

Notice of Hearing

The Board of Nursing announces that it will hold a public hearing on an emergency rule modifying N 2, relating to modification of Board review process to take the NCLEX at the time and place shown below.

Hearing Information

Date: February 9, 2023

Time: 8:00 A.M.

Location: Information concerning the location of the hearing will be available at:
<https://dsps.wi.gov/Pages/BoardsCouncils/MEB/PhysicianAssistant/Meetings.aspx>

Appearances at the Hearing and Submittal of Written Comments

The rule may be reviewed and comments submitted at:
<http://docs.legis.wisconsin.gov/code/chr/hearings>.

Comments may also be submitted to Sofia Anderson, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov.

Comments must be received at or before the public hearing to be included in the record of rulemaking proceedings.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

Agency Small Business Regulatory Coordinator

The Department's Regulatory Review Coordinator may be contacted by email at Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-2112.

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 November 17, 2022.

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:

The fiscal estimate will be attached upon completion.

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) 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 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) 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 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) 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 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 11/11/2022

Agency *Robert Weinman TW-CCHP*
Chairperson
Board of Nursing