

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Board of Nursing

RULE CITATION: 21 NCAC 36 .0317

RECOMMENDATION DATE: February 7, 2024

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

Paragraph (a) requires that programs to secure from controlling institutions¹ "human, physical, technical, and financial resources and services essential to support program processes and outcomes..."

It is unclear and ambiguous what resources and services programs are required to secure.

Accordingly, staff recommends objection pursuant to G.S. 150B-21.9(2) for ambiguity.

¹ "Controlling institution" means the degree-granting organization or hospital under which a nursing education program is ~~operating~~ operating or seeking to establish a new nursing education program. The controlling institution shall hold approval or applicable licensure by the appropriate North Carolina agency, the University of North Carolina System, or North Carolina Community College System and be accredited by an accrediting body recognized by the United States Secretary of Education. 21 NCAC 36 .0120(17) as adopted.

William W. Peaslee
Commission Counsel

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 21 NCAC 36 .0317 is amended, with changes, as published in NCR 38:06, pages 340 - 353 as follows:

2
3 **21 NCAC 36 .0317 ADMINISTRATION**

4 (a) The ~~program shall secure from the~~ controlling institution ~~of a nursing program shall provide~~ human, physical,
5 technical, and financial resources and services essential to support program processes and outcomes, including those
6 listed in Paragraph (f) and (g) of this Rule, and maintain compliance with Section .0300 of this Chapter.

7 (b) The ~~controlling institution program~~ shall ensure that a full-time registered nurse, qualified pursuant to Paragraph
8 (e) of this Rule, has the authority to direct the ~~nursing~~ program. Full-time registered nurse is a registered nurse
9 employed by the institution who is regularly assigned to work at least 40 hours each week in the position of program
10 director.

11 (c) The ~~controlling institution program~~ shall ensure that the program director has the authority and responsibility for
12 maintaining compliance with the Rules in this Chapter and other legal requirements in all areas of the program.

13 (d) The ~~controlling institution program~~ shall ensure that the program director has non-teaching time sufficient to allow
14 for program organization, administration, continuous review, planning, and development.

15 (e) The program director ~~in a program preparing students for initial nurse licensure shall satisfy the following~~
16 ~~requirements: shall:~~

- 17 (1) hold an active unencumbered license or multistate licensure privilege to practice as a registered
18 nurse in North Carolina;
- 19 (2) have two years of full-time experience as a faculty member in a Board-approved ~~nursing~~ program;
- 20 (3) ~~be experientially qualified, having have experience in~~ clinical nursing ~~experience,~~ as a faculty
21 member in a ~~nursing~~ program, and academic or nursing leadership experience to lead the program
22 to accomplish the mission, goals, and expected program outcomes;
- 23 (4) hold ~~either a baccalaureate in nursing or a graduate degree in nursing from an accredited institution.~~
24 ~~institution; If newly employed on or after January 1, 2016, hold a graduate degree from an accredited~~
25 ~~institution. If newly employed on or after January 1, 2021, hold a graduate degree in nursing from~~
26 ~~an accredited institution;~~
- 27 (5) prior to or within the first three years of employment, have education in teaching and learning
28 principles for adult education, including curriculum development, implementation, and evaluation,
29 appropriate to the program director role. Once completed, this education need not be repeated if
30 employing organization is changed. ~~This Proof of this~~ education ~~may be demonstrated by is~~ one of
31 the following:
 - 32 (A) completion of 45 contact hours of Board-approved continuing education ~~courses; courses~~
33 ~~pursuant to Rule .0223 of this Chapter. A list of Board-approved continuing education~~
34 ~~courses is posted at www.ncbon.com;~~
 - 35 (B) completion of a certificate program in nursing education;
 - 36 (C) nine semester hours of graduate course work in adult learning and learning principles;
 - 37 (D) national certification in nursing education; ~~or~~

1 (E) documentation of completion of structured, individualized development activities of at
2 least 45 contact hours approved by the Board. Criteria for approval shall include content in
3 the faculty role in curriculum implementation, curricular objectives to be met and
4 evaluated, review of strategies for identified student population, and expectations of
5 student and faculty ~~performance.~~ performance; or

