

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

INDEPENDENT REGULATORY
REVIEW COMMISSION

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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: 6212

IRRC Number: 2747

(3) Short Title: **Continuing Education**

(4) PA Code Cite: **49 Pa. Code §39.61**

(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 regulation clarifies the general requirement of preapproval of continuing education courses and the special circumstances permitting retroactive approval; increases the number of continuing education hours that may be obtained through retroactively approved courses; enlarges the time-frame during which retroactive course approval or credit for authorship of articles may be obtained; eliminates restrictions on the number of continuing education hours that may be obtained through various instructional modalities; and clarifies the circumstances under which the Board may waive a particular continuing education requirement or grant an extension of time to complete continuing education hours.

(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 9(b) of the Nursing Home Administrators License Act, Act of June 22, 1970, P.L. 378, as amended, 63 P.S. §1109(b), empowers the Board to require continuing education as a condition of biennial renewal of licensure, 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 regulation is 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 regulation is needed because it broadens opportunities for licensed nursing home administrators to obtain qualifying continuing education as a condition of biennial renewal of licensure. The current requirements are unduly restrictive, which makes it challenging for licensees to obtain qualifying continuing education without compromising their professional obligations to the nursing homes that they administer. The primary beneficiaries of the regulation are licensees; the secondary beneficiaries of the regulation are nursing homes and their residents.

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.

The regulation is not based on scientific data, studies or references.

(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 regulation.

(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 regulation directly affects the approximately 1,755 active licensed nursing home administrators.

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 regulation 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 regulation 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 regulation 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 regulation makes desirable revisions to continuing education requirements 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.

The Board solicited comments from interested parties on a pre-proposal draft of the regulation. 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 regulation.

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?

Among the border states, New York, New Jersey, Maryland and Delaware require nursing home administrators to complete continuing education as a condition of license renewal. The regulation is consistent with the continuing education requirements in these other states and will not put Pennsylvania at a competitive disadvantage with these 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 regulation does 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 regulation does not require legal, accounting or consulting procedures. The regulation does not create additional reporting, recordkeeping or other paperwork.

(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 regulation applies uniformly to all licensees, subject to the provisions authorizing the Board to grant an extension of time to complete continuing education hours, or a waiver of a particular continuing education requirement, in individual cases for cause.

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

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(Pursuant to Commonwealth Documents Law)

INDEPENDENT REGULATORY
REVIEW COMMISSION

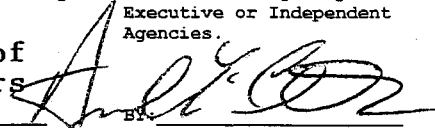
DO NOT WRITE IN THIS SPACE

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)

DOCUMENT/FISCAL NOTE NO. 16A-6212

Andrew C. Clark

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)

Continuing Education

PREAMBLE

The State Board of Examiners of Nursing Home Administrators (Board) amends § 39.61 (relating to requirements) to read as set forth in Annex A.

The final-form rulemaking constitutes a revision of the Board's requirements relating to the obligation of licensed nursing home administrators to complete 48 hours of continuing education during each biennial license period.

The final-form rulemaking revises § 39.61 to clarify that all continuing education hours must be completed in courses that are preapproved by the Board or the National Association of Boards of Examiners of Long-Term Care Administrators, except in limited circumstances where retroactive course approval is permitted or where the continuing education involved service as an instructor, authorship of an article, or completion of an administrator-in-training program. The final-form rulemaking also revises § 39.61 to eliminate requirements and restrictions on the number of continuing education hours that may be obtained through lecture and interactive computer courses, correspondence courses, and college and university courses; to increase the number of continuing education hours that may be obtained through courses that have been approved retroactively; to enlarge the time-frame during which retroactive course approval or credit for authorship of articles may be obtained; and to clarify the circumstances under which the Board may waive a particular continuing education requirement or grant an extension of time to complete continuing education hours. The final-form rulemaking also reorganizes § 39.61 by relettering and renumbering its subsections and paragraphs.

