

STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : BOARD OF NURSING
BOARD OF NURSING : ADOPTING EMERGENCY RULES

The statement of scope for this rule, SS 084-22, was approved by the Governor on October 21, 2022, published in Register 802A4 on October 24, 2022, and approved by the Board of Nursing on November 8, 2022.

This emergency rule was approved by the Governor on *

PROPOSED ORDER

An order of the Board of Nursing to amend N 2.105 (5) (b), N 2.11 (3) (c), and N 2.12 (3) (c); to create N 2.105 (5) (am), (d), (e), N 2.11 (3) (bm), (e), (f), and N 2.12 (3) (bm), (e), (f); and to repeal and recreate N 2.105 (5) (a), N 2.11 (3) (b), and N 2.12 (3) (b), relating to modification of Board review process to take the NCLEX.

Analysis prepared by the Department of Safety and Professional Services.

FINDING OF EMERGENCY

This rule is necessary for the public to increase health care access by modifying the Board review process that allows nurse applicants to take the National Council Licensure Examination (NCLEX). An expeditious promulgation of the proposed rule is in the best interest of Wisconsin’s economy and public welfare, as it will help ensure the opportunity for nurses in Wisconsin to join the workforce sooner by making the eligibility process more accessible.

ANALYSIS

Statutes interpreted: Subchapter I of ch. 441, Stats.

Statutory authority: Sections 15.01 (7), 15.08 (5) (b), 227.24 (1) (a), and 441.01 (3), Stats.

Explanation of agency authority:

Section 15.01 (7), Stats., defines examining boards and states that “[e]xamining board’ includes the board of nursing.”

Section 15.08 (5) (b), Stats., provides an examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 227.24 (1) (a), Stats., provides “[a]n agency may, except as provided in s. 227.136 (1), promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements under this chapter if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.”

Section 441.01 (3), Stats., provides “[t]he board may establish minimum standards for schools for professional nurses and schools for licensed practical nurses, including all related clinical

units and facilities, and make and provide periodic surveys and consultations to such schools. It may also establish rules to prevent unauthorized persons from practicing professional nursing. It shall approve all rules for the administration of this chapter in accordance with ch. 227.”

Related statute or rule:

Subchapter I of ch. 441, Stats.

Plain language analysis:

Chapter N 2 contains the application procedures for single state and multistate licenses, which includes the provision that the Board of Nursing will make the applicants eligible to take the NCLEX upon receiving proof of graduation or completion of the educational requirements of a nursing program. The Board of Nursing has reviewed this requirement in an effort to make nurse applications go through the licensure process much faster than in the past and has decided to make applicants eligible to take the NCLEX once they submit proof of anticipated graduation or completion of the educational program. The modification of the process will require applicants to provide the required information when they start applying for licensure. Applicants will be responsible for providing proof of completion before taking the examination and will have to inform the Board of any changes that may affect their ability to take the NCLEX. However, the Board will still require formal proof of graduation or certificate of approval as a condition of issuing the license.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois:

Illinois Compiled Statutes mentions that nursing applicants need to pass a department approved exam. [225 ILC 65/60-10]. The Illinois Administrative Code states that each applicant shall file an application if the applicant has taken and passed the NCLEX. The application process is initiated by applying with a testing service designated by the Division. [Ill Admin Code Section 1300.300]

Even though, neither Compiled Statutes nor the Administrative Code, explicitly state the requirements of eligibility to take the exam, the process set by the Illinois Department of Financial and Professional Regulation consists of applicants registering through Continental Testing and Pearson VUE. First-time applicants are required to provide certification of education and proof of fingerprinting when applying with Continental Testing, which will approve the applicants upon reception of the required documentation.

Iowa:

The Iowa Board of Nursing establishes that applicants need an authorization to test from the board in order to take the NCLEX. The board will issue an authorization to test upon receipt of:

1. Application with required fee;
2. Proof of fingerprinting;
3. Official transcripts sent directly from the nursing program and;

4. Proof of NCLEX registration, including payment for the exam.

[655 IAC s. 3.4 (4)]

Michigan:

The Michigan Compiled Statutes mentions that nursing applicants need to pass a required examination as approved by the board [333 MCL Section 17213]. Michigan Administrative Code establishes that applicants must show that they meet the eligibility requirements to take the NCLEX, which are:

1. Submit a completed application with the required fee and;
2. Provide proof of completion of an appropriate education program that meets the requirements set forth by the board.

