

Comments of the Independent Regulatory Review Commission



State Board of Nursing Regulation #16A-5141 (IRRC #3426)

Nursing Education Programs; Terminology Updates

March 26, 2025

We submit for your consideration the following comments on the proposed rulemaking published in the January 25, 2025 *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. Legislative comments.

Senator Judy Ward expresses serious concern about the negative impact the rule would have on the already dire nursing workforce shortage and the quality of care at healthcare facilities, especially long-term care facilities. She emphasizes the importance of certified nurse aides (CNAs) and licensed practical nurses (PNs) in ensuring that patients receive quality care. Additionally, she feels that “needless requirements, such as an algebra course and additional science labs, will only serve as a barrier and disincentive for those who feel this calling to enter the workforce.”

The lawmaker cautions, as a registered nurse (RN) and former chair of the Senate Aging and Youth Committee, about the downstream impacts upon CNAs and PNs who desire to become RNs or even Certified Registered Nurse Practitioners (CRNPs). She contends that it will be the healthcare facilities and ultimately the patients and residents in them that will bear the most burden. Senator Ward states that this proposed rule runs counter to the goal of advancing policy that helps, not hurts, Pennsylvanians. She urges the Board to reconsider the proposed rule as it presents unnecessary obstacles at a time when the nursing profession and healthcare are already struggling.

Section 5.2 of the RRA directs the Independent Regulatory Review Commission (IRRC) to determine whether a regulation is in the public interest. In making this determination, IRRC considers written comments submitted by the committees and current members of the General Assembly. We will review the Board’s response to the issues raised in the legislative comments submitted by the Senator in our determination of whether the rulemaking is in the public interest.

2. Section 21.912. Procedure where a nursing education program is placed on provisional status. – Clarity; Reasonableness of requirements, implementation procedures and timetable for compliance by the public and private sectors.

The Board proposes in Section 21.912 (e) to address the length of time that a Nursing Education Program (Program) may be on provisional status. Under the proposed change, a Program may remain on provisional status no longer than the length of the full time Program unless the period is extended by the Board. Currently, Sections 21.33a(g) and 21.162a(g) set a maximum period of two years before a Program must appear before the Board to request an extension of their provisional status.

Commentators assert that the new provisional period set to the “full-time length of the program” is concerning. They claim that “[a] school could have 100% NCLEX [National Council’s Licensure Examination] pass rates for years, and then have one bad cohort or quarterly report, and immediately be placed on provisional status with less time now to be able to get the program off provisional status.”

The Board explains, in part, its rationale for the proposed change giving additional time for lengthier programs to correct deficiencies before having to seek an extension. It states that it is cognizant of the correlation between the length of the Program and the time it takes to correct the deficiencies. The Board, however, does not discuss the impact of the proposed change that effectively shortens the length of time that a diploma or certificate granting program has to remain on provisional status before seeking an extension. The general length of these educational programs, as reported by the Board, ranges from 12 to 18 months.

In Section 21.915 the Board is delineating eleven additional standards beyond the current requirement to achieve the minimum pass rates on the national licensure examination. Our concern with proposed change to “full time length of the program” is that some Programs will have less time to meet more requirements.

The Board states that the current two-year timeframe ensures early intervention with Programs experiencing difficulty and emphasizes the development of a plan to ensure improvement. Requiring Programs to seek an extension of provisional status after two years, according to the Board, heightens the attention on the Program by both the controlling institution and the Program. Did the Board consider maintaining the two-year timeframe as the minimum?

The Board states in the Regulatory Analysis Form that a diploma program would be permitted to remain on provisional status for about 24-36 months before seeking an extension. We ask the Board to either (1) explain how a diploma program, which we understand to be part of PN education and ranges in length from 12-18 months, would be permitted to remain on provisional status for 24-36 months before seeking an extension or (2) modify its description of the amendment in the final-form rulemaking to be consistent with the regulatory language.

3. Section 21.915. Standards. – Clarity; Reasonableness of requirements, implementation procedures and timetable for compliance by the public and private sectors.

