

**MINNESOTA BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS
STATEMENT OF NEED AND REASONABLENESS**

REVISOR'S ID NUMBER R-04366

GOVERNOR'S OFFICE TRACKING NUMBER R-04366

Proposed Amendments to Rules Governing Definitions, Applying for Licensure, Specific Course Requirements, Practicum Duration, Academic Program Review, Licensee Responsibilities, Displaying Licenses, Renewing Licenses, Acting Administrator Permits, Number of CE Credits for Activities, Minnesota Rules, Chapter 6400.

6400.5100 Definitions

6400.6100 Applying for Licensure

6400.6500 Specific Course Requirements For Applicants Who Apply Before September 1, 2017

6400.5550 Specific Course Requirements For Applicants Who Apply On or After September 1, 2017 (new)

6400.6650 Practicum Duration For Applicants Who Apply Before September 1, 2017

6400.6655 Practicum Duration For Applicants Who Apply On or After September 1, 2017 (new)

6400.6660 Academic Program Review (repeal subpart 6)

6400.6710 Licensee Responsibilities

6400.6720 Displaying Licenses

6400.6740 Renewing Licenses

6400.6770 Acting Administrator Permits

6400.6850 Number of CE Credits for Activities

INTRODUCTION

The Minnesota Board of Examiners for Nursing Home Administrators ("Board") licenses and regulates nursing home administrators in the State of Minnesota. The Board proposes to amend its rules for three primary purposes: (1) to reflect trends in national educational standards and practicum duration requirements and to require underperforming educational institutions to identify the source of their failure to perform ("national standard amendments"); (2) to update the rules with current terminology and to reflect more accurately current statutes and Board practices ("housekeeping amendments"); and (3) to update the application process to limit on the number of times an applicant can sit for the national and state examinations within a designated time period and to require a photo as part of the application process ("application amendments").

In drafting the proposed rules, the Board's Rules Committee met in properly noticed public meetings, in which members of the public were invited to participate. Members of the public, including specifically the academic stakeholders, participated in meetings with the Board's executive director and Rules Committee.

In order to adopt these proposed rules, the Board must demonstrate that it has complied with all procedural and substantive requirements for rulemaking. These requirements are as follows: 1) there is statutory authority to adopt rules; 2) the rules are necessary and reasonable; 3) all necessary procedural

steps have been taken; and 4) any additional requirements imposed by law have been satisfied. This statement demonstrates that the Board has met these requirements.

ALTERNATIVE FORMAT

Upon request, this information can be made available in an alternative format, such as large print, Braille, or audio. To make a request, contact:

Randy Snyder, Executive Director
Minnesota Board of Examiners for Nursing Home Administrators
2829 University Ave. S.E., Suite 404
Minneapolis, MN 55414
(651) 201-2730
TTY users may call the Department at 1-800-627-3529.

STATUTORY AUTHORITY

Minnesota Statutes, sections 144A.20, 144A.21, 144A.23, 144A.24, and 214.06 authorize the Board to adopt rules necessary to administer and enforce sections 144A.04 to 144A.28 and to set forth procedures and information required for renewal. Because the Board is not relying on statutory authority recently granted or expanded, Minn. Stat. § 14.125 does not apply.

REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the agency's response for each of the three categories of rule amendments (national standards amendments, housekeeping amendments, and application amendments).

“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”

The national standards amendments have no direct cost to current licensees but may have indirect cost to applicants in the form of additional education and additional time spent in a practicum before securing employment as a licensee. The Board itself is not requiring any specific outlay of financial resources, but the proposed rules will require the nine, Board-approved educational institutions to modify their class curricula to reflect the updated content of the eight required courses. The proposed rules also require underperforming educational institutions to engage in a review and possibly a survey to determine the source of failure to satisfactorily perform. The national standard amendments benefit the public by ensuring a better educated and more experienced licensee base, in accordance with trends in national education and practicum standards.

The classes of persons most affected by the housekeeping amendments will be nursing home administrators (“licensees”) and those applying for nursing home administrator licensure in the future

("applicants"). The housekeeping amendments have little to no additional cost to licensees and applicants. The public, applicants, and licensees benefit from the clarity that the amendments bring to the rule.

The classes of persons most affected by the application amendments are the applicants. The applicants may bear the cost of having a passport-type photo attached to their application, although the Board is able to take the photograph free of charge. (The cost for a passport photo ranges from \$4 to \$15 at photo facilities other than the Board.) The other application requirement, a limit on the number of times an applicant can take the NAB and state examinations in a specified period and the requirement to produce a study plan after failed attempts, have no monetary cost to an applicant. The public will benefit from the Board further ensuring the integrity of the national exam and state application process and further ensuring the knowledge base of applicants who become licensees.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

Beyond the costs associated with the Board’s promulgation of these rules, it is not anticipated that implementation and enforcement of these rules will result in additional costs to the Board or any other state agency. Additionally, it is not anticipated that these rules will have any effect on state revenues.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

There is no less costly or less intrusive method of achieving the purposes of the national standards amendments. The educational requirements and the practicum durations are driven by trends in national standards that are intended to further public safety. Although the Board discussed alternatives to the self-study and survey requirements for underperforming institutions, the Board did not seriously consider any alternatives because these requirements were the least costly and least intrusive to the educational institutions.

There is no less costly or less intrusive method of achieving the purposes of the housekeeping amendments. By their nature, they are intended to clarify ambiguities between statute and rule, to reflect current Board processes, and to remove obsolete language.

There is no less costly or less intrusive method of achieving the purposes of the application amendments. The purposes of these amendments are to ensure the integrity of the examination and application process and thereby further public protection. Any cost of the photo requirement is greatly outweighed by the assurance that an applicant is the same individual who took and passed the NAB examination. The purpose of the limit on exam re-takes and the study plan has no additional cost to the applicant, and the Board found the study plan to be the least intrusive method of ensuring competency in exam topics for applicants who have failed to pass the examination on the first or second attempt.