6 (F) ~~A letter from the controlling institution attesting that the program director has been~~
7 ~~approved by the controlling institution following the submission of a portfolio.~~
8 ~~Individuals with prior teaching experience in an academic [nursing program] setting [may~~
9 ~~be evaluated by administration to assess each individual's prior teaching experience~~
10 ~~commensurate with] seeking the program director position shall submit to the controlling~~
11 ~~institution for approval a portfolio detailing the individual's formal education in teaching~~
12 ~~and learning principles for adult education, [including] which includes curriculum~~
13 ~~development, implementation, and evaluation, appropriate to the program director role.~~
14 ~~A copy of this submission shall be provided to the Board upon request.~~

15 (6) maintain competence ~~pursuant to Rule .0232 of this Chapter~~ in the areas of assigned ~~responsibility;~~
16 ~~and responsibility.~~

17 (7) ~~have knowledge of current nursing practice for the registered nurse and the licensed practical nurse.~~

18 (f) A nursing education program shall implement, for quality improvement, a comprehensive program evaluation ~~in~~
19 ~~writing~~ that shall include the following:

- 20 (1) students' achievement of program outcomes;
- 21 (2) ~~evidence description~~ of program resources, including fiscal, physical, human, clinical, and technical
22 learning resources; student support services; and the availability of clinical sites and the viability of
23 those sites adequate to meet the objectives of the program;
- 24 (3) measures of program outcomes for graduates;
- 25 (4) ~~evidence that the public's access to~~ accurate program ~~information for the public is available;~~
26 ~~information;~~
- 27 (5) ~~evidence that how the program and~~ the controlling institution ~~and its administration support program~~
28 ~~achieve concurrent~~ outcomes;
- 29 (6) ~~evidence that an attestation from the~~ program director ~~and that all~~ program faculty meet Board
30 qualifications and are sufficient in number to achieve program outcomes;
- 31 (7) ~~evidence that reporting of~~ collected evaluative data ~~is~~ used in implementing quality improvement
32 activities; and
- 33 (8) ~~evidence description~~ of student participation in program planning, implementation, evaluation, and
34 continuous improvement.

35 (g) The ~~controlling institution and the nursing education~~ program shall communicate information describing the
36 nursing education program that is accurate, complete, consistent across mediums, and accessible by the public. The
37 following shall be accessible to all applicants and students:

- 1 (1) admission policies and practices;
- 2 (2) policy on advanced placement and transfer of credits;
- 3 (3) the number of credits required for completion of the program;
- 4 (4) tuition, fees, and other program costs;
- 5 (5) policies and procedures for withdrawal, including refund of tuition or fees;
- 6 (6) the grievance procedure;
- 7 (7) criteria for successful progression in the program, including graduation requirements; and
- 8 (8) policies for clinical performance.

9

10 *History Note:* Authority G.S. 90-171.23(b)(8); 90-171.38;
11 *Eff. June 1, 1992;*
12 *Amended Eff. December 1, 2016; January 1, 2015; April 1, 2008; March 1, 2006;*
13 *Readopted Eff. January 1, 2019;*
14 *Amended Eff. ~~January 1, 2024;~~ March 1, 2024; September 1, 2021.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Board of Nursing

RULE CITATION: 21 NCAC 36 .0318

RECOMMENDATION DATE: February 7, 2024

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

Paragraph (e) requires clinical preceptors to have “competencies, assessed by the program, related to the area of assigned clinical teaching responsibilities.”

It is unclear what “competencies” the preceptors are required to possess, nor the standard by which the programs are to assess the preceptors.

Paragraph (f) program faculty members “shall be responsible for” “student admission, progression, and graduation requirements” and the “development, implementation, and evaluation of the curriculum.”

These terms are undefined and without citation to specific rules, the language employed provides little guidance to an individual faculty member about his or her responsibilities or prohibitions. The ambiguous language could be perverted by a nefarious Board to discipline licensed faculty members without any clear guidance or regulation of what is required of individual faculty members.

Accordingly, staff recommends objection pursuant to G.S. 150B-21.9(2) for ambiguity.

