

Comments of the Independent Regulatory Review Commission



State Board of Examiners of Nursing Home Administrators Regulation #16A-6219 (IRRC #3250)

Continuing Education

April 1, 2020

We submit for your consideration the following comments on the proposed rulemaking published in the February 1, 2020 *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 Examiners of Nursing Home Administrators (Board) to respond to all comments received from us or any other source.

- 1. Section 39.11. Biennial renewal. – Conforms to the intention of the General Assembly; determining whether the regulation is in the public interest; protection of the public health, safety and welfare; comments of a committee.**

The Board seeks to implement the Governor’s recommendation that the biennial requirement for continuing education be reduced for nursing home administrators. This recommendation is based on a study conducted by the Commissioner of Professional and Occupational Affairs that reviewed requirements for licensure of the 29 licensing boards and commissions under the Commissioner’s authority. The study revealed that Pennsylvania carries one of the highest continuing education requirements in the regional comparison group for nursing home administrators. After discussion with stakeholders who opposed the reduction, the Board determined that a reduction by one quarter to at least 36 hours per biennium would accomplish the Governor’s goal of reducing the required continuing education while at the same time ensuring that licensees obtain sufficient continuing education given the complexities of nursing home regulation.

However, a commenter continues to oppose the reduction, asserting that this change would move Pennsylvania to having “one of the lowest continuing education requirements in the country.” This commenter further states that “with an increasing aging population . . . there is no logical explanation for decreasing educational requirements, especially if there is a desire to enhance the quality of care.”

The PA House Professional Licensure Committee (Committee) comments, noting that Pennsylvania would have lower continuing education requirements than several contiguous states. The Committee is concerned about the impact on Pennsylvania licensees who would seek licensure in any of these states.

We ask the Board to explain how lowering the continuing education requirements for nursing home administrators will adequately protect the public health, safety and welfare. We also ask the Board to explain how reduced continuing education requirements will affect members of the regulated community who seek licensure in states with higher continuing education requirements.

Additionally, the Nursing Home Administrators License Act (Act) states in Section 1109(d) (relating to registration) that “the license of a nursing home administrator who fails to comply with the provisions of this section, and who continues to act as a nursing home administrator, may be suspended or revoked by the [B]oard.” 63 P.S. 1109(d). Is it the Board’s intent not to renew a license of a nursing home administrator who fails to meet continuing education requirements? If it is the Board’s intent not to renew, we ask the Board to amend the final regulation to include clear notice that the Board will not renew a license if the licensee fails to complete the continuing education required by the Act.

2. Section 39.11b. Continued competence. – Clarity and lack of ambiguity.

In Subsection (4), the Board allows for the demonstration of continued competence by being employed in a nursing home in a supervisory or consultant capacity for at least three of the last five years. The licensee must appear before the Board to demonstrate, to the Board’s satisfaction, a “significant” involvement in the field of nursing home administration during the time the license has been expired or inactive. The proposed regulation further states that “sporadic or occasional” involvement is not sufficient to demonstrate continued competence. A regulation has the full force and effect of law; however, terms such as “significant,” “sporadic” and “occasional” are non-regulatory language. We ask the Board to revise the language pertaining to continued competence to establish a standard that is predictable for the regulated community and enforceable by the Board.

3. Section 39.61. Requirements. – Clarity and lack of ambiguity.

In Subsection (c)(3), the Board provides for clock hour requirements that may be earned by authoring an article on long-term care. Paragraph (ii) states that clock hours may be awarded based on the “complexity” of the subject matter or work. Likewise, Paragraph (iii) states that clock hours may be awarded if the work is “complex.” A regulation has the full force and effect of law; however, the terms “complexity” and “complex” are non-regulatory language. We ask the Board to revise the language relating to earning clock hours by authoring an article or to establish a standard that is predictable for the regulated community and enforceable by the Board.

4. Miscellaneous clarity.

Regarding notification, in Section 39.11(b) (relating to biennial renewal) the Board states that notice of the availability of the renewal process will be forwarded to each active licensee at the licensee’s address of record or current e-mail address on file with the Board, or both. Will the Board develop a process to offer licensees a choice of which notification method they prefer?