“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”

As noted above, the national education amendments are driven by changes in national education and practicum requirements and by the Board's need to require underperforming institutions to engage in self-study to determine the cause of the lack of successful performance. The national education standards are reviewed every five to seven years. The NAB published its "Report: Practice Analysis of Long Term Care Administrators across Multiple Lines of Service" in May 2014. ("NAB Report")(Exhibit A.) The Board adopted this report in June 2014, and, since then, the Board's Rules and Education Committees have met in-person at least three times to compare the new national requirements with the current Minnesota requirements. The Rules and Education Committees also reviewed the literature supporting the changes in national education standards and participated in the national campaign for Advancing Excellence in America's Nursing Homes. After participating in this extensive review, the Rules Committee, the Education Committee, and the Board concluded that there are no viable alternatives to the changes in the educational requirements.

With respect to the practicum duration amendment, the NAB has advocated for a 1000-hour practicum since 1992 (Exhibit B) and the NAB standard has been a 1000-hour practicum since 2007. The Education Committee reviewed and monitored the changes in national standards for several years. During the first half of 2015, the Board completed a Licensed Nursing Home Administrators ("LNHA") Insight Survey. Of the 67 Minnesota LNHAs who responded to the question, over 70 percent indicated that Minnesota should increase its practicum duration from 400 hours to the 1000-hour NAB standard. (See Exhibit C.) Many of the comments provided by the responders indicated that their 2000-hour practicum (required by some educational institutions for graduation) was highly beneficial. After this extensive multi-year review, the Educational Committee, the Rules Committee, and the Board concluded that there are no viable alternatives to an increase in the practicum hours requirement.

With respect to the underperforming institutions amendment, the Board reviewed the rules of other Minnesota health licensing boards, including specifically the Minnesota Board of Nursing, to determine the best way to assist and manage underperforming institutions to benefit the public and benefit potential applicants. After careful review, the Rules Committee and the Board determined that there are no viable alternatives to requiring institutional self-study and potentially a survey of stakeholders to determine the source of the failure to satisfactorily perform.

The Board did not consider alternative methods for achieving the purposes of the housekeeping amendments. By their nature, there are no other alternatives to clarify ambiguities between statute and rule, to reflect current Board processes, and to remove obsolete language.

The Board did not consider an alternative to the photo application amendment. By its nature, it is the least physically intrusive method to ensure that the same person who passed the NAB examination is the person who is applying for licensure. The Board did consider alternatives to the limit on the exam re-takes application amendment. The Board considered requiring a repeat of a course or a refresher course after multiple failed examination attempts. The Board rejected this requirement in favor of the less intrusive and less costly requirement to submit a study plan.

“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”

The national standards amendments will likely have some additional cost to the nine Board-approved educational institutions. Two of these institutions are nationally approved and, therefore, are already in the process of updating the eight nursing home administrator courses to include the additional and revised domains of practice. On June 10, 2015, six institutions participated in person and two participated via conference call in a meeting with the Rules Committee, which includes one member of the Education Committee, to discuss the challenges to the changes in curriculum and the increase in practicum durations. The discussion was positive, and the institutions indicated they would not oppose the rule amendments. Seven of the nine Board-approved educational institutions are Minnesota institutions. Two institutions, the University of Wisconsin-Eau Claire and the University of South Dakota, are not Minnesota entities.

The housekeeping amendments will have little to no cost for governmental units, businesses or individuals.

The application amendments may have a nominal cost to applicants for the photo if the applicant chooses to have the photo taken at a facility other than the Board, but no additional costs to any governmental units, businesses, or individuals.

“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”

The cost or consequences of not adopting the national standards amendments are that (1) Minnesota licensure and practicum standards would be less rigorous than and in conflict with national standards and (2) the Board will be left without a specific mechanism for requiring institutional self-study and potentially a stakeholder survey to determine the source of educational institutions’ failure to successfully perform. Moreover, if the Minnesota-based institutions do not voluntarily increase their standards to national levels, it is possible that students will choose other institutions that offer a curriculum and a practicum that mirrors national standards. As a final note, two of the Board-approved institutions are nationally approved and therefore already modifying their curriculum and practicum standards. If the Board does not adopt the amendments normalizing the educational and practicum requirements for all Minnesota licensees, there will in effect be two classes of licensees in Minnesota – one group with a stronger educational background and more practicum experience and a second group with an inferior educational background and less practicum experience.

The costs and consequences of not adopting the proposed housekeeping amendments will most likely be increased and/or continued inquiries from licensees, applicants, and the public to the Board about the rule requirements. This has the potential to raise Board staff costs.

The costs and consequences of not adopting the proposed application amendments are as follows: (1) with respect to the photo requirement, the consequence is that the Board could mistakenly license an

individual who has not actually passed the national examination and thereby causing a risk to the public and causing the Board to incur costs to revoke or rescind the license upon discovery of the fraud; and (2) with respect to the limit on re-takes, the Board could license an individual who may have passed the national examination by a guessing method and who may, in fact, lack the educational base for licensure, thereby causing a risk to the public and causing the Board to incur costs to revoke or rescind the license at a later date.

“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”

The national standards amendments are not in conflict with any existing federal regulations.

The Board maintains that the application amendments are not in direct conflict with any existing federal regulations. The Board has interpreted 42 CFR § 431.710 as setting a floor on the provision license process. 42 CFR § 431.710 states, “To fill a position of nursing home administrator that unexpectedly becomes vacant, the agency or board may issue one provisional license, for a single period not to exceed 6 months.” The Board has allowed a second, successive six-month permit to be issued when (1) an applicant, due to an educational institution’s schedule, was unable to complete a required course in the first six-month period; (2) a nursing home was unable to find and hire a qualified applicant during the first six-month period; or (3) a nursing home used the same acting administrator during two separate, six-month vacancy periods (See Exhibit D.) The second and third of these situations are more likely to occur in rural settings. The Board’s grant of a successive permit in all three situations above serve public protection by maintaining stability at a nursing home with a qualified acting administrator. Moreover, the second situation accounts for the realities of an employment marketplace in which it is challenging to find qualified LNHAs willing to serve in out-state locations.