William W. Peaslee
Commission Counsel

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

21 NCAC 36 .0318 is amended, with changes, as published in NCR 38:06, pages 340 - 353 as follows:

21 NCAC 36 .0318 FACULTY

(a) The [nursing] program shall develop Policies policies for nursing program faculty members shall be consistent with those for other faculty of the controlling institution, with variations as needed due to the nature of the nursing curriculum.

(b) Fifty percent or more of the nursing faculty per program shall hold a graduate degree.

(c) Nurses licensed pursuant to this Chapter who are full-time and part-time faculty and who teach in a program leading to initial licensure as a nurse shall:

(1) hold an active unencumbered license or multistate licensure privilege to practice as a registered nurse in North Carolina;

(2) hold either a baccalaureate in nursing or a graduate degree in nursing from an accredited institution;

(3) have two calendar years or the equivalent of full-time ~~clinical~~ experience as a registered nurse. A Full time full-time registered nurse is a registered nurse employed by the institution program who is regularly assigned to work at least 40 hours each week in the a position of faculty member; position;

(4) ~~if newly employed in a full-time faculty position on or after January 1, 2016, full-time faculty shall~~ hold a graduate degree from an accredited institution or obtain a graduate degree in nursing from an accredited institution within five years of initial full-time employment;

(5) prior to or within the first three years of employment, have education in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to faculty assignment. Once completed, this education need not be repeated if the employing organization is changed. This education may be demonstrated by one of the following:

(A) completion of 45 contact hours of Board-approved continuing education courses;

(B) completion of a certificate program in nursing education;

(C) nine semester hours of graduate course work in adult learning and learning principles;

(D) national certification in nursing education; or

(E) documentation of completion of structured, individualized development activities of at least 45 contact hours approved by the Board. Criteria for approval shall include content in the faculty role in the curriculum implementation, curricular objectives to be met and evaluated, review of strategies for identified student population, and expectations of student and faculty performance. performance; or

(F) ~~individuals with prior teaching experience in an academic [nursing program] setting seeking a faculty position [may] shall~~ be evaluated by the Program Director to assess each individual's prior teaching experience commensurate with formal education in teaching and learning principles for adult education including curriculum development, implementation, and evaluation, appropriate to faculty assignment.

1 (6) maintain competence pursuant to Rule .0232 of this Chapter in the areas of assigned responsibility;
2 and responsibility.

3 ~~(7) have knowledge of current nursing practice for the registered nurse and the licensed practical nurse.~~

4 (d) Interdisciplinary faculty who teach in nursing program courses shall have academic preparation, including a
5 conferred degree, with applicable licensure or certification be licensed or certified in the content area in which they
6 are teaching.

7 (e) Clinical preceptors shall have competencies, assessed by the nursing program, related to the area of assigned
8 clinical teaching responsibilities. ~~Clinical preceptors may be used to enhance faculty directed clinical learning
9 experiences after a student has received basic instruction for that specific learning experience.~~ Clinical preceptors shall
10 hold an active unencumbered license to practice as a registered nurse in North Carolina.

11 (f) Nurse Program faculty members shall have the authority and responsibility be responsible for:

12 (1) student admission, progression, and graduation requirements; and

13 (2) the development, implementation, and evaluation of the curriculum.

14 ~~(g) Nurse faculty members shall be academically qualified and sufficient in number to implement the curriculum as
15 required by the course objectives, the levels of the students, the nature of the learning environment, and to provide for
16 teaching, supervision, and evaluation.~~

17 ~~(h)(g)~~ The ~~controlling institution~~ program shall provide workshops and presentations devoted to faculty
18 development.

19 ~~(i)(h)~~ The faculty-student ratio for faculty-directed preceptor clinical experiences shall be no greater than 1:15. The
20 faculty-student ratio for all other clinical experiences shall be no greater than 1:10.

21
22 *History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.83;*

23 *Eff. February 1, 1976;*

24 *Amended Eff. December 1, 2016; January 1, 2015; August 1, 2011; November 1, 2008; July 1, 2006;*

25 *July 1, 2000; January 1, 1996; June 1, 1992; January 1, 1989; January 1, 1984;*

26 *Readopted Eff. January 1, 2019;*

27 *Amended Eff. [January 1, 2024;] March 1, 2024; September 1, 2021.*

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AGENCY: North Carolina Board of Nursing

RULE CITATION: 21 NCAC 36 .0321

RECOMMENDATION DATE: February 7, 2024

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

Paragraph (l) requires requests for approval of changes in the curriculum be submitted to the Board "on a form posted on the Board's website."