[MI Admin. Rules R 338.10203 and R 338.10204]

Minnesota:

The Minnesota Statutes requires nursing applicants to pass a national examination approved by the board [MN Stats 148.211]. The Minnesota Administrative Code establishes that the board will make applicants eligible to take the NCLEX upon receiving the following:

1. Application with required fee and;
2. Confirmation of program completion.

[MN Admin. Code 6305.0400 Subp. 12]

Summary of factual data and analytical methodologies:

In consultation with staff from the Department of Safety and Professional Services, the Board developed a proposed emergency rule that revises the eligibility process for applicants to take the NCLEX.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rule will have minimal to no economic impact on small businesses and the state's economy as a whole.

Fiscal estimate:

These proposed emergency rules will not have a fiscal impact.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-2112.

Agency contact person:

Sofia Anderson, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Sofia Anderson, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be submitted by the date and time at which the public hearing on these emergency rules is conducted. Information as to the place, date, and time of the public hearing will be published on the Legislature's website and in the Wisconsin Administrative Register.

TEXT OF RULE

SECTION 1. N 2.105 (5) (a) is repealed and recreated to read:

N 2.105 (5) (a) The board shall determine that an applicant is eligible for admission to the NCLEX as of the date of the applicant's anticipated graduation or completion of the requirements for a certificate of approval. Applicants shall report their anticipated date of graduation or completion of the requirements for a certificate of approval as part of the application process. Applicants shall notify the board prior to the original anticipated date of eligibility if the date of eligibility changes and shall not take or attempt to take the NCLEX before graduation or obtaining a certificate of approval from a school of nursing.

SECTION 2. N 2.105 (5) (am) is created to read:

N 2.105 (5) (am) Applicants shall submit proof of graduation or a certificate of approval to the board prior to taking the NCLEX.

SECTION 3. N 2.105 (5) (b) is amended to read:

N 2.105 (5) (b) The applicant shall contact the examination provider to schedule the NCLEX date and time within one year from the time ~~the notice of eligibility is received by the applicant~~ the board determined that the applicant was eligible to take the examination.

SECTION 4. N 2.105 (5) (d) is created to read:

N 2.105 (5) (d) Failure to comply with the terms of this section may result in a denial of application or licensure.

SECTION 5. N 2.105 (5) (e) is created to read:

N 2.105 (5) (e) If a license is issued based on fraud, deceit, or material omission, the board shall take any action it deems necessary pursuant to s. 441.07 (1g), Stats.

SECTION 6. N 2.11 (3) (b) is repealed and recreated to read:

N 2.11 (3) (b) The board shall determine that an applicant is eligible for admission to the NCLEX as of the date of the applicant's anticipated graduation or completion of the requirements for a certificate of approval. Applicants shall report their anticipated date of graduation or completion of the requirements for a certificate of approval as part of the

application process. Applicants shall notify the board prior to the original anticipated date of eligibility if the date of eligibility changes and shall not take or attempt to take the NCLEX before graduation or obtaining a certificate of approval from a school of nursing.

SECTION 7. N 2.11 (3) (bm) is created to read:

N 2.11 (3) (bm) Applicants shall submit proof of graduation or a certificate of approval to the board prior to taking the NCLEX.

SECTION 8. N 2.11 (3) (c) is amended to read:

N 2.11 (3) (c) The applicant shall contact the examination provider to schedule the NCLEX date and time within one year from the time ~~the notice of eligibility is received by the applicant~~ the board determined that the applicant was eligible to take the examination.

SECTION 9. N 2.11 (3) (e) is created to read:

N 2.11 (3) (e) Failure to comply with the terms of this section may result in a denial of application or licensure.

SECTION 10. N 2.11 (3) (f) is created to read:

N 2.11 (3) (f) If a license is issued based on fraud, deceit, or material omission, the board shall take any action it deems necessary pursuant to s. 441.07 (1g), Stats.

SECTION 11. N 2.12 (3) (b) is repealed and recreated to read:

N 2.12 (3) (b) The board shall determine that an applicant is eligible for admission to the NCLEX as of the date of the applicant's anticipated graduation or completion of the requirements for a certificate of approval. Applicants shall report their anticipated date of graduation or completion of the requirements for a certificate of approval as part of the application process. Applicants shall notify the board prior to the original anticipated date of eligibility if the date of eligibility changes and shall not take or attempt to take the NCLEX before graduation or obtaining a certificate of approval from a school of nursing.