The Board is delineating eleven additional standards on Programs relating to accreditation, authorization to operate, systematic evaluation plans, curriculum, written policies, faculty, clinical agencies, and notifications. The current standard of achieving the minimum pass rate on a national licensure examination is retained in the proposal. The majority of the additional standards, according to the Board, are embedded in other portions of the current regulations and, as such, do not impose any hardship on Programs. The Board is adding prohibitions concerning

multiple administrator turnover and engaging in fraud, deceit, or misrepresentation specific to the Program.

Commentators disagree with the Board's assertion that the addition of these standards will not impose any hardships on Programs. Specifically, they identify §21.915(b)(2), which states that a nursing education program may not have more than two administrators within an academic year without pre-approval from the Board. They believe there could be circumstances beyond the Program's control that would jeopardize violation of this provision.

The Board states that the administrative turnover standard was based on its review of programs on provisional status and national research concluding that one quality indicator for nursing education performance is consistent administrative leadership in a Program. The administrative standard, according to the Board, is in alignment with the National Council of State Boards of Nursing Model Rules.

We will review the Board's response to commentator concerns in our determination of whether the rulemaking is in the public interest.

4. Section 21.916. Programmatic accreditation. – Need; Fiscal impact; Reasonableness.

This section requires Programs to obtain and maintain programmatic accreditation from a Board-recognized nursing accreditation agency within five years of publication of the final-form regulation.

Commentators assert that mandating programmatic accreditation adds cost, administrative resources, and additional regulatory requirements to programs. They note that PN programs have been able to successfully educate students with strong NCLEX passage rates and achieve other positive student outcomes without this additional financial and regulatory burden. They believe the decision to pursue this additional layer of accreditation, beyond the institutional accreditation the school already has, should remain an institutional choice.

We will review the Board's response to commentators' concerns in our determination of whether the regulation is in the public interest.

5. Section 21.917. Controlling institution accreditation or authorization. – Possible conflict with or duplication of statutes or existing regulations.

This provision requires the controlling institution to obtain and maintain accreditation or authorization to operate a Program.

A number of individuals took exception to the Board's description of its rationale and need for Section 21.917. The Board's summary of the proposed regulation, they claim, indicates that nursing programs licensed through the Private Licensed Schools Board will not be able to offer RN Programs because these schools offer "terminal" degrees that do not allow students to transfer credits to other institutions after completion. These individuals assert this is false and needs to be removed from the regulation.

Commentators emphasize that many of these programs have articulation agreements with bachelor programs and that many of the credits can transfer from these associate degrees to other schools or programs. Additionally, they note that this potential restriction of denying Associate

Degrees (AD) in RN Programs at schools licensed by the Commonwealth's Private Licensed Schools Board appears to be in direct violation of the Professional Nursing Law of 1951 (Law). Commentators state that the Law mandates the Board accept candidates for licensure in RN programs from any state-approved AD, and it explicitly forbids the Board from discriminating against different kinds of diplomas or AD programs compared to bachelor programs.

We will evaluate the Board's response to these concerns in our determination of whether the rulemaking is in the public interest.

6. Section 21.918. Minimum student program qualification requirements. – Clarity; Need; Fiscal Impact; and Reasonableness.

The proposed regulation requires that, in addition to meeting the requirements for admission to the controlling institution, “[o]nly students who hold a high school diploma or its equivalence as determined by the Pennsylvania Department of Education (PDE) and evidence of completion of two courses in mathematics with one being in Algebra and two courses of physical science with a related laboratory or the equivalent may commence a professional or practical nursing education program.” Section 21.918(a)(1). This provision is modeled after the Board's current admission and selection standards for RN programs at §§ 21.101(b) and (c).

The Board states that it is adding this new requirement for PN programs because there is a correlation between math and science preparedness and the ability to successfully complete a Program and pass the NCLEX. The Board cites research concluding that science grade point average is the most consistent predictor of Program and NCLEX-RN success. The Board also notes, anecdotally, that Programs on provisional status have repeatedly reported to the Board (during discussions of an extension of their provisional status) that one factor causing their low pass rates is the lack of student competence in math and science. The Board also explains that it is retaining the “laboratory or the equivalent” requirement to address concerns about nontraditional education raised by a stakeholder.

