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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

August 13, 2008

Mary E. Bowen, R.N., C.R.N.P., Chairperson
State Board of Nursing
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-5133 (IRRC #2700)
State Board of Nursing
Clinical Nurse Specialists

Dear Chairperson Bowen:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable P. Michael Sturla, Majority Chairman, House Professional Licensure Committee
Honorable William F. Adolph, Jr., Minority Chairman, House Professional Licensure Committee
Honorable Pedro A. Cortes, Secretary, Department of State

Comments of the Independent Regulatory Review Commission



State Board of Nursing #16A-5133 (IRRC #2700)

Clinical Nurse Specialists

August 13, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the June 14, 2008 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Nursing (Board) to respond to all comments received from us or any other source.

1. General. – Consistency with statute; Implementation procedures; Reasonableness.

Consistency with statute

The proposed regulation includes certain parts, verbatim, from Act 49 of 2007 (63 P.S. §§ 213, 216.2, 217, 218.5 and 218.6) (Act), while other provisions from the Act are not included. Several commentators, including the House Professional Licensure Committee, questioned whether Section 218.5(e) (relating to Clinical nurse specialist; qualifications) of the Act should be added to this regulation. Further, some commentators also assert that Section 218.6 (relating to Scope of practice for clinical nurse specialist) of the Act should be included.

The final-form regulation should include all requirements from the Act or justify why certain provisions are being omitted.

Grandfather clause

Several commentators have suggested that this regulation include a grandfather clause for those nurses that have a master's degree in Nursing and have previously "demonstrated success" and effectiveness in the role of clinical nurse specialist (CNS). The Board should consider adding a grandfather clause for a CNS in this situation. If the Board adds a grandfather clause, it should also specify the criteria that must be met for a nurse to be certified as a CNS under a grandfather clause.

2. Section 21.801. Definitions. – Consistency with statute; Clarity.

The definition of “CNS – Clinical nurse specialist” is not the same as the definition of “clinical nurse specialist” contained in the Act. For clarity, the language in these definitions should be the same.

3. Section 21.805. Fees. – Statutory authority; Reasonableness.

Subsection (b) states that “a candidate for National certification will also pay an additional fee to the National certification organization” and that “a candidate for credentials review by a Board-recognized organization will also pay an additional fee to the credentialing organization.” Does the Board intend to require the candidate to pay these additional fees to other organizations? If so, what is the Board’s authority to do so? If this provision is merely acting as a notice that the candidate might have to pay fees to other organizations and is not a requirement of the Board, then this language should be deleted from the final-form regulation because it is not regulatory language. The Board also should add a provision directing CNSs to the Board’s website for additional fee information.

4. Section 21.811. Qualifications for initial certification. – Reasonableness; Clarity.

This section discusses the qualifications necessary for initial certification as a CNS. We have two concerns.

First, the opening sentence of this section contains the phrase “...show evidence of...” Board staff has indicated that this evidence would consist of an official transcript and a certificate awarded by a national certification organization. This information should be set forth in the final-form regulation. A similar concern applies to Section 21.813(b).

Second, commentators state that the reference to the National Council of State Boards of Nursing (NCSBN) under Subsection (1)(i) should be deleted because NCSBN has no authority as an accrediting body. Further, they recommend that NCSBN should be replaced with a reference to the National Organization of Competency Assurance (NOCA). The Board should explain why NCSBN is an appropriate body to recognize organizations for providing continuing education. Also, has the Board considered including NOCA as an accrediting body?

5. Section 21.812. Qualifications for certification by endorsement or change of clinical specialty area. – Clarity.

The title of Subsection (b) is “**Change** of clinical specialty area.” However the content of the subsection refers to “**additional** specialty area.” (Emphasis added.) The final-form regulation should clarify whether this subsection applies to changing a specialty, adding one, or both.

6. Section 21.813. Application for certification. – Reasonableness; Clarity.

Subsection (b)

This subsection contains the phrase “An applicant...shall include documentation satisfactory to the Board....” What documentation is acceptable to the Board? How will the applicant know this when submitting the application? The final-form regulation should clarify these issues.

