

Comments of the Independent Regulatory Review Commission



State Board of Nursing Regulation #16A-5125 (IRRC #3080)

General Revisions

December 31, 2014

We submit for your consideration the following comments on the proposed rulemaking published in the November 1, 2014 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (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. Statutory authority; Determining whether the regulation is in the public interest; Economic or fiscal impacts; Protection of the public health, safety and welfare; Reasonableness of requirements, implementation procedures and timetables for compliance.**

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed regulation and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under Section 5 of the RRA in the Regulatory Analysis Form (RAF) (71 P.S. § 745.5(a)).

Section 215(a) of the Professional Nursing Law (RN Law) states, "The Board shall . . . examine all eligible applicants for licensure . . ." (63 P.S. § 215(a)). Section 215(d) of the RN Law states,

In establishing the education requirements for admittance to the nursing licensure examination under this section, the Board shall not deny access to the examination for licensure as a registered nurse to a graduate of a State-approved associate degree, diploma or baccalaureate degree nursing program.

(63 P.S. § 215(d)). Regarding eligibility, Section 216(a) of the RN Law states,

Every applicant, to be eligible for examination for licensure as a registered nurse, shall furnish evidence satisfactory to the Board that he or she is of good moral character, has completed work equal to a standard high school course as evaluated

by the Board and has satisfactorily completed an approved program of professional nursing.

(63 P.S. § 216(a)). The Board proposes to amend Section 21.25 (relating to re-examination) by adding a new requirement in Subsection (c) that states, “If a candidate does not pass the examination within 2 years of completion of the candidate’s nursing education program, the candidate shall complete a plan of remediation developed by a nursing education program for the candidate prior to applying for re-examination.”

It is unclear how the Board can deny access to the examination to a candidate who meets the eligibility requirements of Section 216(a) of the RN Law. We ask the Board either to remove this requirement from the final-form regulation, or to explain why this proposed regulatory requirement is consistent with the statute in terms of access to the exam.

If the proposed requirement in Section 21.25(c) is retained in the final-form regulation, we ask the Board to address the following concerns.

The Board should explain in the Regulatory Analysis Form (RAF) and Preamble of the final-form regulation the need for the two-year time frame, and why it is reasonable.

In the Preamble, the Board describes this change as requiring the candidate to complete a remedial plan developed by a “Board-approved” nursing education program. The proposed language in Section 21.25(c) does not specifically state that the remedial plan must be developed by a Board-approved nursing education program, and we recommend the Board include this requirement in the final-form regulation.

Section 21.25(c) states that the plan of remediation will be developed “for the candidate,” indicating that each failing candidate’s plan of remediation will be customized. Such a requirement could have a significant economic or fiscal impact on both the programs and the candidates. In response to RAF #19 related to costs to the regulated community, the Board states, “The remedial education costs for those candidates who fail after the 2 years cannot be predicted as different programs charge different fees and the amount of remedial education required will be candidate-specific.” The RRA requires the Board to provide “a specific estimate” of the costs to the regulated community associated with compliance. In order to assist us in our determination of whether the regulation is reasonable and in the public interest, we ask the Board to provide more details in the RAF regarding the economic impact on the programs and candidates.

In response to RAF #21 regarding costs to state government, the Board states that the regulation does not impose any additional costs to state government. However, it seems that the proposed requirements in Sections 21.25(c) and (d) would impact the Board in some manner. We ask the Board to clarify in the RAF and Preamble of the final-form regulation how the processing of a new class of candidates will not impose new costs on the Board. Specifically, would the Board need to verify that these candidates have completed a plan of remediation developed by a Board-approved nursing education program prior to reapplying? Would the Board need to verify that

these candidates satisfy the administrative and education requirements prevailing at the time of reapplication?

We also have concerns related to the implementation of the proposed requirement in Section 21.25(c). We ask the Board to clarify what will be required of a candidate who fails the examination following completion a remediation plan.

Finally, the Board states in the Preamble that since October 1, 2010, a nursing education program must achieve a minimum pass rate for first-time test takers of 80 percent. According to the Board, currently 22 of the approximately 142 approved nursing education programs are on provisional approval due to their pass rates which did not reach the 80 percent threshold. While success or failure on the examination ultimately rests with the candidate, we ask the Board to clarify whether a correlation exists between the failing candidates and any of the education programs on provisional approval. The Board did not provide this information, nor did the Board include the pass rate for the 22 education programs. Without this information, we question whether there would be value in candidates turning to certain provisional approval education programs for remediation plans. We ask the Board to explain how it determined that requiring candidates to complete a remedial plan, rather than addressing the education offered by provisional approval programs, is reasonable.

These concerns also apply to Section 21.153 and Section 21.722.

2. Section 21.2. Scope. – Clarity.

In Subsection (e) the Board states that it may approve professional nursing education programs conducted in hospitals, colleges and universities, and will make available a list of approved programs. We ask the Board to be more specific as to how and where the list of approved programs will be made available.

Additionally, could other types of postsecondary education institutions that are not hospitals, colleges or universities be approved? If so, we ask the Board to consider including these other types of institutions, or explain in the Preamble why they are not included. We ask the Board to also consider this comment in reference to Section 21.142.

3. Section 21.21. Application for examination. – Protection of the public health, safety and welfare; Reasonableness of requirements.