The Board initially proposed requiring the completion of the math and science courses in order for students to be admitted for a prelicensure Program. Responding to stakeholder initial concerns about student costs and the availability of post-secondary programs to meet the proposed coursework requirement, the Board extended the timeframe to complete the coursework from pre-admission to pre-commencement. Under the proposed regulation, students may be admitted to a Program before meeting the requirements but cannot start the Program until the requirements are met.

The Board states that these courses can be completed through GED subtests, Careerlink, or private or public educational institutions. Commentators remark that while the Board has suggested Careerlink to help provide funding and courses for students to meet these requirements, their inquiries with local Careerlink offices have shown that funding is highly restrictive, does not cover the required classes, and does not offer science courses with labs. Commentators also point out that there is no lab with the GED exam.

Commentators raise a number of issues related to the Board's proposal. For instance:

- Commentators questioned the Board's use of a study that examined factors that impact a student's success rate on the NCLEX-RN to inform policy on PN programs. Directors at

a number of PN programs emphasized the results of a “recent study” which indicated that one third to one half of current PN students would not have met the proposed pre-requisites (to commence a Program). Representatives of institutions that prepare PNs provided numerous examples of how the proposed minimum admission requirements, if applied, would negatively impact their current PN programs. These new requirements, they contend, are not needed because a large number of students who currently enter PN programs without these pre-requisites graduate, pass the NCLEX and become successfully employed in healthcare facilities. They believe the proposed minimum admission requirements create an unnecessary obstacle in terms of both costs and additional instruction time for students.

- A representative of career and technical education feels the lack of collaboration with the Department of Education and the lack of consistency with high school requirements is concerning. She shares that a Career Technical Education student can obtain a path to graduation by earning an industry certification, such as a Patient Care Technician. But, upon graduation, this student may not meet the admission requirement for a PN program under this proposed rulemaking.
- Others warn that these additional academic “hurdles” will negatively impact rural and underserved communities and ultimately decrease diversity in the nursing workforce.

The statewide organization representing practical nursing administrators requests that the Board revise the proposed regulation by eliminating the specific requirements for math and science courses and instead allow for training modules or remediation to be completed during enrollment, but prior to graduation. Additionally, it requests that the lab requirement also be removed from the rulemaking since PDE does not require the inclusion of lab courses on high school transcripts or the lab component for individuals obtaining a GED. The Board, during the drafting phase of the proposal, did consider but rejected utilizing entrance testing because it felt that while these instruments may assess some level of foundational knowledge, they cannot “replace broad spectrum primary instruction in PDE-established math and science courses.”

Commentators also raise issues with the regulatory language, contending that it is too vague. It is unclear to some individuals whether the math and science requirements are to be credit or non-credit requirements and question what a related laboratory “or the equivalent” means. Others question why the regulation would require physical science courses as opposed to life science or general science.

The current RN admission and selection standards in Section 21.101(c) require applicants to have completed work **equal to a standard high school course** with a minimum of 16 units, including 4 units of English, 3 units of Social Studies, 2 units of Mathematics (1 of which is Algebra), and **2 units of Science with a related laboratory or the equivalent**. We would agree with commentators that the proposed language is less clear than the current regulation and that the Board has not provided its rationale for specifying physical science.

Given the number of concerns raised, we ask the Board to explain in greater detail how this section will be implemented. Specifically, the Board should address how a Program will know whether a course, under this section, complies. The discussion should also address concerns raised by commentators, including the need for and reasonableness of the math and science

course requirements for PN students as well as the impact on underserved communities, PN Programs, and the potential for nursing shortages.

Should the math and science course requirement be retained in the final rulemaking, we ask the Board to consider delaying implementation given the concerns raised relating to student costs. Programs that may want to offer these courses themselves or partner with other educational entities will also benefit from additional time. If this provision is retained but its implementation is not delayed, we ask the Board to explain the reasonableness of the proposed timeline for compliance when it submits the final-form regulation. If the Board modifies the requirements under this section, we ask that it make certain that both students and Programs have sufficient time to comply.