Statutory Authority

The final-form rulemaking is authorized under section 9(b) of the Nursing Home Administrators License Act (act) (63 P.S. § 1109(b)), which empowers the Board to require continuing education as a condition of biennial renewal of licensure, 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 39 Pa. B. 1005 (February 21, 2009), with a 30-day public comment period.

The Board received comments in support of the proposed rulemaking from the Pennsylvania Health Care Association, an advocacy organization for compassionate, quality long-term care for

Pennsylvania's elderly and disabled residents; PANPHA, a trade association representing more than 360 nonprofit providers of housing and health-related services to Pennsylvania's elderly residents; and Foulkeways at Gwynedd, a continuing care retirement community in Pennsylvania.

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.

IRRC's comments related to the provisions for granting a continuing education waiver or an extension of time to complete continuing education. Section 39.61(e) currently provides that a licensee who cannot meet the continuing education requirement for reasons of illness, emergency or hardship may apply in writing to the Board for a waiver. The waiver request must explain why compliance with the continuing education requirement is impossible and must be accompanied by appropriate documentation. The Board evaluates each request on a case-by-case basis. In addition to redesignating it as § 39.61(f), the proposed rulemaking would have revised current § 39.61(e) to add language providing that in the event the Board determines that a licensee has not established entitlement to a waiver on the basis of illness, emergency or hardship, the Board may grant the licensee an extension of time to complete the continuing education requirement.

IRRC asked the Board to explain why current § 39.61(e) was being amended. IRRC also asked the Board to explain why a licensee who has failed to establish an illness, emergency or hardship should nevertheless be considered eligible for an extension of time to complete the continuing education requirement. IRRC further asked the Board to explain the standards, or grounds, on which the Board will base its decision whether to grant an extension of time. Finally, IRRC asked the Board to explain how and when a licensee will be notified of the Board's decision to grant a waiver or an extension of time.

The Board's intent in amending current § 39.61(e) was to clarify that a licensee who, for good cause, is unable to comply with some aspect of the continuing education requirement may obtain relief in the nature of a waiver or an extension of time. The proposed rulemaking did not adequately differentiate between the circumstances justifying the granting of a waiver and the circumstances justifying the granting of an extension of time.

The Board believes that a licensee's obligation under § 39.61(a) and the redesignated § 39.61(d) to complete 48 hours of continuing education during each biennial license period – or a pro-rated amount in the case of a licensee's initial biennial license period – cannot be waived; however, a licensee

may be granted an extension of time complete continuing education hours if timely compliance is not possible because of illness, emergency or hardship. The Board believes that all other requirements in § 39.61, such as the limitation on the number of continuing education hours that may be obtained through retroactively approved courses or authorship of articles, may be waived upon a licensee's showing of illness, emergency or hardship. The final-form rulemaking makes this distinction clear in the new § 39.61(f).

The Board does not believe it is necessary to specify in the new § 39.61(f) how and when a licensee will be notified of the Board's action on a request for a waiver or an extension of time. Since the right to request a waiver was added to § 39.61 in March 2001, the Board has always acted expeditiously on such requests when they are received. No licensee, nursing home or professional association has complained about the promptness or manner of the Board's responses to requests for waivers.

The House Committee commented that the proposed rulemaking incorrectly renumbered the revised paragraphs in § 39.61(b). The final-form rulemaking sets forth the correct renumbering.

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 11, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 1005, 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 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 39 Pa. B. 1005.
- (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 by amending § 39.61 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 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

* * * * *

CLOCK HOURS REQUIREMENT

§ 39.61. Requirements.

(a) A licensee shall complete at least 48 clock hours of continuing education during the preceding biennial period.

(b) [Of the 48 hours required, the following apply:] All continuing education clock hours shall be completed in courses preapproved by NAB or the Board, except as provided in subsection (c)(2)-(5).

(c) Of the 48 clock hours required, the following apply:

(1) [At least 24 hours shall be taken in lecture or computer interactive courses approved by NAB or the Board.

(2) Up to 24 clock hours may be taken through college or university courses, including distance learning, approved by NAB or the Board.] Up to 48 clock hours may be

taken in lecture, college or university, computer interactive, distance learning or correspondence courses preapproved by NAB or the Board.