The application amendments are not in conflict with any existing federal regulations.

“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

The Board has found no cumulative effect with the national standards amendments and any other existing rules.

The Board has found no cumulative effect with the housekeeping amendments and any other existing rules.

The Board has found no cumulative effect with the application amendments and any other existing rules. In 2017, BENHA will be phased into the Health Licensing Boards’ fingerprinting process, so it is possible that after implementation of the fingerprinting process, the photo requirement may have a cumulative effect with the fingerprinting process.

PERFORMANCE-BASED RULES

With respect to the national standards amendments, the Board sought to balance public protection and the burden to applicants and institutions created by an increase in national education and practicum standards. At least one-quarter of the Board's applicants since 2011 have been educated at the nationally-approved University of Wisconsin-Eau Claire and, therefore, have already been subjected to the increased educational and practicum requirements. (Exhibit E page 2.) The Board seeks to achieve a consistently well-educated and sufficiently experienced licensee base while not requiring overly burdensome or unnecessary education and practicum experience. Moreover, the Board seeks to have a mechanism by which to require underperforming institutions to engage in self-study and potentially a survey to determine the source of the failure to perform.

With respect to the housekeeping amendments, the Board is, in effect, clarifying rule ambiguities, omitting obsolete language, and clarifying current Board practices and expectations. The Board has not decreased the flexibility in any of these rule amendments.

With respect to the application amendments, the Board has sought to balance public protection with minimal burdens to the potential applicant. The photo requirement is a minimal burden to verify an applicant's identity and thereby ensure the integrity of the examination and application process. With respect to the time limit on the exam re-takes, the Board sought to balance its responsibility to ensure competence of its applicants and licensees with the most flexible of potential remedies for failure to pass the national examination – a study plan and time to implement that plan. The Board specifically rejected less flexible options to achieve the goal of ensuring that applicants have an adequate knowledge base.

ADDITIONAL NOTICE

The Board's notice plan includes the following mandated statutory actions:

1. A copy of the Dual Notice and proposed rules shall be mailed to everyone who has registered to be on the Board's rulemaking mailing list under Minnesota Statutes, Section 14.14, subdivision 1a; and
2. A copy of the Dual Notice, proposed rules, and this Statement of Need and Reasonableness shall be mailed to the Legislature according to Minnesota Statutes, section 14.116. The following is a list of the Legislators:
 - a. House – Health and Human Services Finance Committee Chair and Lead;
 - b. House – Health and Human Services Reform Chair and Lead;
 - c. House – Rules and Legislative Administration Chair and Lead;
 - d. Senate – Finance: Health and Human Services Budget Division Chair and Ranking Minority Member;
 - e. Senate – Health, Housing and Housing Committee Chair and Ranking Minority Member;
 - f. Senate – Rules and Administration Committee Chair and Ranking Majority Member;
 - g. Legislative Coordinating Commission.

The Board is also providing notice according to its Additional Notice Plan, which was reviewed by the Office of Administrative Hearings and approved in an October 2, 2015 Order On Review of Additional Notice Plan by Administrative Law Judge Jim Mortenson.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board consulted with Minnesota Management and Budget (MMB). The Board sent copies of the Governor's Office Proposed Rule Form, the proposed rules, and the SONAR to Paul Moore, the Board's Executive Budget Officer with MMB. The Board will submit a copy of the cover correspondence and the response received from MMB to the OAH at the hearing or with the documents it submits for OAH review.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the Board has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Board was unable to identify any local ordinances or regulations that would require amendment in order to implement the proposed amendments.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

As required by Minnesota Statutes, section 14.127, the Board has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Board has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

LIST OF WITNESSES

Randy Snyder, Executive Director, Minnesota Board of Examiners for Nursing Home Administrators
Jane Pederson, M.D., Chair-Rules Committee, Minnesota Board of Examiners for Nursing Home Administrators
Ann Tagtmeyer, Chair-Education Committee, Minnesota Board of Examiners for Nursing Home Administrators
Jim Birchem, Chair-Minnesota Board of Examiners for Nursing Home Administrators

RULE-BY-RULE ANALYSIS

In order to facilitate discussion, the following section includes an analysis of each proposed rule amendment.

I. Housekeeping amendment: Minn. R. 6400.5100, subp. 9, Definitions.

1.3 6400.5100DEFINITIONS.

- 1.4 *[For text of subps 1 to 8, see M.R.]*
- 1.5 Subp. 9. **Domains of practice.** "Domains of practice" means the tasks performed
- 1.6 by nursing home administrators and the knowledge, skills, and abilities identified as
- 1.7 necessary to perform those tasks by NAB in its job analysis of nursing home administrator.
- 1.8 The NAB domains of practice for nursing home administrator are found in the Final
- 1.9 Report of the Job Analysis of the Practice of Nursing Home Administrators prepared
- 1.10 for the ~~National Association of Boards of Examiners for Nursing Home Administrators~~
- 1.11 ~~(now National Association of Boards of Examiners for Long-Term Care Administrators),~~
- 1.12 ~~prepared by Patricia Muenzen, et. al., of the Department of Research and Development,~~
- 1.13 ~~Professional Examination Service, New York, NY, November 1996.~~ This document is
- 1.14 incorporated by reference. It is available at the State Law Library and on the board's Web
- 1.15 site and is subject to change every five years.

This Board proposes to update this subpart to reflect the updated literature supporting the domains of practice requirements. The proposed amendments reflect current national standards and clarify the rule by not creating the impression that the document that controls the domains of practice standards is one that first existed in 1996. The proposed amendments make clear that the relevant document will always be the most recent version.

