

Comments of the Independent Regulatory Review Commission



State Board of Nursing Regulation #16A-5140 (IRRC #3288)

Child Abuse Reporting Requirements

March 31, 2021

We submit for your consideration the following comments on the proposed rulemaking published in the January 30, 2021 *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. Implementation procedures; Clarity and lack of ambiguity.

The definition of “Board-regulated practitioner” in Section 21.501 (relating to definitions) includes certified registered nurse practitioners and clinical nurse specialists. We acknowledge that these certifications are held by registered nurses. However, the proposed rulemaking does not amend the application and continuing education requirements for these certifications in Chapter 21, Subchapters C and H (relating to certified registered nurse practitioners; and clinical nurse specialists). We ask the Board to explain how child abuse recognition and reporting training and continuing education requirements in 23 Pa.C.S. § 6383(b)(3)(i) and (ii) (relating to education and training) are implemented for these certifications. Further, we ask the Board to consider clarifying these subchapters in a future rulemaking by either adding child abuse recognition and reporting requirements or cross-references to the applicable registered nurse regulations.

2. Section 21.20. Licensure by examination. – Implementation procedures; Clarity and lack of ambiguity.

This section requires an applicant for licensure as a registered nurse to “**submit proof of completion** of at least 3 hours of approved training in child abuse recognition and reporting.” [Emphasis added.] As explained in the Preamble and required by Section 21.509(b)(13) (relating to child abuse recognition and reporting course approval process), an approved course provider reports participation/attendance electronically to the Bureau of Professional and Occupational Affairs (Bureau). We ask the Board to revise this section to clarify that the approved course provider electronically reports proof of attendance/completion.

This comment also applies to Sections 21.28(f), 21.131(d) and (e), 21.150, 21.155(f) and 21.723(b)(3).

3. Section 21.501. Definitions. – Clarity and lack of ambiguity.

Perpetrator

Subparagraphs (i)(D) and (ii)(D) of the definition of “perpetrator” limit this term to individuals of certain ages who are responsible for a child’s welfare. However, the specifically-defined term “person responsible for the child's welfare” is not used. To improve clarity, we ask the Board to revise the definition of “perpetrator” to use the term defined in this section.

Serious physical neglect

The definition of “serious physical neglect” does not include the phrase “when committed by a perpetrator” as specified in the definition of this term in 23 Pa.C.S. § 6303 (relating to definitions). We ask the Board to revise this definition to include the omitted language.

4. Section 21.502. Suspected child abuse – mandated reporting requirements. – Protection of the public health, safety and welfare; Clarity and lack of ambiguity.

Subsection (a) requires a Board-regulated practitioner to report suspected child abuse when there is “reasonable cause to suspect that a child is a victim of child abuse” under a set of circumstances derived from 23 Pa.C.S. § 6311(b)(1) (relating to persons required to report suspected child abuse). This subsection does not include the responsibilities under 23 Pa.C.S. § 6311(b)(2) and (3) to report suspected child abuse when certain information is not known. To protect the public health, safety and welfare, the Board should add the omitted statutory provisions or explain why it is unnecessary to do so.

5. Section 21.503. Photographs, medical tests and X-rays of child subject to report. – Clarity and lack of ambiguity.

Under this section, a Board-regulated practitioner is required to send “[m]edical summaries or reports of the photographs, X-rays and relevant medical tests taken” to the county children and youth social service agency after the written or electronic report is submitted. Under 23 Pa.C.S. § 6314 (relating to photographs, medical tests and X-rays of child subject to report), these materials “shall be made available to law enforcement officials in the course of investigating cases.” For consistency, the Board should add the statutory requirement to make these materials available to law enforcement officials or explain why it is not necessary to do so.

6. Section 21.508. Child abuse recognition and reporting – mandatory training requirement. – Implementation procedures; Clarity and lack of ambiguity.

Subsection (a)

Subsection (a) requires an individual applying for initial licensure to complete at least three hours of training in child abuse recognition and reporting requirements. This subsection does not address documentation and reporting of completion of training as required under

23 Pa.C.S. § 6383(b)(3)(i). We ask the Board to revise this subsection to include the implementation procedures for submission of proof of training by an approved course provider.

Subsection (b)

Subsection (b) states that the “Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance/participation by the licensee in an approved course or the licensee has obtained an exemption under subsection (c).” Section 21.131(b) (relating to continuing education) provides that a registered nurse “will not be required to meet the continuing education requirement on the first renewal immediately following licensure.” We ask the Board to explain how it will implement the child abuse recognition and reporting continuing education requirements for registered nurses who are exempt from continuing education following initial licensure.

Subsection (c)

Under subsection (c), an applicant or licensee may apply for an exemption from subsection (a) or (b). Paragraph (3) directs an applicant or licensee to submit documentation demonstrating that the individual “should not be subject to the training or continuing education requirement.” A request for exemption is “considered on a case-by-case basis.” We have three concerns. First, the standards for documentation and evaluation are vague. Second, this subsection does not specify if the exemption is limited to one biennial renewal period. Third, the process for notification of approval or denial is not stated. We ask the Board to explain the standards for sufficient documentation and the evaluation process for reviewing a request for exemption, including if there is a time frame for completion of training prior to applying for an exemption. We also ask the Board to considering clarifying this subsection to state the time period of the exemption and the process for notifying applicants and licensees.

7. Section 21.721. Qualifications for licensure. – Implementation procedures; Clarity and lack of ambiguity.

Subsection (c) requires an applicant for licensure as a dietitian-nutritionist to “**submit complete** at least 3 hours of training in child abuse recognition and reporting.” [Emphasis added.] As addressed in Comment # 1, since the approved course provider electronically reports participation/attendance the Bureau, this subsection should be revised to delete “submit.”

8. Miscellaneous clarity.

- We identified the following clarity issues in Section 21.501:
 - In the definition of “mandated reporter,” the reference to “chapter” should be corrected to “subchapter.”
 - In subparagraph (i)(F) of the definition of “perpetrator,” the phrase “by birth or adoption of the child” should be corrected to “by birth or adoption to the child.”

- In the definition of “recent act or failure to act,” the phrase “act of failure” should be corrected to “act or failure.”
- The reference to “subparagraph” in Section 21.502(c)(1) (relating to suspected child abuse – mandated reporting requirements) should be corrected to “paragraph.”
- In Section 21.507(b)(4) (relating to noncompliance), the phrase “convicted of a prior offense under § 6319” should be revised to cross-reference **23 Pa.C.S. § 6319**. [Emphasis added.]
- In Section 21.603(b) (relating to applications), “applicant for a volunteer licensee” should be corrected to “applicant for a volunteer license.”
- Section 21.605 (relating to biennial renewal) should be revised to cross-reference 35 P.S. § 449.46(c). [Emphasis added.]
- We identified the following clarity issues in the Regulatory Analysis Form:
 - The citation to the Child Protective Services Law in Question # 7 should be updated to 23 Pa.C.S. §§ 6301 – **6387**. [Emphasis added.]
 - The citation to The Professional Nursing Law in Question # 8 should be corrected to 63 P.S. § **212.1(k)**. [Emphasis added.]
 - The number of volunteer applicants and licensees should be included in responses to Questions # 15, 16, 18 and 19.