[(3)] (2) A maximum of 12 clock hours may be [taken in the following categories:

(i) Individual study using NAB or Board approved correspondence courses.

(ii) Serving] earned by serving as an instructor of a NAB or Board-approved continuing education program or as an instructor of a college or university course approved by NAB or the Board. Instructors may earn 1 clock hour for each hour of instruction up to 12 clock hours.

[(4) Authoring] (3) Clock hours may be earned by authoring an article on long-term care[.] as follows:

(i) Authors whose articles relating to long-term care are published in professional journals may earn 3 clock hours per article, up to a maximum of 12 clock hours per biennium.

(ii) Additional credit per article, up to 12 of the required clock hours, may be awarded based on the complexity of the subject matter or work.

(iii) In exceptional circumstances, when the article is published in a refereed journal, and the subject matter or work is complex, a licensee may be awarded up to 24 clock hours.

(iv) Published articles used for continuing education credit shall be submitted to the Board within [30] 60 days of publication. Upon review of the published

article, the Board will determine the appropriate number of clock hours to be awarded based upon the complexity of the subject matter or work.

[(5)] (4) Up to 24 clock hours may be obtained by serving as a supervisor in a Board-approved AIT program, when the AIT successfully completes the AIT program.

[(6)] (5) A maximum of [6] 12 clock hours may be awarded retroactively for attending programs, to include lectures, and college or university courses, which have not been preapproved. The attendee shall submit a written request for approval within [30] 60 days of attending the program and document attendance. The attendee shall demonstrate to the Board's satisfaction that the programs meet the requirements of §§ 39.14(a)(2) and 39.51 (relating to approval of programs of study; and standards for continuing education programs).

[(c)] (d) A licensee who obtains a license after the biennial period begins shall complete a prorated amount of clock hours equal to 2 clock hours per month through the end of the biennial period. For the purpose of calculating the number of clock hours required, partial months shall count as whole months.

[(d)] (e) A licensee suspended for disciplinary reasons is not exempt from the continuing education requirements in subsection (a).

[(e)] (f) A licensee who cannot meet the OVERALL continuing education CLOCK HOUR requirement IN SUBSECTION (A) OR (D) due to illness, emergency or hardship may apply to the Board in writing prior to the end of the renewal period for [a waiver] AN EXTENSION OF TIME TO COMPLETE THE CLOCK HOURS. A LICENSEE WHO CANNOT MEET ANY OTHER

REQUIREMENT IN THIS SECTION DUE TO ILLNESS, EMERGENCY OR HARDSHIP MAY APPLY TO THE BOARD IN WRITING PRIOR TO THE END OF THE RENEWAL PERIOD FOR A WAIVER OF THE REQUIREMENT. ~~The AN EXTENSION OR WAIVER request [shall] must explain why compliance is impossible, and include appropriate documentation. ~~Waiver requests AN EXTENSION OR WAIVER REQUEST will be evaluated by the Board on a case-by-case basis. When the Board determines that a licensee has not met the illness, emergency or hardship requirement for the grant of a waiver, the Board may grant an extension of time for the licensee to complete the continuing education requirement.~~~~

[(f)] (g) A licensee will not be credited for repeating a program in the same renewal period unless the subject matter has substantially changed during that period.

P. S. § 1803(h)), a chiropractor seeking to practice acupuncture must become registered with one of these medical boards under the Acupuncture Registration Act and be subject to regulation of that medical board. Although it is not the practice of chiropractic, the Board sees no compelling basis to prohibit the practice of acupuncture by a licensed chiropractor who is registered with a medical board to practice acupuncture and is acting in accordance with that medical board's regulations concerning the practice of acupuncture.

Description of the Proposed Amendments

The proposed rulemaking would amend § 5.81(1)(xv). A licensee who is registered to do so by the State Board of Medicine or the State Board of Osteopathic Medicine and acting in accordance with the act and regulations of the appropriate medical board would not be subject to the prohibition against advertising or practicing needle acupuncture.