II. Application amendments: Minn. R. 6400.6100, subps. 1, 4, Applying for Licensure.

A. "Application contents."

1.17 **6400.6100 APPLYING FOR LICENSURE**

- 1.18 Subpart 1. **Application contents.** An individual applying for licensure shall do
- 1.19 so on forms provided by the board. The information requested shall include personal
- 1.20 identifying and locating data including name, home and work addresses and telephone
- 1.21 numbers, and social security number; education and degree information; employment and
- 1.22 practice history; licensure and disciplinary history; and information relating to criminal
- 1.23 convictions, use of alcohol and drugs, and other issues which may reflect on ability
- 1.24 and fitness to practice. The application shall also include a recent full-face two-inch
- 1.25 by three-inch photograph affixed to the application as indicated and notarized as a true
- 2.1 likeness. The notary seal shall be placed next to the picture and shall fall partly upon the
- 2.2 photograph and partly upon the application.

The Board proposes to update this subpart to require that an individual applying for licensure also include a full face, recent 2x3 photograph affixed to the application as indicated and notarized next to the picture as a true likeness. The Board will take the photograph and require that the notary seal fall partly upon the photograph and partly upon the application. The Board proposes to require the photograph to eliminate the possibility that an individual other than the actual applicant would appear to take the exam or apply for licensure. Other health licensing boards, including the Minnesota Board of Medical Practice and the Minnesota Board of Physical Therapy, also require a photograph as part of the application for licensure. Other states have also added this photo requirement to be able to compare the photo to the national examination testing site photo of the candidate. One candidate in another state reportedly sent another individual to write the examination in his place. The photo requirement ensures the integrity of the national examination system and the state licensing system.

B. "Examination attempts and score expiration."

- 2.4 Subp. 4. **Examination attempts and score expiration.**
- 2.5 A. If an applicant does not pass the NAB or state examination on the second
- 2.6 attempt, the applicant must submit to the board a study plan and wait six months from the
- 2.7 date of the examination attempt to sit for the examination a third time. If an applicant does
- 2.8 not pass the NAB or state examination on the third attempt, the applicant must submit a
- 2.9 revised study plan and wait one year from the date of the third examination attempt to
- 2.10 sit for the examination a fourth time. The applicant may also be required to reapply in
- 2.11 order to comply with subpart 3.
- 2.12 B. Examination scores expire two years after the date the examination was
- 2.13 taken if the applicant has not become fully licensed within that two years.

The Board proposes to update this subpart to require applicants who fail the NAB or the state examination on the second attempt to submit to the Board a study plan and implement that plan for 6 months before sitting for the exam a third time. If the applicant fails the NAB or the state examination on the third attempt, the Board is proposing that the applicant submit a revised study plan and implement that plan for one year before sitting for the exam a fourth time. The timeline on the third failed attempt will likely trigger the 18-month application deadline in subpart 3, so the applicant will likely need to re-apply. The Board has concerns about the ability of an applicant to provide leadership and management in a nursing home if he or she has repeated failures to plan for and pass the NAB or state examination. Moreover, the impact of this proposed rule amendment is minimal because the majority of applicants pass on the first or second exam attempts.

IV. National standards amendments: Minn. Rule 6400.6500, subp. 10, Specific Course Requirements For Applicants Who Apply Before September 1, 2017; and Minn. Rule 6400.6550 Specific Course Requirements For Applicants Who Apply On or After September 1, 2017

- 2.15 **6400.6500 SPECIFIC COURSE REQUIREMENTS FOR APPLICANTS WHO**
- 2.16 **APPLY BEFORE SEPTEMBER 1, 2017.**
- 2.17 [For text of subps 1 to 9, see M.R.]
- 2.18 Subp. 10. **Effective date.** An applicant who applies before September 1, 2017,
- 2.19 must follow the requirements in this part.

- 2.20 **6400.6550 SPECIFIC COURSE REQUIREMENTS FOR APPLICANTS WHO**
- 2.21 **APPLY ON OR AFTER SEPTEMBER 1, 2017.**

- 2.22 Subpart 1. **Organizational management.** An applicant must complete a course in
- 2.23 organizational management covering the basic management functions of:
- 2.24 A. planning and objective setting;
- 2.25 B. organizing and delegating; and
- 3.1 C. observing, monitoring, and evaluating outcomes, including customer
- 3.2 satisfaction.
- 3.3 Subp. 2. **Managerial accounting.** An applicant must complete a course in
- 3.4 managerial accounting, beyond introductory accounting, covering:
- 3.5 A. budgeting and fiscal resource allocation; and
- 3.6 B. interpreting financial information to monitor financial performance and
- 3.7 position and to make managerial decisions.
- 3.8 Subp. 3. **Gerontology.** An applicant must complete a course in gerontology covering:
- 3.9 A. the physical, social, and psychological aspects of the aging process; and
- 3.10 B. programs and services designed to meet the needs of the aged population.
- 3.11 Subp. 4. **Health care and medical needs.** An applicant must complete a course in
- 3.12 health care and medical needs of nursing facility residents covering:
- 3.13 A. the anatomic and physiologic changes that are associated with the aging
- 3.14 process;