SECTION 12. N 2.12 (3) (bm) is created to read:

N 2.12 (3) (bm) Applicants shall submit proof of graduation or a certificate of approval to the board prior to taking the NCLEX.

SECTION 13. N 2.12 (3) (c) is amended to read:

N 2.12 (3) (c) The applicant shall contact the examination provider to schedule the NCLEX date and time within one year from the time ~~the notice of eligibility is received by the applicant~~ the board determined that the applicant was eligible to take the examination.

SECTION 14. N 2.12 (3) (e) is created to read:

N 2.12 (3) (e) Failure to comply with the terms of this section may result in a denial of application or licensure.

SECTION 15. N 2.12 (3) (f) is created to read:

N 2.12 (3) (f) If a license is issued based on fraud, deceit, or material omission, the board shall take any action it deems necessary pursuant to s. 441.07 (1g), Stats.

SECTION 16. EFFECTIVE DATE. The rules adopted in this order shall take effect upon publication in the official state newspaper, pursuant to s. 227.22 (2) (c), Stats.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Chairperson
Board of Nursing

Chapter N 2

N 2.105 Application procedure for a multistate license.

- (1) Each applicant for a multistate license shall complete and submit an application by the electronic application process or on forms provided by the department, declare Wisconsin as the primary state of residence, and pay the fee.
- (2) The educational administrator or designee for a board-approved prelicensure education program shall submit one of the following:
 - (a) Via the electronic application process a verification that the applicant has graduated.
 - (b) A certification of graduation.
 - (c) An official transcript indicating graduation.
- (3) If the applicant graduated from a foreign prelicensure education program, the applicant shall submit a certificate or report demonstrating verification from an independent credentials review agency that the prelicensure education program is comparable to a board-approved prelicensure education program.
- (4) If the applicant graduated from a foreign prelicensure program that was not taught in English or if English is not the applicant's native language, the applicant shall submit proof of successfully passing an English proficiency examination that includes the components of reading, speaking, writing, and listening.

Repeal and recreate (5) (a)

~~(5) (a) The board shall notify the applicant of eligibility for admission to the NCLEX once it receives verification of one of the following:~~

- ~~1. Certificate of approval.~~
- ~~2. Graduation.~~

~~The board shall determine that an applicant is eligible for admission to the NCLEX as of the date of the applicant's anticipated graduation or completion of the requirements for a certificate of approval. Applicants shall report their anticipated date of graduation or completion of the requirements for a certificate of approval as part of the application process. Applicants shall notify the board prior to the original anticipated date of eligibility if the date of eligibility changes and shall not take or attempt to take the NCLEX before graduation or obtaining a certificate of approval from a school of nursing.~~

Create (5) (am):

~~(am) Applicants shall submit proof of graduation or a certificate of approval to the board prior to taking the NCLEX.~~

Amend (5) (b)

~~(b) The applicant shall contact the examination provider to schedule the NCLEX date and time within one year from the time the notice of eligibility is received by the applicant the board determined that the applicant was eligible to take the examination.~~

(c) The board shall send notification of results to applicants who fail to earn a passing score on the NCLEX. An applicant may apply to the board for authorization to schedule reexamination. The reexamination may not occur earlier than 45 days after the most recent sitting for the NCLEX.

Create (5) (d)

~~(d) Failure to comply may result in a denial of application or licensure.~~

Create (5) (e)

~~(e) If a license is issued based on fraud, deceit, or material omission, the board shall take any action it deems necessary pursuant to s. 441.07 (1g), Stats.~~

(6) The applicant shall submit, through an approved process, fingerprints or other biometric-based information for the purpose of obtaining an applicant's criminal history information from the federal bureau of investigation and the Wisconsin department of justice.

(7) If the applicant has been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense, the applicant shall provide the board all related information necessary for the board to determine whether the circumstances substantially relate to the practice of nursing.

N 2.11 Application procedure for a single state license for applicants from board-approved schools.

(1) Each applicant from a board-approved school shall complete and submit an application by the electronic application process or on forms provided by the department and shall pay the fee.

(2) The educational administrator or designee for a school of professional nursing or practical nursing shall submit any of the following:

(a) Via the electronic application process a verification that the applicant has graduated or received a certificate of completion.

(b) A certification of graduation or completion to the department.

(3)

(a) The examination accepted by the board is the NCLEX.