Fiscal Impact and Paperwork Requirements

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendment will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 11, 2009, 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 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.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, by mail at P. O. Box 2649, Harrisburg, PA 17105-2649, or by e-mail at st-chiro@state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-4317 (Needle acupuncture), when submitting comments.

JONATHAN W. MCCULLOUGH, D. C.,
Chairperson

Fiscal Note: 16A-4317. 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 13. STATE BOARD OF CHIROPRACTIC

Subchapter H. DISCIPLINARY ACTION

§ 5.81. Unprofessional and immoral conduct.

A licensee who engages in unprofessional or immoral conduct is subject to disciplinary action in accordance with section 506 of the act (63 P. S. § 625.506).

(1) Unprofessional conduct includes the following.

* * * * *

(xv) Practicing or advertising needle acupuncture, unless the licensee is registered to do so by the State Board of Medicine or the State Board of Osteopathic Medicine and acting in accordance with the Acupuncture Registration Act (63 P. S. §§ 1801—1806.1) and regulations of the State Board of Medicine in §§ 18.11—18.18 (relating to registration and practice of acupuncturists) or regulations of the State Board of Osteopathic Medicine in §§ 25.301—25.308 (relating to registration and practice of acupuncturists).

* * * * *

[Pa.B. Doc. No. 09-299. Filed for public inspection February 20, 2009, 9:00 a.m.]

STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

[49 PA. CODE CH. 39]

Continuing Education

The State Board of Examiners of Nursing Home Administrators (Board) proposes to amend § 39.61 (relating to requirements), to read as set forth in Annex A. The proposed amendment would clarify, update and expand on the continuing education requirements.

A. *Effective Date*

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

B. *Statutory Authority*

The Board has authority to adopt regulations pertaining to continuing education under sections 4(c) and 9(b) of the Nursing Home Administrators License Act (act) (63 P. S. §§ 1104(c) and 1109(b)).

C. *Background and Need for Amendments*

Section 9(b) of the act requires licensees to complete continuing education as a condition of biennial renewal. The proposed amendments to § 39.61 clarify, update, and expand on the continuing education clock hour requirements.

D. Description of Proposed Amendments

The proposed amendment to § 39.61(b) clarifies that the 48 required continuing education clock hours must be completed in courses preapproved by the National Association of Boards of Examiners of Long-Term Care Administrators (NAB) or the Board, except in limited circumstances, including serving as an instructor or authoring an article, or when a course is approved retroactively under subsection (c)(5) for those continuing education courses that have not been preapproved.

Currently, there are restrictions placed on the number of continuing education clock hours that may be completed based on the modality of instruction. For example, licensees are required to take at least 24 hours in lecture or computer interactive courses; and licensees are permitted to take a maximum of 24 clock hours through college or university courses and a maximum of 12 hours in correspondence courses. The Board believes that these restrictions are outdated and should be lifted. The proposed amendment would permit licensees to take all 48 clock hours in any of the various modalities, including lecture, college or university, computer interactive, distance learning or correspondence courses, so long as the courses are approved by NAB or the Board.

In addition, the Board is proposing an amendment to increase the amount of time, from 30 days to 60 days, that a licensee would have in which to gain Board approval for authoring an article on long-term care after publication or for attending programs which have not been preapproved by NAB or the Board. Section 39.61(c)(5) would also raise the maximum number of clock hours that may be awarded for attending programs which have not been preapproved by NAB or the Board, from 6 to 12, so long as the licensee submits the required documentation to the Board within 60 days of attending the program.

Finally, § 30.61(f) would be amended to clarify that when the Board determines that a licensee requesting a waiver has not met the "illness, emergency or hardship" standard for grant of a waiver, the Board may elect to grant the licensee an extension of time to complete the continuing education clock hours.

E. Fiscal Impact

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

F. Paperwork Requirements

The proposed amendment 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 cost 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 11, 2009, 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 objec-

tions 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 Roberta Silver, Board Counsel, State Board of Examiners of Nursing Home Administrators, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6212 (Continuing Education) when submitting comments.

BARRY S. RAMPER, II,
Chairperson

Fiscal Note: 16A-6212. 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

CLOCK HOURS REQUIREMENT

§ 39.61. Requirements.