3.15 B. the impact and management of common syndromes associated with aging,
3.16 including vision and hearing impairment, nutrition and malnutrition, and balance and
3.17 mobility impairment;
3.18 C. basic medical and pharmacological terminology;
3.19 D. prevention and management of conditions such as pressure ulcers and
3.20 delirium;
3.21 E. common psychiatric and neurodegenerative disorders such as dementias
3.22 (including Alzheimer's), depression, anxiety, psychotic disorders, and alcohol and drug
3.23 abuse;
3.24 F. advance care planning and the role of palliative care and end-of-life care; and
4.1 G. emerging medical trends and technology used in the long-term care setting.
4.2 Subp. 5. **Long-term care supports and services.** An applicant must complete a
4.3 course in the organization, operations, functions, services, and programs of long-term care
4.4 supports and services covering:
4.5 A. governing and oversight bodies and their relationship to the administrator;
4.6 B. administrative responsibilities and structures;
4.7 C. operations and functions of each facility department;
4.8 D. functions and roles of professional and nonprofessional staff and consulting
4.9 personnel; and
4.10 E. issues of cultural diversity and human relationships between and among
4.11 employees and residents of nursing facilities and their family members.
4.12 Subp. 6. **Human resources.** An applicant must complete a course in human resource
4.13 management covering:
4.14 A. staffing;
4.15 B. equal employment opportunity, affirmative action, and workforce diversity;
4.16 C. compensation and benefits;
4.17 D. coaching and performance management;
4.18 E. training and development;
4.19 F. labor relations, including union contract negotiation and administration;
4.20 G. employment law; and
4.21 H. workplace culture, accountability and fairness, just culture and learning
4.22 concepts.
5.1 Subp. 7. **Regulatory management.** An applicant must complete a course in
5.2 regulatory management covering the legal, regulatory, and funding provisions and
5.3 requirements governing operations of long-term care supports and services and health
5.4 care programs including:
5.5 A. resident rights, resident choice, resident risk, and protection from
5.6 maltreatment;
5.7 B. professional and biomedical ethics, including advance directives;
5.8 C. guardianship and conservatorship;
5.9 D. liability, negligence, and malpractice;
5.10 E. data confidentiality, privacy, and practices;
5.11 F. professional licensing, certification, and reporting for staff and consulting
5.12 personnel;
5.13 G. health and safety codes, including OSHA and the National Life Safety Code;
5.14 H. Medicare and Medicaid, standards for managed care and subacute care, and
5.15 third-party payer requirements and reimbursement;
5.16 I. federal and state nursing home survey and compliance regulations and
5.17 processes;
5.18 J. requirements affecting the quality of care and life of residents, including
5.19 measurement of outcomes from clinical and resident-satisfaction perspectives;
5.20 K. resident acuity and assessment methodology;
5.21 L. quality assessment and assurance; and
5.22 M. customer choice.
Subp. 8. **Quality measurement and performance improvement.** An applicant

- 6.2 must complete a course in the accumulation and analysis of data to inform management
- 6.3 decision making including:
- 6.4 A. strategic uses of data and information;
- 6.5 B. data accumulation, storage, integration from multiple sources, manipulation, 6.6 and presentation;
- 6.7 C. needs assessment and analysis methodologies;
- 6.8 D. measures, analysis, and assessment of outcomes, including customer 6.9 satisfaction and quality improvement;
- 6.10 E. utilizing quality measurement and performance improvement tools and 6.11 methodologies; and
- 6.12 F. problem-solving skills.
- 6.13 Subp. 9. **Practicum.** An applicant must complete or have waived, based upon prior 6.14 experience under part 6400.6650, subpart 1, item A, a practicum course as described 6.15 in part 6400.6600.
- 6.16 Subp. 10. **Effective date.** An applicant who applies on or after September 1, 2017, 6.17 must follow the requirements in this part.

The Board proposes to update these rules to reflect current trends in national standards for nursing home administrator education. (See Exhibit A, pp 9-22). The Board has also set a definite start date for implementation of the new educational standards.

As noted above, two of nine Board-approved educational institutions will be amending their curricula content to reflect the updated national domains of practice standards. Six institutions participated in person and two participated via conference call in a meeting with the Rules Committee, which includes one member of the Education Committee, on June 10 to discuss the challenges to the changes in curricula and practicum durations. The discussion was positive, and the institutions indicated they would not oppose the rule amendments. The Board is proposing this rule to increase Minnesota educational standards to be consistent with national standards and to normalize educational standards across Minnesota applicants and educational institutions.

V. National standards amendment: Minn. Rule 6400.6650, subp. 3, Practicum Duration For Applicants Who Apply Before September 1, 2017; and Minn. Rule 6400.6655 Practicum Duration For Applicants Who Apply On or After September 1, 2017.

- 6.18 **6400.6650 PRACTICUM DURATION FOR APPLICANTS WHO APPLY BEFORE**
- 6.19 **SEPTEMBER 1, 2017.**
- 6.20 [For text of subps 1 and 2, see M.R.]
- 6.21 Subp. 3. **Effective date.** An applicant who applies before September 1, 2017, must
- 6.22 follow the requirements in this part.

- 7.1 **6400.6655 PRACTICUM DURATION FOR APPLICANTS WHO APPLY ON OR**
- 7.2 **AFTER SEPTEMBER 1, 2017.**
- 7.3 Subpart 1. **Duration of individual student practicums.** An applicant must complete
- 7.4 a 1,000-hour practicum unless the applicant presents evidence to the board that the
- 7.5 applicant has experience as described in subpart 2 for a reduction in the number of
- 7.6 practicum hours. The board shall determine the minimum number of hours of practicum
- 7.7 to be completed by an applicant by comparing the applicant's expertise to the requirements
- 7.8 in subpart 2 and shall notify the applicant of the board's decision.
- 7.9 Subp. 2. **Waiver and minimum number of hours.** An individual may qualify
- 7.10 for a reduction in hours or waiver of the 1,000-hour practicum by providing evidence
- 7.11 of the following documented health care experience and satisfying the board-approved