The contents or substantive requirements of the form are not in the rule, nor does it appear that the Board has adopted them in any other rule.

Forms and the contents or substantive requirements contained therein meet the definition of a "rule" pursuant to G.S. 150B-2(8a)d.

Without contents or substantive requirements in a rule that which is required is unclear and ambiguous.

Further, the rule requires adherence to a document which has not and cannot be incorporated by reference pursuant to G.S. 150B-21.6 as the document has not been adopted pursuant to the APA. Therefore, the rule's adoption was not in accordance with the APA.

Accordingly, staff recommends objection pursuant to G.S. 150B-21.9(2) and (4).

William W. Peaslee
Commission Counsel

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

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(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

§ 150B-2. Definitions.

As used in this Chapter, the following definitions apply:

- (1) Administrative law judge. - A person appointed under G.S. 7A-752, 7A-753, or 7A-757.
- (1a) Adopt. - To take final action to create, amend, or repeal a rule.
- (1b) Agency. - An agency or an officer in the executive branch of the government of this State. The term includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.
- (1c) Codifier of Rules. - The person appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings pursuant to G.S. 7A-760(b).
- (1d) Commission. - The Rules Review Commission.
- (2) Contested case. - An administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. The term does not include rulemaking, declaratory rulings, or the award or denial of a scholarship, a grant, or a loan.
- (2a) Repealed by Session Laws 1991, c. 418, s. 3.
- (2b) Hearing officer. - A person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.
- (3) License. - Any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes, occupational licenses, and certifications of electronic poll books, ballot duplication systems, or voting systems under G.S. 163-165.7.
- (4) Licensing. - Any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. The term does not include controversies over whether an examination was fair or whether the applicant passed the examination.
- (4a) Occupational license. - Any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.
- (4b) Occupational licensing agency. - Any board, commission, committee, or other agency of the State that is established for the primary purpose of regulating the entry of persons into, or the conduct of persons within

a particular profession, occupation, or field of endeavor, and that is authorized to issue and revoke licenses. The term does not include State agencies or departments that may as only a part of their regular function issue permits or licenses.

- (5) Party. - Any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate.
- (5a) Person. - Any natural person, partnership, corporation, body politic, and any unincorporated association, organization, or society that may sue or be sued under a common name.
- (6) Person aggrieved. - Any person or group of persons of common interest directly or indirectly affected substantially in his, her, or its person, property, or employment by an administrative decision.
- (7) Recodified as subdivision (5a) of this section by Session Laws 2021-88, s. 16(a), effective July 22, 2021.
- (7a) Policy. - Any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency that is intended and used purely to assist a person to comply with the law, such as a guidance document.
- (8) Residence. - Domicile or principal place of business.
- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
 - a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
 - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
 - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.

- d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
 - e. Statements of agency policy made in the context of another proceeding, including:
 - 1. Declaratory rulings under G.S. 150B-4.
 - 2. Orders establishing or fixing rates or tariffs.
 - f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
 - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
 - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.
 - i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
 - j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
 - k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
 - l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.
- (8b) Repealed by Session Laws 2011-398, s. 61.2, effective July 25, 2011.
- (8c) Substantial evidence. - Relevant evidence a reasonable mind might accept as adequate to support a conclusion.
- (9) Repealed by Session Laws 1991, c. 418, s. 3. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, ss. 61, 62; 1977, c. 915, s. 5; 1983, c. 641, s. 1; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(2)-1(5); 1987, c. 878, ss. 1, 2, 21; 1987 (Reg. Sess., 1988), c. 1111, s. 17; 1991, c. 418, s. 3; c. 477, ss. 3.1, 3.2, 9; 1995, c. 390, s. 29; 1996, 2nd Ex. Sess., c. 18, s. 7.10(g); 1997-456, s. 27; 2003-229, s. 12; 2007-491, s. 44(1)b; 2011-13, s. 2; 2011-398, ss. 15, 61.2; 2013-188, s. 7; 2013-382, s. 9.1(c); 2013-413, s. 1; 2015-2, s. 2.2(c); 2015-241, ss. 7A.3, 30.16(a); 2017-6, s. 3; 2018-13, s. 3.8(b); 2018-146, ss. 3.1(a), (b), 4.5(b); 2021-88, s. 16(a), (b).)

