

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-6212

IRRC Number: 2747

(3) Short Title

Continuing Education

(4) PA Code Cite

49 Pa. Code § 39.61

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Roberta L. Silver, Counsel**
State Board of Examiners of Nursing Home
Administrators (717) 783-7200

Secondary Contact: **Steven Wennberg, Regulatory**
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 9(b) of the Nursing Home Administrators License Act (act) (63 P.S. § 1109(b)) requires licensees to complete continuing education as a condition of biennial renewal. Current §§ 39.41-39.65, establish the parameters of the continuing education requirements. The proposed amendments to § 39.61 (relating to requirements) 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 9(b) of the Nursing Home Administrators License Act, Act of June 22, 1970 (P.L. 378, No. 120), 63 P.S. §§ 1109(b).

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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 the current continuing education requirements. These amendments would give the licensee more flexibility to meet the biennial continuing education requirement.

Specifically, the amendments provide that the 48 required clock hours must be preapproved by the National Association of Boards of Examiners of Long-Term Care Administrators (NAB) or the Board, except in limited circumstances, such as instructing, authoring an article on long-term care, or obtaining retroactive approval for attending continuing education programs which have not been preapproved. Further, the proposed rulemaking would remove limitations currently contained in the regulations relating to the modality of instruction. All 48 required credit hours could be completed in lecture, college or university, computer interactive, distance learning, or correspondence courses. The amendments would also expand the amount of time, from 30 to 60 days, for a licensee to obtain Board approval for authoring an article or attending programs that have not been preapproved and would expand the amount of non-preapproved courses from 6 clock hours to 12, so long as the licensee submits documentation to the Board within 60 days of attendance. Lastly, under the waiver provision, the Board would have the discretion to grant an extension of time to a licensee to complete the continuing education requirement, where the licensee does not meet the standards for grant of a waiver.

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

There are no public health, safety, environmental or general welfare risks associated with nonregulation. The proposed amendments simply give the licensee more flexibility and options to complete the biennial continuing education requirement.

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

The licensee will have more options in which to complete the continuing education requirement and, therefore, will benefit from the regulation.

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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 approximately 1,912 actively licensed nursing home administrators. All actively licensed individuals will be required to comply with the regulation.

(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 stakeholders and interested parties by disseminating numerous drafts of the proposed rulemaking 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 approval of a non-preapproved continuing education program are borne by the provider or licensee. Under § 39.72 (relating to fees), the continuing education provider application fee is \$40, the continuing education program application fee per clock hour is \$15 and the continuing education individual program application fee is \$20.

Regulatory Analysis Form

(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 approval applications for continuing education. 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.

	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013
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-04-05 (Actual)	FY- 05-06 (Actual)	FY- 06-07 (Actual)	FY 07-08 (budgeted)
State Board of Examiners of Nursing Home Administrators	\$ 201,242.06	\$208,123.21	\$ 213,042.26	\$ 250,000.00*

(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 continuing education requirements to provide more flexibility to licensees. These benefits outweigh any costs of implementing the rulemaking because costs of reviewing continuing education provider approval applications will be borne by applicants through the continuing education application fees which are not changing.

(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 9(b) of the act requires licensees to complete continuing education as a condition of biennial renewal 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. Delaware, Maryland, New Jersey and New York require completion of continuing education as a condition for licensure renewal.

The regulations are consistent with the continuing 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.

Regulatory Analysis Form

(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 continuing education applications.

(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.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY

DO NOT WRITE IN THIS SPACE

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

[Signature]

BY: _____
(DEPUTY ATTORNEY GENERAL)

OCT 24 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-6212

DATE OF ADOPTION: _____

BY: *[Signature]*
Barry S. Ramber, II, NHA

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

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

[Signature]

BY: Andrew C. Clark

AUG 8 2008

DATE OF APPROVAL

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

[] 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

CONTINUING EDUCATION
16A-6212

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 amendments would clarify, update and expand on the continuing education requirements.

A. Effective Date

The proposed amendments 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), Act of June 22, 1970, (P.L. 378, No. 120), 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 amendments to § 39.61(b) clarify 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 where a course is approved retroactively under subsection (c)(4) 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 amendments 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 amendments 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)(4) 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 amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

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

Barry S. Ramper, II, Chairperson
State Board of Examiners of Nursing Home Administrators

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 applies:] All continuing education clock hours shall be completed in courses preapproved by NAB or the Board, except as provided in subsection (c)(2)-(4).

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

(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) All 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) 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 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.

HEALTH ADMINISTRATION PROGRAM
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SCRANTON, PA 18510

JANET NERGECKI
SCHOOL OF CONTINUING EDUCATION
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KINGS COLLEGE
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DEPARTMENT OF HEALTH
BUREAU OF QUALITY ASSURANCE
DIVISION OF NURSING CARE FACILITIES
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AMERICAN ASSOC. OF RETIRED PERSONS
225 MARKET STREET
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OFFICE OF SOCIAL PROGRAMS
PERSONAL CARE HOMES
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PA ASSOC. OF COUNTY AFFILIATED HOMES
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KIM KAUFMAN, EXECUTIVE DIRECTOR
INDEPENDENT REGULATORY REVIEW
COMMISSION
333 MARKET STREET, 14TH FLOOR
HARRISBURG, PA 17101



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 11, 2009

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
16A-6212: Continuing Education

Dear Chairman Coccodrilli:

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

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/SJW:klh

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Peter V. Marks, Executive Deputy Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Sabina I. Howell, 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-6212
 SUBJECT: CONTINUING EDUCATION
 AGENCY: DEPARTMENT OF STATE
 STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

TYPE OF REGULATION

- 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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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/11/09	<i>Clarine Nichols</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <i>Michael P. McSheehan</i>
2/11/09	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <i>Robert Tomlinson</i>
2/11/09	<i>Kathy Coops</i>	INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL (for Final Omitted only)
2/11/09	<i>Mayer Garcia</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)