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INDEPENDENT REGULATORY REVIEW COMMISSION

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

July 1, 2010

Ann L. O'Sullivan, PhD FAAN, CRNP, Chair
State Board of Nursing
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-5122 (IRRC #2840)
State Board of Nursing
IV Therapy Functions for Licensed Practical Nurses

Dear Ms.O'Sullivan:

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, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Michael P. McGeehan, Majority Chairman, House Professional Licensure Committee
Honorable Julie Harhart, Minority Chairman, House Professional Licensure Committee
Honorable Basil L. Merenda, Acting Secretary, Department of State
Robert A. Mulle, Esq., Office of Attorney General
Andrew Clark, Esq., Office of General Counsel

Comments of the Independent Regulatory Review Commission



State Board of Nursing Regulation #16A-5122 (IRRC #2840)

IV Therapy Functions for Licensed Practical Nurses

July 1, 2010

We submit for your consideration the following comments on the proposed rulemaking published in the May 1, 2010 *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. Effective date of the regulation. – Implementation procedures; Protection of the public health, safety and welfare.

The Preamble states that the regulation “will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.” What effect will the regulation have on Licensed Practical Nurses (LPNs) currently administering IV therapy that have not meet the curriculum requirements of § 21.145b, pertaining to IV therapy curriculum requirements? Will those LPNs be able to continue to administer IV therapy? If not, has the Board considered providing a grandfathering provision or delaying the effective date of the regulation to allow LPNs the necessary time to meet the curriculum requirements?

2. Section 21.141. Definitions. – Consistency with statute; Clarity.

Focused assessment

This term is defined as, “Appraisal of an individual’s current status and situation, which contributes to comprehensive assessment by the registered nurse and supports ongoing data collection.” A commentator has stated that the Practical Nurse Law (Law) (63 P.S. §651 *et.seq.*) does not allow for assessment by an LPN and questions if the use of the term is needed in the regulation. Does inclusion of this term expand the scope of practice of LPNs? If so, is that expansion consistent with the Law?

IV therapy

As the title of this proposed rulemaking suggests, the subject matter of this regulation is IV therapy. However, this term is not defined in the Board's existing regulations, nor is it defined in the proposed regulation. The final-form regulation should include a definition of this term.

3. Section 21.145. Functions of the LPN. – Statutory authority; Need; Protection of the public health, safety and welfare; Clarity.

Subsection (a)(2) states the following: “An LPN shall obtain instruction and supervision if implementing new or unfamiliar nursing practices or procedures.” It is unclear who will provide the instruction and supervision. We suggest that this provision be clarified to specify who must provide the instruction and supervision.

Similar to the concern expressed on the definition of “focused assessment,” a commentator is concerned with the use of the word “assess” in Subsections (f)(2)(ii), (iii) and (iv). Under the Law, does an LPN have the authority to perform the assessments referenced in these subsections?

Subsection (f)(4) includes the phrase “readily available” and Subsection (f)(5) includes the phrase “immediate vicinity.” These phrases are vague and lack clarity. We suggest that the final-form regulation include more precise standards that eliminate the ambiguity created by these phrases.

Subsection (f)(5)(i) allows LPNs to provide IV therapy when a patient's condition is “critical, fluctuating, unstable or unpredictable” if the LPN's supervisor is present in the immediate vicinity. A commentator has stated that an LPN should not be assigned to a patient in this condition. In the Preamble to the final-form regulation, we ask the Board to explain why this provision is needed and how it adequately protects the health, safety and welfare of the patient.

4. Section 21.145b. IV therapy curriculum requirements. – Protection of the public health, safety and welfare; Reasonableness; Implementation procedures; Clarity.

Under this section, IV therapy curriculum can be provided as part of LPN education curriculum as set forth in § 21.203 (related to specific curriculum requirements for practical nursing programs) or as a stand-alone course offered by a licensed health care facility. We have three concerns. First, should § 21.203 be amended to include a cross-reference to this section?

Second, how will the Board ensure that the stand-alone courses are meeting the requirements of this Section? Will the courses have to be approved by the

Board? If so, what process will the Board use to approve the courses? These issues should be addressed in the final-form regulation

Third, as noted by a commentator, has the Board considered adding standards for course length, clinical experience and instructor qualifications for IV therapy curriculums? We believe including such standards would help ensure the quality of the curriculum and help protect the health, safety and welfare of the public. We recommend that the Board include such standards in the final-form regulation.

5. Miscellaneous clarity.

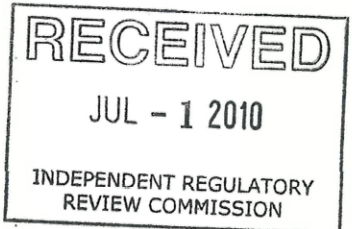
- § 21.145(a)(1) uses the term “RN”, but § 21.145(f)(1) uses the term “licensed professional nurse.” We recommend that only one of these terms be used in the final regulation.

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
3-3394 (Cynthia Montgomery)
Fax: 7-0251
Date: July 1, 2010
Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Nursing's regulation #16A-5122 (IRRC #2840). 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:

Cynthia K. Montgomery

Date:

7/1/10