§ 150B-21.6. Incorporating material in a rule by reference.

An agency may incorporate the following material by reference in a rule without repeating the text of the referenced material:

- (1) Another rule or part of a rule adopted by the agency.
- (2) All or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.
- (3) Repealed by Session Laws 1997-34, s. 5.

In incorporating material by reference, the agency must designate in the rule whether or not the incorporation includes subsequent amendments and editions of the referenced material. The agency can change this designation only by a subsequent rule-making proceeding. The agency must have copies of the incorporated material available for inspection and must specify in the rule both where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material.

A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments and editions of the referenced material. A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(c) is a statement that the rule includes subsequent amendments and editions of the referenced material. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 64; 1981 (Reg. Sess., 1982), c. 1359, s. 5; 1983, c. 641, s. 3; c. 768, s. 19; 1985, c. 746, s. 1; 1987, c. 285, s. 13; 1991, c. 418, s. 1; 1997-34, s. 5.)

1 21 NCAC 36 .0321 is amended, with changes, as published in NCR 38:06, pages 340 - 353 as follows:

2
3 **21 NCAC 36 .0321 CURRICULUM**

4 (a) The nursing program curriculum shall:

- 5 (1) be planned by nursing members of the program faculty;
- 6 (2) reflect the stated program philosophy, purposes, and objectives, pursuant to 21 NCAC 36
7 .0302(b)(2);
- 8 (3) be consistent with Article 9A of G.S. 90 and the Rules in this Chapter governing the practice of
9 nursing;
- 10 (4) define the level of performance required to pass each course in the curriculum;
- 11 (5) enable a student to develop the nursing knowledge, skills, and abilities necessary for competent
12 practice consistent with the level of licensure and scope as set forth in 21 NCAC 36 .0221, .0224,
13 .0225, and .0231;
- 14 (6) include content in the biological, physical, social, and behavioral sciences to provide a foundation
15 for competent and effective nursing practice;
- 16 (7) provide students the opportunity to acquire and demonstrate, through didactic content and clinical
17 experience under faculty supervision, the knowledge, skills, and abilities required for effective and
18 competent nursing practice in the areas of medical/surgical, obstetric, pediatric, psychiatric/mental
19 health, and community [health] health, across the lifespan; and
- 20 (8) be revised as necessary to reflect changes and advances in health care and its delivery.

21 (b) Didactic content and supervised clinical experience across the lifespan appropriate to program type shall include:

- 22 (1) implementing quality and safety principles and practices minimizing the risk of harm to clients and
23 providers through both system effectiveness and individual performance; performance to include
24 clinical judgment, skill in clinical management, time management, and emergency preparedness;
- 25 (2) using informatics to communicate, manage knowledge, mitigate error, and support decision making;
- 26 (3) employing evidence-based practice to integrate the best research with clinical expertise and client
27 values for optimal care, including skills to identify and apply best practices to nursing care;
- 28 (4) providing client-centered, culturally competent care by:
 - 29 (A) respecting client differences, values, preferences, and expressed needs;
 - 30 (B) involving clients in decision-making and care management;
 - 31 (C) coordinating and managing continuous client care consistent with the level of licensure.
32 This shall include a demonstrated ability to delegate and supervise others and provide
33 leadership within the profession appropriate for program type; and
 - 34 (D) promoting healthy lifestyles for clients and populations;
- 35 (5) working in interdisciplinary teams to cooperate, collaborate, communicate, engage in patient
36 teaching consistent with the level of licensure, and integrate client care and health promotion; ~~and~~

1 (6) participating in quality improvement processes to measure client outcomes, identify hazards and
2 errors, and develop changes in client ~~care.~~ care; and

3 (7) legal and ethical issues and professional responsibilities of the licensed nurse.