(a) A licensee shall complete at least 48 clock hours of continuing education during the preceding biennial period.

(b) [Of the 48 hours required, the following apply:] All continuing education clock hours shall be completed in courses preapproved by NAB or the Board, except as provided in subsection (c)(2)–(5).

(c) Of the 48 clock hours required, the following apply:

(1) [At least 24 hours shall be taken in lecture or computer interactive courses approved by NAB or the Board.

(2) Up to 24 clock hours may be taken through college or university courses, including distance learning, approved by NAB or the Board.] Up to 48 clock hours may be taken in lecture, college or university, computer interactive, distance learning or correspondence courses preapproved by NAB or the Board.

[(3)] (2) A maximum of 12 clock hours may be taken in the following categories:

(i) Individual study using NAB or Board-approved correspondence courses.

(ii) Serving] earned by serving as an instructor of a NAB or Board-approved continuing education program or as an instructor of a college or university course approved by NAB or the Board. Instructors may earn 1 clock hour for each hour of instruction up to 12 clock hours.

[(4) Authoring] (3) Clock hours may be earned by authoring an article on long-term care[.] as follows:

(i) Authors whose articles relating to long-term care are published in professional journals may earn 3 clock hours per article, up to a maximum of 12 clock hours per biennium.

(ii) Additional credit per article, up to 12 of the required clock hours, may be awarded based on the complexity of the subject matter or work.

(iii) In exceptional circumstances, when the article is published in a refereed journal, and the subject matter or work is complex, a licensee may be awarded up to 24 clock hours.

(iv) Published articles used for continuing education credit shall be submitted to the Board within **[30] 60** days of publication. Upon review of the published article, the Board will determine the appropriate number of clock hours to be awarded based upon the complexity of the subject matter or work.

(4) Up to 24 clock hours may be obtained by serving as a supervisor in a Board-approved AIT program, when the AIT successfully completes the AIT program.

[(6)] (5) A maximum of **[6] 12** clock hours may be awarded retroactively for attending programs, to include lectures, and college or university courses, which have not been preapproved. The attendee shall submit a written request for approval within **[30] 60** days of attending the program and document attendance. The attendee shall demonstrate to the Board's satisfaction that the

programs meet the requirements of §§ 39.14(a)(2) and 39.51 (relating to approval of programs of study; and standards for continuing education programs).

[(c)] (d) A licensee who obtains a license after the biennial period begins shall complete a prorated amount of clock hours equal to 2 clock hours per month through the end of the biennial period. For the purpose of calculating the number of clock hours required, partial months shall count as whole months.

[(d)] (e) A licensee suspended for disciplinary reasons is not exempt from the continuing education requirements in subsection (a).

[(e)] (f) A licensee who cannot meet the continuing education requirement due to illness, emergency or hardship may apply to the Board in writing prior to the end of the renewal period for a waiver. The request **[shall] must** explain why compliance is impossible, and include appropriate documentation. Waiver requests will be evaluated by the Board on a case-by-case basis. **When the Board determines that a licensee has not met the illness, emergency or hardship requirement for the grant of a waiver, the Board may grant an extension of time for the licensee to complete the continuing education requirement.**

[(f)] (g) A licensee will not be credited for repeating a program in the same renewal period unless the subject matter has substantially changed during that period.

[Pa.B. Doc. No. 09-300. Filed for public inspection February 20, 2009, 9:00 a.m.]

**LIST OF NAMES AND ADDRESSES OF PUBLIC
COMMENTATORS FOR REGULATION 16A-6212**
(1 Pa. Code §307.2(c)(6))

- (1) Douglas Tweedale, NHA, Chief Executive Officer
Mary Knapp, NHA, Director of Health Services
Foulkeways at Gwynedd
1120 Meetinghouse Road
Gwynedd, PA 19436

- (2) Mark D. Miller
Regulatory Affairs Manager
PANPHA
1100 Bent Creek Boulevard
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- (3) Stuart H. Shapiro, M.D.
President and Chief Executive Officer
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STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

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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 Continuing Education (16A-6212)

Dear Chairman Coccodrilli:

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

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

