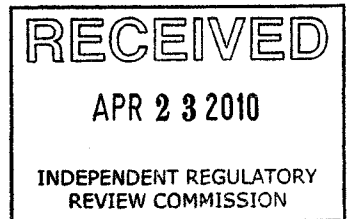


State Board of Examiners of Nursing Home Administrators
Regulation 16A-629: Temporary Permits
Final Regulation



PROPOSAL: Regulation 16A-629 is Final Regulation which was delivered to the House Professional Licensure Committee on April 5, 2010. Regulation 16A-629 amends Title 49 of the Pennsylvania Code, Section 39.1 (Definitions) and Section 39.4 (Admission to practice; temporary permits). The House Professional Licensure Committee has until April 26, 2010 to either approve or disapprove the regulation. The Final Regulation was amended.

The Committee considered the proposed regulation on April 17, 2008 and submitted four (4) comments. A brief summary of the Committee comments and the responses provided by the Board are included in this analysis.

FINAL RULEMAKING ANALYSIS: Regulation 16A-629 amends Title 49 of the Pennsylvania Code, Section 39.1 (Definitions) and Section 39.4 (Admission to practice; temporary permits). Proposed amendments to Section 39.17, Temporary permits-statement of policy were withdrawn.

Section 39.1 was revised to define “temporary permit” as follows: “A permit issued by the Board which authorizes 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”.

Section 39.4(3)(ii) was revised to clarify that a temporary permit holder who otherwise satisfies the requirements of education and experience for admission to the licensing examination may apply to sit for the nursing home administrators licensing examination.

Section 39.4(3)(iii) reaffirms that 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.

Subsections 39.4(3)(vi) and (vii) have been added to clarify and refine conditions and requirements for the issuance of temporary permits. First, a temporary permit will become void if the holder does not pass any part of the nursing home administrators licensing examination or the facility obtains the services of a licensed administrator; and secondly, a temporary permit holder shall notify the Board and immediately return the permit if the holder fails to pass any part of the licensing examination or when the facility obtains the services of a licensed nursing home administrator.

Section 39.17, Temporary permits-statement of policy, was reorganized in the proposed regulation; however, because it was brought to the Board’s attention that it has no authority to change policy in regulation, the proposed amendments were withdrawn. The Board intends to retain a revised version as a statement of policy but it will be published separately consistent with the final-form rulemaking.

The Board received a public comment.

SUMMARY OF COMMENTS BY HOUSE PROFESSIONAL LICENSURE COMMITTEE TO THE PROPOSED REGULATION AND RESPONSES BY THE BOARD

1. The Committee suggested a technical change in the definition section. The definition for temporary permit “authorizes a person.” Person, as defined in the statutory construction act would include a corporation, LLC, etc. The Committee suggested that the definition read “A permit issued by the Board authorizing an individual...”.
 - The Board responded that, because a licensed nursing home administrator can only be an individual, it agreed that the definition should be clarified; it incorporated the Committee’s recommendation.
2. The Committee requested elaboration on the reasoning for Section 39.4 (3) (ii). What is the reasoning for not wanting the temporary permit holder to be qualified or eligible to sit for the exam? The Committee understood the language to mean that merely because one holds a temporary permit, he/she is not automatically qualified to sit for the licensing examination. However, the Committee believed it would be beneficial for an individual holding a temporary permit to be otherwise qualified to be a nursing home administrator. The statute states that a temporary permit holder must meet certain criteria, including “suitability as provided in this act.”; however, that phrase is left open to interpretation and there is no requirement stating that a temporary permit holder must comply with any part of the education or experience requirements.
 - The Board responded that it agreed that this clarification is warranted. The final-form rulemaking further revises the section to provide that a temporary permit holder who meets the education and experience requirements set forth in Section 39.5(b) may apply to sit for the licensing examination.
3. The Committee also suggested that, in Section 39.17(b), the Board delete the first sentence. The first sentence may be unnecessary as any applicant for licensure as an administrator would need to demonstrate suitability as a candidate to the Board. It was implicit that such time in the position of a temporary permit holder would not “count” as anything else.
 - The Board responded that it believed that the proposed language was useful because it provided 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.
Although the Board intends to retain a revised version of

Section 39.17(b) as a statement of policy, it will do so by separately publishing revisions that are consistent with the final-form rulemaking. This section will not be amended at this time.

4. The Committee questioned Regulatory Analysis Form (17) regarding the disciplinary process. The Committee would like further clarification as to how often the Board prosecutes or disciplines temporary permit holders, what they are disciplined for, and the cost incurred. Is the discipline of fully licensed nursing home administrators similar?
 - The Board responded that a temporary permit holder has never been the subject of a disciplinary proceeding before the Board. It would likely interpret the disciplinary provisions in Sections 11 and 12 of the Act as applying with equal force to both licensees and permit holders. The cost of any future disciplinary action would depend on the circumstances of the case and would be defrayed by biennial renewal fees.

RECOMMENDATION: It is recommended the House Professional Licensure Committee approve Regulation 16A-629.

House of Representatives
Professional Licensure Committee
April 21, 2010