Subsection (d)(1)

This subsection does not consider those applicants that do not have access to official transcripts. Commentators assert that this subsection should be amended to allow other documentation to be accepted by the Board when official transcripts are not available. The Board should consider allowing other documentation in these circumstances and should specify what other documentation is acceptable.

Subsection (f)

This subsection allows 12 months for CNSs to meet compliance standards. How did the Board determine that this was an appropriate timeframe?

7. Section 21.821. CNS standards of conduct. – Reasonableness; Clarity.

It is unclear how the Board would determine whether a CNS has the “necessary knowledge, preparation, experience and competency” to properly execute a specific practice or procedure. The Board should specify if more is expected from CNSs than is already provided in the existing standards of nursing practice and this proposed regulation. If there is nothing additional, then this provision should be deleted.

8. Section 21.822. Biennial renewal of certification. – Reasonableness; Clarity.

We have four concerns with this section.

First, Subsection (b) states that notice will be forwarded to each active CNS “prior to the expiration date of the current biennial period.” However, it does not establish how much notice will be given. The final-form regulation should clearly state when this notice will be given to each active CNS.

Second, the final-form regulation should provide circumstances for when the Board would waive the 30 hours of Board-approved continuing education requirement in Subsection (d), or provide a cross-reference to Subsection 21.823 (b), which mentions illness or undue hardship as instances requiring a waiver.

Third, Subsection (d) requires a CNS to complete a minimum of 30 hours of Board-approved continuing education. How does the Board determine that an

individual has met this requirement? The final-form regulation should clarify this issue.

Finally, this section sets forth the requirements for the biennial renewal of certification. However, Subsection (f) establishes the requirements for written communication with the Board. Therefore, it should be moved to a more appropriate portion of the regulation.

9. Section 21.823. CNS-level continuing education; waiver; sanctions. – Clarity.

Under Subsection (b), the Board states that it will “grant, deny or grant in part the request for waiver.” The final-form regulation should specify what timeframe these actions will be taken in and how the CNS will be notified.

10. Section 21.825. Sources of continuing education. – Implementation procedures; Reasonableness; Clarity.

Group or individual research

This regulation is silent as to whether a CNS can get credit for group or individual research. However, commentators assert that the regulatory provisions for professional registered nurses allow this type of credit. Did the Board consider this option for CNSs?

Subsection (a)

This subsection contains the phrase “...and, provided that these providers and credentialing organizations agree to abide by §§ 21.826 and 21.827...they are preapproved....” How does one know if the organizations have agreed to these particular sections and, therefore, would be preapproved?

Subsection (b)

Under this subsection, what circumstances would result in a reevaluation of an approval given to providers and credentialing organizations? What circumstances would warrant a rescission of approval?

Subsection (c)

Under this subsection, a CNS can get Board approval for a course given by a provider not on the pre-approved list. The request for approval must be submitted at least 60 days prior to the course. However, a request for approval by a professional registered nurse must be submitted at least 90 days prior to the course. Why is the timeframe different?

Subsection (e)

How did the Board determine that 15 credit hours were sufficient for providing the various types of services listed in this subsection?

11. Section 21.826. Requirements for continuing education courses. – Clarity.

The term “adequate” in Subsection (2) is non-regulatory language. To be clear what is expected of a facility, the term “adequate facility” should be defined or this term should be deleted.

12. Section 21.827. Continuing education course approval. – Reasonableness; Clarity.

Subsection (b) sets forth the items that one must submit when requesting Board approval for continuing education. Subsection (b)(12) states “Other information requested by the Board.” It is impossible for the applicant to know what “other information” the Board would want at the time of the initial submittal of this information. However, we recognize that it is reasonable for the Board to have the ability to request additional information when necessary. Therefore, Subsection (b)(12) should be deleted and a new subsection (e.g. Subsection (e)) should be added that states that the Board may request additional information.

Facsimile Cover Sheet

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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Tom Blackburn
Cynthia Montgomery
Agency: Department of State
Licensing Boards and Commissions
Phone: 3-7200 or 3-3394 (Cynthia)
Fax: 7-0251
Date: August 13, 2008
Pages: 7

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Nursing's regulation #16A-5133 (IRRC #2700). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by:

Date:

8/13/08