7. Section 21.932. Minimum administrator, faculty and staff requirements. – Clarity, Need and Fiscal Impact.

Paragraph (5)

This provision requires all nursing education programs to have nursing education program support staff including administrative, library, admissions, financial aid, academic counseling, student services, technological, and dedicated clerical support.

Commentators contend that this subsection appears to require programs to have administrative staff, library officials, admissions, financial aid, academic counseling, student services, and clerical support under the program directly. If so, they believe this could create a huge financial burden on smaller programs that either fall under a larger institution that provides these services for them or for schools that share these resources.

The Board should clarify the need for and intent of this provision when it submits the final rulemaking.

8. Section 21.933. Administrator qualifications. – Need; Reasonableness.

The Board is proposing, effective five years from the publication of the final-form rulemaking, to enhance the educational requirements for program administrators. The Board believes this timeframe adequately balances the Board’s desire to meet national standards with the cost and time associated with obtaining the additional education.

A representative of Geisinger states that the proposed requirement for all RN program nurse administrators to possess both a master’s in nursing and a doctorate is concerning. He asserts that applying the doctorate requirement broadly to all RN programs will be challenging. Currently, the requirement of a doctorate applies only to nurse administrators of Bachelor of Science Nursing (BSN) programs, and Associate Degree of Nursing (ADN) and diploma nurse administrators only need to hold a master’s in nursing. He cites data from the American Association of Colleges of Nursing which reports that only 2% of nurses in the United States hold doctorate degrees. This is an increase from the 1% that was reported pre-pandemic.

ADN programs, he goes on to say, will have difficulty finding nurse administrators with these qualifications. He further points out that “[u]nless an established interest in education or administration, or obtaining a doctorate is a personal goal, there isn’t financial incentive to support this pursuit clinically, or academically. There will be a five-year grace period for current

nurse administrators to achieve a doctorate (or for institutions to find someone who does). Many nurse administrators are seasoned professionals within arm's length of retirement, and as such, would not go through a doctoral program at the end of their career.” He is concerned that RN programs will lose talent and valuable assets. We will review the Board’s response to the commentator’s concern in our determination of whether the rulemaking is in the public interest.

9. Section 21.934. Faculty and staff qualifications. – Clarity; Reasonableness and Fiscal Impact.

The Board proposes to incorporate the faculty and staff qualifications in the current regulations for RN and PN Programs. RN Program faculty would be required to possess at least one graduate degree in nursing or obtain a graduate degree in nursing within five years of appointment. PN Program faculty would be required to possess at least a bachelor’s degree, preferably in nursing, or obtain one within five years of appointment. The Board proposes for CRNP program faculty to hold or obtain a Nursing Doctorate within 5 years of appointment. The PN and CRNP enhanced faculty requirements become effective five years from the publication of the final-form regulation.

The Board explains that the proposed educational enhancements are consistent with the Board’s position for faculty members’ degrees to exceed the degree being conferred by the Program types. The Board also retains the requirement that all faculty members, regardless of the Program type, possess current authority to practice in this Commonwealth, and have expertise in the area of instruction.

Commentators expressed differing opinions on the Board’s proposal to enhance faculty educational requirements. Some commentators contend that the new faculty requirements impose heavy financial burdens on smaller programs. They say the broad degree requirements may not be necessary in all cases. Additionally, they expressed concern about the availability of qualified candidates and the fiscal impact of higher pay scale on students' tuition.

Others expressed appreciation for the flexibility provided in the regulation to address faculty shortages in the PN program. They recommend the Board extend those flexibilities to the RN programs or provide additional pathways to increase the number of educators to meet the high demands. These modifications could include pathways for RNs with any graduate level degree along with a BSN or for experienced RNs who are not pursuing advanced graduate degrees to enter faculty positions as faculty assistants, similar to models that exist in other states.

We will consider the Board’s response to these concerns in determining whether the regulation is in the public interest.