Subsection (c) currently requires a copy of the transcript validating the applicant's completion of the program to be filed at least two weeks prior to the testing dates. The Board states in the Preamble that it proposes to delete this requirement for graduates of in-state programs and maintain the requirement only for out-of-state graduates. The Board notes that it is retaining this requirement for graduates who attend programs outside of the Commonwealth because the Board does not approve these programs. However, proposed Subsection (c) no longer requires the transcript to be filed at least two weeks prior to the testing dates. Does the Board intend to remove the filing deadline from Subsection (c)? If so, we ask the Board to explain the

reasonableness of removing the filing deadline for transcripts for out-of-state graduates and how doing so protects the public health, safety and welfare.

4. Section 21.23. Qualifications of applicant for examination. – Clarity.

Subsection (a) should state “. . . that the applicant has, prior to **being** approved to take the licensure examination . . .” [Emphasis added.]

Also, Subsection (a) addresses demonstration of proficiency in English, and refers to the possibility that an applicant may have satisfied the requirement of Section 21.7(a) (relating to temporary practice permits). A parallel provision related to practical nurses, Section 21.151(d), refers to the possibility that an applicant may have satisfied the requirement of Section 21.149(b)(2) (relating to temporary practice permits). Should Subsection (a) reference Section 21.7(b)(2)? [Emphasis added.]

In the Preamble, the Board states that Subsection (b) is “identical for endorsement candidates in Sections 21.28(c) and 21.155(d) (relating to licensure by endorsement).” However, the language of these three subsections is not identical. We ask the Board to revise the provisions or revise the description in the Preamble of the final-form regulation.

5. Section 21.25. Re-examination. – Clarity; Reasonableness of requirements.

Subsection (b) states, “The candidate may take the licensing examination **as many times as necessary** to pass the licensure examination within 2 years of completion of the candidate’s nursing education program.” [Emphasis added.] However, in the Preamble, the Board states, “To preserve the integrity of the examination, it may be administered to a single applicant **every 45 days**. Under proposed subsection (b), candidates are allowed to take the licensure examination **up to 16 times** without additional requirements.” [Emphasis added.] The proposed language in Subsection (b) does not limit a candidate to 16 exams. If it is the Board’s intention to impose such a limit, Subsection (b) should be revised to make clear the limitation on re-examination.

This comment also applies to Section 21.153(b). Additionally, we ask the Board to consider the impact of this comment on Section 21.722, which the Board describes in the Preamble as “identical” to the proposed re-examination requirements for registered and practical nurses. We ask the Board to revise the final-form regulation as appropriate, or to explain the reasonableness of any differences between these sections.

6. Section 21.28. Licensure by endorsement. – Clarity.

We ask the Board to make the language of Subsections (b) and (d) consistent. Specifically, Subsection (b) states, “An applicant for licensure in this Commonwealth by endorsement . . .” while Subsection (d) states, “An applicant for endorsement . . .”

Similar to Comment #4 regarding demonstration of proficiency in English, should Subsection (e) reference Section 21.7(b)(2)? [Emphasis added.]

7. Section 21.151. Application for examination. – Clarity.

Subsection (f) references completion of the “**professional** nursing education program.” [Emphasis added.] Should this subsection reference the “**practical** nursing education program”? [Emphasis added.]

8. Section 21.153. Re-examination. – Clarity.

In Subsection (c), the Board should clarify that the plan of remediation must be developed by a “Board-approved” nursing education program.

9. Section 21.155. Licensure by endorsement. – Clarity.

Similar to Comment #4 regarding demonstration of proficiency in English, should Subsection (e) reference Section 21.7(b)(2)? [Emphasis added.]

10. Section 21.701. Definitions. – Clarity.

The Board should revise the definition for *ACEND* to state “Accreditation **Council** for Education in Nutrition and Dietetics.”

11. Section 21.722. Education, examination and re-examination of applicants. – Clarity.

The Board states in the Preamble that it is adding Subsection (c) which is “identical” to the proposed language for registered and practical nurses in proposed Sections 21.25(b) and (c) and 21.153(b) and (c). However, the proposed language is not identical. For example, Subsection (c) references completing the licensure process, whereas Sections 21.25(b) and (c) and 21.153(b) and (c) reference passing the licensure examination. We ask the Board to ensure that where it intends to make language identical, it does so. Additionally, does the Board intend for Paragraph (c)(3), Section 21.25(d) and Section 21.153(d) to be identical?

In reviewing Sections 21.21 and 21.151 (relating to application for examination), we note that Subsection (a) in each requires submission of an application for examination and the required fee. In reviewing Sections 21.25 and 21.153 (relating to re-examination), we note that Subsection (a) in each requires a candidate to submit a re-examination application and the required fee. Does the Board intend for candidates for examination and re-examination under Section 21.722 to do the same? The proposed language related to examination and re-examination does not include requirements for submission of applications or fees.

The Board states in the Preamble that it believes that all of its licensees should be subject to the same re-examination requirements. In keeping with this statement, the Board should clarify in Paragraph (c)(2) that the plan of remediation must be developed by a “Board-approved” dietetics-nutrition education program.

12. RAF #4 Short title. – Clarity.

The existing title for 49 Pa. Code Chapter 21, Subchapter A is “General Provisions.” Should the short title provided in response to RAF #4 and noted in Annex A also be “General Provisions”? We ask the Board to clarify whether it intends this change.