Repeal and recreate (3) (b)

~~(3) (b) The board shall notify the applicant of eligibility for admission to the NCLEX once it receives verification of one of the following:~~

~~1. Certificate of approval.~~

~~2. Graduation.~~

The board shall determine that an applicant is eligible for admission to the NCLEX as of the date of the applicant's anticipated graduation or completion of the requirements for a certificate of approval. Applicants shall report their anticipated date of graduation or completion of the requirements for a certificate of approval as part of the application process. Applicants shall notify the board prior to the original anticipated date of eligibility if the date of eligibility changes and shall not take or attempt to take the NCLEX before graduation or obtaining a certificate of approval from a school of nursing.

Create (3) (bm):

(bm) Applicants shall submit proof of graduation or a certificate of approval to the board prior to taking the NCLEX.

Amend (3) (c)

(c) The applicant shall contact the examination provider to schedule the NCLEX date and time within one year from the time ~~the notice of eligibility is received by the applicant~~ the board determined that the applicant was eligible to take the examination.

(d) The board shall send notification of results to applicants who fail to earn a passing score on the NCLEX. An applicant may apply to the board for authorization to schedule reexamination. The reexamination may not occur earlier than 45 days after the most recent sitting for the NCLEX.

Create (3) (e)

(e) Failure to comply may result in a denial of application or licensure.

Create (3) (f)

(f) If a license is issued based on fraud, deceit, or material omission, the board shall take any action it deems necessary pursuant to s. 441.07 (1g), Stats.

(4) An applicant who has a pending criminal charge or has been convicted of any crime or ordinance violation shall provide the board all related information necessary for the board to determine whether the circumstances of the arrest or conviction or other offense substantially relate to the practice of nursing.

(5) An applicant who has committed any act, which would be subject to discipline under ch. [N 7](#), shall provide the board with all related information regarding the act necessary for the board to make a determination on the application for licensure.

N 2.12 Application procedure for a single state license for applicants from comparable schools.

(1) Each applicant from a comparable school shall complete and submit an application on forms provided by the department.

(2) The school of professional nursing or practical nursing shall forward directly to the department, official transcripts of nursing education for applicants who graduated from the school. If the applicant graduated from a school of professional nursing or practical nursing not located in the United States or a U.S. territory, the applicant shall submit any of the following:

(a) For a professional nursing applicant, one of the following:

1. A valid certificate issued by the Commission on Graduates of Foreign Nursing Schools or another board-approved entity that evaluates education.
2. A credential evaluation service academic report and demonstration of passing a board-accepted language proficiency exam.

(b) For a practical nursing applicant, a credential evaluation service academic report and demonstration of passing a board-accepted language proficiency exam.

(3)

(a) The examination accepted by the board is the NCLEX.

Repeal and recreate (3) (b)

~~**(3) (b)** The board shall notify the applicant of eligibility for admission to the NCLEX once it receives verification of one of the following:~~

- ~~1. Certificate of approval.~~
- ~~2. Graduation.~~

~~The board shall determine that an applicant is eligible for admission to the NCLEX as of the date of the applicant's anticipated graduation or completion of the requirements for a certificate of approval. Applicants shall report their anticipated date of graduation or completion of the requirements for a certificate of approval as part of the application process. Applicants shall notify the board prior to the original anticipated date of eligibility if the date of eligibility changes and shall not take or attempt to take the NCLEX before graduation or obtaining a certificate of approval from a school of nursing.~~

Create (3) (bm):

~~**(bm)** Applicants shall submit proof of graduation or a certificate of approval to the board prior to taking the NCLEX.~~

Amend (3) (c)

~~**(c)** The applicant shall contact the examination provider to schedule the NCLEX date and time within one year from the time the notice of eligibility is received by the applicant the board determined that the applicant was eligible to take the examination.~~

~~**(d)** The board shall send notification of results to applicants who fail to earn a passing score on the NCLEX. An applicant may apply to the board for authorization to schedule reexamination.~~

The reexamination may not occur earlier than 45 days after the most recent sitting for the NCLEX.

Create (3) (e)

(e) Failure to comply may result in a denial of application or licensure.

Create (3) (f)

(f) If a license is issued based on fraud, deceit, or material omission, the board shall take any action it deems necessary pursuant to s. 441.07 (1g), Stats.

(4) An applicant who has a pending criminal charge or has been convicted of any crime or ordinance violation shall provide the board all related information necessary for the board to determine whether the circumstances of the arrest or conviction or other offense substantially relate to the practice of nursing.

(5) An applicant who has committed any act, which would be subject to discipline under ch. [N 7](#), shall provide the board with all related information regarding the act necessary for the board to make a determination on the application for licensure.