- 7.12 assessment tool:
- 7.13 A. 750 hours for an individual with two or more years of managerial or
7.14 administrative employment experience, including supervision of at least 25 employees
7.15 and responsibility for an annual budget of at least \$1,000,000;
- 7.16 B. 750 hours for an individual who has two or more years of employment in a
7.17 hospital or nursing facility in any professional capacity or in any direct patient care capacity;
- 7.18 C. 500 hours for an individual who has served two or more years as a
7.19 department manager with supervisory and budgetary responsibility and meets one or more
7.20 of the following criteria:
- 7.21 (1) the individual does not meet the requirements for assistant administrator
7.22 under item D or the definition in part 6400.5100, but has otherwise held that title in a
7.23 nursing facility or hospital and has performed under the title for two or more years;
- 7.24 (2) the individual has served, for two or more years, as director of nurses
7.25 in a hospital or registered housing with services establishment that has an arranged
7.26 comprehensive home care license; or
- 8.1 (3) the individual has served as a housing manager in a registered housing
8.2 with services establishment that has an arranged comprehensive home care license;
- 8.3 D. 200 hours for an individual who has served one or more years as a full-time
8.4 hospital administrator or hospital assistant administrator with responsibility for both
8.5 resident care and administrative functions, or who has served two or more years as a
8.6 full-time director of nurses in a nursing facility; or
- 8.7 E. the documented experience requirement is waived for an individual who has
8.8 one year of continuous full-time employment as the assistant administrator, chief executive
8.9 officer, or equivalent role with responsibility for both resident care and administrative
8.10 functions. Time working as an acting administrator under an acting license or permit in the
8.11 same nursing facility where the individual also served as the assistant administrator, chief
8.12 executive officer, or equivalent role meets this requirement if the individual's employment
8.13 under both titles combined was one continuous year.
- 8.14 Subp. 3. **Method of measuring experience.** The amount of experience required to
8.15 qualify for a practicum reduction under subpart 2, items C, D, and E, shall be measured
8.16 in full-time equivalency at the rate of 35 hours per week.
- 8.17 Subp. 4. **Effective date.** An applicant who applies on or after September 1, 2017,
8.18 must follow the requirements in this part.

The Board proposes to set a definite start date for implementation of the new practicum duration standards. Also, the Board is amending the language of Rule 6400.6650 as it currently exists, which will be re-codified into Rule 6400.6655, to switch subpart 1 and 2 and re-work the language in subpart 2 to clarify that the hours listed in the subpart are not hours to be discounted from the 1000-hour practicum but rather hours required to qualify for a reduction in the 1000-hour practicum. Also, the Board proposes to re-order A-E of subpart 2 to better reflect the default 1000-hour practicum and required hours for deviation from the default. The Board has received a number of inquiries over the years on the appropriate interpretation of this rule and seeks to clarify it with an amendment.

The Board also proposes to add Rule 6400.6655 to increase the duration of practicum required to qualify for licensure to 1000 hours and to increase the hours of experience required to waive portions of the practicum experience. The Board proposes these increases to bring the Minnesota standards in line with the national standards and expectations set forth by the NAB in 2007. LNHAs face an ever-expanding role and increasing acuity and complexity of residents in long-term care facilities. The Board maintains that LNHAs need a longer practicum and more experience to hone a much more intense skill set. (See Exhibit A, pp. 9-22 (setting forth the skill sets)). Moreover, in 2015, the Board conducted a

“New Licensee Insight Survey,” and over 70 percent of the LNHAs who responded said that Minnesota should match the national standard 1000 hour practicum requirement. (Exhibit C, pp. 8-9.) As a final note, a significant percentage of new LNHAs who have no previous health care experience are already completing a 2000-hour practicum requirement because it is required by their educational institution. (Exhibit E, p. 2.)

The Board also proposes to add Rule 6400.6655 to allow for a practicum hours reduction for housing managers of registered housing with services establishments that have an arranged comprehensive home care license. According to NAB Report, the skill set is highly comparable between these managers and nursing home administrators. (Exhibit A, p. 6., 7) The Board maintains that it is appropriate that these managers have an opportunity to petition the Board for a reduction of the 1000 hour practicum requirement.

VI. National standards amendment: Minn. Rule 6400.6660

8.19 6400.6660 ACADEMIC PROGRAM REVIEW.

8.20 [For text of subs 1 to 4, see M.R.]

8.21 Subp. 5. Five-year program review.

8.22 [For text of items A and B, see M.R.]

8.23 C. In addition to the five-year program review, if the board receives information

8.24 that the success rates fall below the national average for candidates from the program who,

8.25 during any January 1 through December 31 period, wrote for the first time the national

9.1 examination for nursing home administrators developed by NAB, the board must take one

9.2 of the actions described in subitems (1) to (3).

9.3 (1) If success rates are below the national average for one period, the

9.4 board shall require the director to identify factors that are potentially affecting the low

9.5 success rate on the licensure examination. The director shall submit a plan of corrective

9.6 action by a specified date. The plan of action must be on a board-supplied form and

9.7 include the signature of the director and another institutional administrative academic

9.8 representative. If the following year the success rate is above the national average, no

9.9 action by the board is required.

9.10 (2) If success rates are below the national average for any two consecutive

9.11 periods, the board shall notify the director of a survey to identify additional factors

9.12 affecting the low success rate and review progress on the plan for corrective action

9.13 submitted the previous year. The survey must include the director, faculty, students, and

9.14 an institutional administrative academic representative. The director shall submit a revised

9.15 plan of corrective action by a specified date. The plan of corrective action must be on a

9.16 board-supplied form and include the signature of the director and another institutional

9.17 administrative academic representative. If the following year the success rate is above

9.18 the national average, no action is required by the board.

9.19 (3) If success rates are below the national average for any three consecutive

9.20 periods, the board shall require the director and another institutional administrative

9.21 academic representative to meet with a committee of board members and board staff for a

9.22 survey for compliance with all applicable rules and for the implementation of the plan for

9.23 corrective action submitted the previous year. Upon completion of the survey, the board

9.24 shall take action in compliance with subpart 3.

9.25 Subp. 6. [See repealer.]

The Board proposes to amend this rule to reflect a better data collection practice and to allow it to better ensure educational program quality on an ongoing basis. Currently, the Board collects the data and informally follows a review process for those educational institutions that appear to be struggling.

The Board wants to formalize this process and require as a first step a self-study and as a second step, if the failure to perform continues, a survey of the educational institution's stakeholders. Both the self-study and the survey are intended to help the educational institution determine the source of the failure to successfully perform and to identify methods to correct the failure. Other health licensing boards, including the Minnesota Board of Nursing, have rules that allow the Board to take specific action if an educational institution is underperforming. See, e.g., Minn. R. 6301.0800. This proposed rule was a topic of the June 10, 2015, meeting between the Rules Committee and the academic stakeholders, and the academic stakeholders voiced no objection to the proposals.

