

Comments of the Independent Regulatory Review Commission



State Board of Nursing Regulation #16A-5142 (IRRC #3222)

Fees; General Provisions

April 3, 2019

We submit for your consideration the following comments on the proposed rulemaking published in the February 2, 2019 *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. Economic or fiscal impacts; Reasonableness of requirements, implementation procedures and timetables for compliance; Whether a less costly or less intrusive alternative method of achieving the goal of the regulation has been considered for regulations impacting small business.**

Under Section 11.2(a) of the Professional Nursing Law (RN Law) and Section 17.5(a) of the Practical Nurse Law (LPN Law), the Board is required to support its operations from the revenue it generates from fees, fines and civil penalties. Specifically, Section (a) of the RN Law states, in part,

“If the revenues raised by the fees, fines and civil penalties imposed under this act are not sufficient to meet expenditures over a two-year period, the Board shall increase those fees by regulation so that projected revenues will meet or exceed projected expenditures.” 63 P.S. § 221.2(a).

Section (a) of the LPN Law states essentially the same. 63 P.S. § 667.5(a).

As required by the RN Law and LPN Law, the Board proposes to increase 68 fees. While we acknowledge the statutory requirement for the Board to increase revenues through fees, fines and civil penalties to cover expenditures, as well as the extensive outreach done by the Board in drafting the proposed regulation, commenters raise concerns regarding the impact of proposed fee increases on nurses and non-profit exempt organizations.

In both the RN Law and LPN Law, Section (c) states that all fees, fines and penalties imposed in accordance with the RN Law and LPN Law, respectively, shall be paid into the Professional Licensure Augmentation Account (PLAA). 63 P.S. § 221.2(c) and 63 P.S. § 667.5(c). We ask

the Board to explain what, if any, role the PLAA could play in mitigating the impact of fee increases on the regulated community, including small businesses.

2. Clarity and lack of ambiguity.

Sections 21.28(a) and (b) of the Board's regulations contain requirements for licensure by endorsement which include, in part, "having passed an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth." Based on this requirement, we understand licensure by endorsement to mean that **an applicant has passed an exam.** [Emphasis added.] However, the Board states that a new fee for "licensure by endorsement **with examination**" is being proposed for both registered nurses and licensed practical nurses **who are required to take the licensure examination.** [Emphasis added.] The title of this fee seems contradictory to the concept of licensure by endorsement, as well as the requirements of Section 21.28(a) and (b). We ask the Board to clarify the title of this new fee or to explain how someone who has not passed an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth would qualify for licensure by endorsement.