incur an increase in administrative costs by implementing the regulation. Because the Board must charge fees which reflect its annual costs in providing services to licensees, implementing the regulation will produce no identifiable costs or savings to state government.

The Board estimates that it will not incur an increase in its administrative cost in reviewing temporary permit applications. Additionally, no other legal, accounting or consulting activities are anticipated. However, the Board will review the costs during its biennial reconciliation.

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

	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010
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.

Not applicable.

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

Program	FY-3	FY- 2	FY- 1	Current FY
State Board of Examiners of Nursing Home Administrators	\$ 213,042.26	\$ 201,314.71	\$ 179,235.04	\$ 179,964.23

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

The proposed rulemaking amends current temporary permit requirements. Costs of reviewing temporary permit applications will be borne by temporary permit applicants through the temporary permit application fee.

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

No non-regulatory alternatives were considered because section 14(a) of the act authorizes the Board to issue temporary permits and existing regulations require amendment. The Board believes the profession of nursing home administration, the nursing home residents and their families are best served by regulations capable of enforcement rather than a nonregulatory alternative.

(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. See No. 22 above.

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.

No federal licensure standards apply.

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

This regulation will not put Pennsylvania licensees at a competitive disadvantage with other states. The following is a comparison of the fees charged in the surrounding states.

Delaware	\$150.00
Maryland	\$100.00
New Jersey	\$150.00
New York	\$40.00
Ohio	\$500.00
West Virginia	\$600.00

The regulations are consistent with the temporary permit requirements in other states and will not put Pennsylvania at a competitive disadvantage.

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

This regulation will have no effect on other regulations of the Board or other state agencies.

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

The Board reviews its regulatory proposals at regularly scheduled public meetings each month, generally on the second Wednesday of every month. Meetings are held in the Bureau of Professional and Occupational Affairs' offices at 2601 North Third Street, Harrisburg, Pennsylvania. Please contact the Board Administrator for further information or see the Department of State's website at www.dos.state.pa.us/nha.

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

The regulation will not add significant new reporting, record keeping and paperwork requirements for temporary permit applications. However, after a temporary permit has been relinquished, it must be returned to the Board.

(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.

The Board has perceived no special needs of any subset of its licensees for whom special provisions should be made.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

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

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

The Board reviews the effectiveness of its regulations on an ongoing basis.

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REVIEW COMMISSION

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

2678

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

BY: _____
(DEPUTY ATTORNEY GENERAL)

FEB 12 2008

DATE OF APPROVAL

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

State Board of Examiners of Nursing Home
Administrators
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-629

DATE OF ADOPTION: _____

BY:
Barry S. Ramper, IV, NHA

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: Andrew C. Clark

JAN 22 2008

DATE OF APPROVAL

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

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

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

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

TEMPORARY PERMITS
16A-629

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 policy statement regarding temporary practice permits) 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 above, 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 policy statement regarding temporary permits)

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 intra-company 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 intra-company 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). 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, Pennsylvania 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.

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 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 permits.

(a) The Board will not issue temporary permits to applicants who wish to fill positions that have been vacated for reasons such as intra-company 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).

* * * * *



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7155

February 27, 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 Examiners of Nursing Home Administrators
Regulation No. 16A-629 - Temporary Permits

Dear Chairman Coccodrilli:

Enclosed is a copy of a proposed rulemaking package of the State Board of Nursing Home Administrators pertaining to temporary permits.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Eva J. Bering".

Eva J. Bering, Chairperson
State Board of Examiners of Nursing Home Administrators

EJB/RLS:pah

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
Roberta L. Silver, Counsel
State Board of Examiners of Nursing Home Administrators
State Board of Examiners of Nursing Home Administrators

**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

- 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

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 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/27/08	<i>Joe Thomas</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <u>Mike Sturla</u>
2/27/08	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <u>Robert Tomlinson</u>
2/27/08	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL (for Final Omitted only)
2/27/08	<i>C. Lee Brown</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)