The Board also proposes to delete subpart 6 because it is now obsolete.

VIII. Housekeeping amendment: Minn. Rule 6400.6710 Licensee Responsibility

10.1 6400.6710 LICENSEE RESPONSIBILITIES.

10.2 Each licensee shall:

10.3 [For text of item A, see M.R.]

10.4 B. provide notice to the board within ten five working days of any change

10.5 in mailing address or telephone number pursuant to Minnesota Statutes, section 13.41,

10.6 subdivision 2, paragraph (b);

10.7 C. provide notice to the board within ten five working days of any change in

10.8 employment as a nursing home administrator for a nursing facility;

10.9 D. provide notice to the board within ten five working days of the occurrence

10.10 of any reprimand, restriction, limitation, condition, revocation, suspension, surrender,

10.11 or other disciplinary action or the bringing of charges against any license the licensee

10.12 holds as a nursing home administrator or other health care professional in Minnesota or

10.13 any other jurisdiction; and

10.14 [For text of item E, see M.R.]

The Board proposes to amend this rule to comport with the five-day requirement set forth by the Minnesota Department of Health. Minn. Rule 4658.0050, subp. 3(C). The updated data required by the Board in the rule above can be provided online. There would be little to no additional burden to the licensee.

IX. Housekeeping amendment: Minn. Rule 6400.6720, Displaying Licenses.

10.15 6400.6720 DISPLAYING LICENSES.

10.16 All licensees A licensee actively practicing as a nursing home administrators

10.17 administrator shall display their the board-issued license, not a photocopy, in a conspicuous

10.18 place in the facility which the licensee administers, visible to residents and visitors.

The Board proposes this rule amendment to prevent administrators, including those that serve as administrator for multiple nursing homes, from photocopying licenses and displaying them. The need for this rule is two-fold. First, the Board is clarifying the current rule and Board practice that photocopies are not acceptable to satisfy this rule. Currently, the Board notifies, in writing, licensees serving as shared administrators that they need to obtain a duplicate license from the Board office to be posted at the second facility. (Exhibit E.) Second, the Board is collecting data on shared administrator status.

X. Housekeeping amendment: Minn. Rule 6400.6740, Renewing Licenses.

10.19 **6400.6740 RENEWING LICENSES.**

10.20 [For text of subps 1 and 2, see M.R.]

10.21 Subp. 3. **Exemption from renewal.** Pursuant to Minnesota Statutes, section 326.56,
10.22 a licensee who is in active military service, as defined in Minnesota Statutes, section
10.23 190.05, for the armed forces of the United States or is employed outside the United States
10.24 in employment that is essential to the prosecution of any war or the national defense, as
10.25 defined in Minnesota Statutes, section 326.56, and whose license was in effect at the
11.1 time of entry into the armed forces or engagement in employment outside the United
11.2 States, is not obligated to renew licensure. The board must be notified in writing by the
11.3 licensee regarding the qualifications for this exemption. The exemption ceases six months
11.4 after discharge from active service or termination of the aforementioned employment.
11.5 A license renewal notice shall be sent to the licensee at the time that a license renewal
11.6 notice would normally be sent to the licensee. The licensee may be requested to reconfirm
11.7 exempt status. If the licensee no longer qualifies for the exemption, the requirements
11.8 for license renewal must be met.

The Board proposes to add this subpart to comport with Minnesota Statute section 325.56, which gives a licensure renewal exemption for all individuals in active military service or engaged in employment essential to the prosecution of a war or to the national defense. The statutory exemption unambiguously includes individuals licensed as nursing home administrators in the State of Minnesota. The purpose of the rule is to clarify that the statute controls and exempts licensees from renewal requirements. This rule is modeled after a similar rule promulgated by the Minnesota Board of Nursing.

XI. Housekeeping amendment: Minn. Rule 6400.6770, Acting administrator permits.

11.9 **6400.6770 ACTING ADMINISTRATOR PERMITS.**

11.10 Subpart 1. **Board to issue permits.** When the controlling persons of a nursing
11.11 home designate an acting nursing home administrator under Minnesota Statutes, section
11.12 144A.27, the designee must secure an acting administrator's permit within 30 days of the
11.13 termination of the previous licensed administrator. The board shall issue a permit to serve a
11.14 facility as an acting administrator for up to six months from the termination of the facility's
11.15 previous licensed administrator to an individual who meets the qualifications specified
11.16 in subpart 2. A permit to serve a facility as an acting administrator is valid only for the
11.17 holder's work with that facility and shall not be transferable to another facility. A permit
11.18 to serve as acting administrator is not renewable beyond the six months for which it was
11.19 issued. The board may issue a second permit to serve a facility as an acting administrator
11.20 for up to six months from the expiration of the original acting administrator permit when
11.21 the board finds the second permit to be in the best interests of the public. In no event shall
11.22 the board issue successive permits for a total duration of longer than one year.
11.23 [For text of subp 2, see M.R.]

The Board proposes this rule to comport with current Board practices and to recognize the challenges many nursing homes face in the current employment climate. In the past, the Board has occasionally waived the one-time limitation and allowed a second acting nursing home administrator permit. The Board has issued the second one-time limitation when (1) an acting administrator had a course to complete before complete licensure and the course was not available during the initial 6-month period; (2) a nursing home was unable to find a replacement LNHA in a 6-month time frame; and (3) a nursing home had the same acting administrator during two separate vacancy periods. The Board's current practice is to allow a nursing home, if no viable other option exists, to petition the Board with a rationale as to why a second permit is warranted and necessary. The Board does not grant the second

permit under circumstances where the acting administrator failed to pass the examination or has not taken action to complete the required coursework and/or become licensed.

Some nursing homes, often those in rural settings, have difficulty finding qualified individuals to serve as nursing home administrators within a six-month period. The Board has determined that allowing a second six-month permit better protects the public than to arbitrarily limit the acting permit duration to six-months, when the six-month time period has, on occasion, been an unrealistic time period in which to find a replacement nursing home administrator. In the Board's experience, one year is a sufficient and reasonable time in which facilities can find a replacement nursing home administrator.

As noted above, 42 C.F.R. §431.710 allows for one provisional license for a six-month period. For several years, the Board has interpreted this regulation as providing a floor on the provisional license process and has allowed nursing homes to petition for a second six-month acting administrator license under the circumstances set forth above. (See Exhibit D.) The Board has never allowed a permit or permits to last longer than one year.

XII. Housekeeping amendment: Minn. Rule 6400.6850, subs. A, E, I, Number of CE Credits for Activities

12.1 6400.6850 NUMBER OF CE CREDITS FOR ACTIVITIES.

12.2 Acceptable activities to meet continuing education requirements for license renewal

12.3 and the number of CE credits that licensees may obtain for each are described in items A
12.4 to K.

12.5 A. A licensee who attends board-approved seminars, webinars, institutes, or

12.6 workshops shall receive CE credit on a clock-hour basis for the actual amount of time

12.7 spent in the seminar rounded to the nearest lower one-quarter hour. To verify clock hours

12.8 of attendance at seminars, institutes, or workshops, a licensee must maintain an attendance

12.9 certificate provided by the sponsoring organization.

12.10 [For text of item B, see M.R.]

12.11 C. A licensee who attends seminars, webinars, institutes, or workshops, or

12.12 completes home study courses approved by the NAB/National Continuing Education

12.13 Review Service (NCERS), shall receive CE credit on the basis of clock hours assigned by

12.14 NAB/NCERS. To verify clock hours of attendance at NAB approved seminars, institutes,

12.15 or workshops, or completion of NAB approved home study courses, the licensee must

12.16 maintain a certificate provided by the NAB approved sponsor.

12.17 D. A licensee who attends, in another state, seminars, webinars, institutes, or

12.18 workshops approved by the nursing home administrator licensing authority of the other

12.19 state shall receive CE credit on the basis of the number of clock hours attended. To verify

12.20 clock hours of attendance at seminars, institutes, or workshops approved by another state

12.21 licensing authority, the licensee must maintain a certificate of attendance from the sponsor

12.22 including verification of the approval from the state licensing authority.

12.23 E. A licensee who completes academic courses applicable to the domains of

12.24 practice taken at an accredited postsecondary institution shall receive nine CE credits per

12.25 quarter credit and 12 CE credits per semester credit. To verify completion of academic

13.1 courses the licensee must maintain a copy of an academic transcript showing the course

13.2 grade and date it was awarded.

13.3 [For text of items F to H, see M.R.]

13.4 I. A licensee who serves as a member of a board, committee, council, or work

13.5 group which includes members from several nursing facilities or organizations and deals

13.6 primarily with issues in nursing facility operation or long-term care shall receive one clock

13.7 hour per membership position provided the group meets at least quarterly or for at least

13.8 four hours of work in a year to a maximum of six CE credits per year for all membership
13.9 positions combined. Where the licensee verifies that the licensee's participation on a
13.10 single board, committee, council, or work group exceeded the minimum specified for a
13.11 single CE credit by double the amount of hours of attendance, the licensee shall receive
13.12 two CE credits per membership position to a maximum of six CE credits per year for all
13.13 membership positions combined. To verify board, committee, council, or work group
13.14 participation the licensee must maintain written verification of membership and attendance
13.15 from an officer of the group and must provide the learning objectives of the meeting.
13.16 [For text of items J and K, see M.R.]
13.17 **REPEALER.** Minnesota Rules, part 6400.6660, subpart 6, is repealed.

The Board proposes to amend this rule to clarify that webinars are an acceptable method of continuing education instruction, that academic courses need to be applicable to the domains of practice, and that committee work needs to have learning objectives to qualify as continuing education. These amendments all reflect the current Board practices and expectations for continuing education.

For several years, webinars have been available as continuing education in various medical professions, and they can be a low-cost method of achieving quality continuing education for licensees. The Board has already been approving continuing education via webinar when (1) the sponsor maintains a way of verifying attendance by meeting the NAB standard or (2) the sponsor assigns an onsite monitor who will provide a list of participants or evidence of a testing process to measure the participants' attainment of knowledge. (Exhibit F.)

The requirement that academic courses need to apply to the domains of practice is a practical clarification to ensure that all continuing education helps licensees maintain an acceptable level of practice. The Board would be unwilling, for example, to award continuing education credit to a licensee who completes a course in poetry at an accredited postsecondary institution.

The third change, the addition of a learning objective requirement, will (1) verify the Board's expectation that continuing education activities help licensees maintain an acceptable level of practice and knowledge and (2) recognize the educational requirements across other medical disciplines. The Board understands that some meetings may not, in fact, have learning objectives that relate to a licensee's practice. The Board maintains that it would be inappropriate to award continuing education credit for these types of meetings. Moreover, the Board notes that the burden would not fall on individual licensees to provide the learning objectives, but rather on the organizations that are already obligated to provide verification of membership and attendance.

LIST OF EXHIBITS

In support of the need and reasonableness of the proposed rules, the Board anticipates it will enter the following exhibits into the hearing record:

- Exhibit A: NAB Brief Report: Practice Analysis of Long Term Care Administrators across Multiple Lines of Service
- Exhibit B: NAB position on internship, dated April 6, 1992
- Exhibit C: BENHA New Licensee Insight Survey 2015

Exhibit D: BENHA form letter to acting administrator applicants
Exhibit E: BENHA newsletter, May 2015
Exhibit F: BENHA form letter to shared administrators
Exhibit G: BENHA Application for Continuing Education Approval
Revisor's Final Draft of Rules
Memo from Paul Moore, Minnesota Management and Budget

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

June 15, 2016

Date

15/Randy Snyder

Randy Snyder, LNHA, MHA
Executive Director
Minnesota Board of Examiners for Nursing
Home Administrators