4 (c) Clinical ~~experience~~ [experience,] experience hours, traditional or simulated, shall be comprised of sufficient hours
5 to accomplish the curriculum, objectives of the curriculum, [and with the exception of observational experiences and
6 the focused client care experience as noted in Paragraphs (e) and (f) of this Rule,] shall be supervised by qualified [on-
7 site] faculty pursuant to 21 NCAC 36 .0318, and shall ensure students' ability to practice at an entry level.

8 (d) All student clinical experiences, including those with preceptors, shall be directed by nursing faculty.

9 (e) A focused client care experience with a minimum of 120 hours shall be provided in the final year of curriculum
10 implementation for programs preparing registered nurses.

11 (f) A focused client care experience with a minimum of 90 hours shall be provided in the final semester of the
12 curriculum for programs preparing practical nurses.

13 (g) Learning experiences and methods of instruction, including distance education methods, shall be consistent with
14 the written curriculum plan and shall demonstrate logical curricular progression.

15 (h) Remediation strategies for students shall be in place at the beginning of each course and include processes to
16 remediate errors in the clinical setting.

17 ~~(h)(i)~~ Objectives for each course shall indicate the knowledge, skills, and abilities expected for competent student
18 performance. These objectives shall:

- 19 (1) indicate the relationship between the classroom learning and the application of this learning in the
20 clinical experience;
- 21 (2) serve as criteria for the selection of the types of and settings for learning experiences; and
- 22 (3) serve as the basis for evaluating student performance.

23 ~~(i)(j)~~ Student course syllabi shall include a description and outline of:

- 24 (1) the course content;
- 25 (2) the learning environments and activities;
- 26 (3) when the course is taken in the curriculum;
- 27 (4) allocation of time for didactic content, clinical experience, laboratory experience, and simulation;
28 and
- 29 (5) methods of evaluation by faculty of student performance, including all evaluation tools used in the
30 course.

31 ~~(j)(k)~~ Each course shall be implemented in accordance with and evaluated by reference to the student course syllabus.

32 ~~(k)(l)~~ Requests for approval of changes ~~in,~~ in the currently approved curriculum, or expansion of, the program,
33 accompanied by all required documentation, shall be submitted in the format provided by to the Board on a form
34 posted on the Board's website at www.ncbon.com at least ~~30~~ 60 days prior to implementation for approval by the
35 Board. Criteria for approval shall include program approval status, the availability of classrooms, laboratories, clinical
36 placements, equipment, and supplies and faculty sufficient to implement the curriculum to an increased number of
37 students. Approval shall be required for any increase in enrollment that exceeds, by more than 10 students, the

1 ~~maximum number approved by the Board.~~ Requests for expansion in enrollment shall be considered only for programs
2 with full approval status that demonstrate at least a three-year average licensure examination pass rate equal to or
3 greater than the North Carolina three-year average pass rate for program type. status.

4 ~~(d)~~(m) The nursing education program shall notify the Board at least ~~30~~ 45 days prior to implementation of:

- 5 (1) alternative or additional program schedules; and
- 6 (2) planned decrease in the Board-approved student enrollment number to accurately reflect program
7 capacity; and capacity.
- 8 ~~(3) changes that alter the currently approved curriculum.~~

9 (n) The program shall have written policies and procedures on the following:

- 10 (1) short-term and long-term plans for integrating simulation into the curriculum;
- 11 (2) method of debriefing for each simulated activity; and
- 12 (3) a plan for orienting faculty to simulation.

13 ~~(m)~~(o) For all programs using simulation experiences substituted for clinical experience time, the nursing education
14 program shall:

- 15 (1) demonstrate that simulation faculty have been formally educated and maintain the competencies in
16 simulation and debriefing; and
- 17 (2) provide a simulation environment with adequate faculty, space, equipment, and supplies that
18 simulate realistic clinical experiences to meet the curriculum and course objectives.

19 ~~(n) Programs not holding national nursing accreditation shall limit simulation experiences to no more than 25 percent~~
20 ~~in each course, including the focused client care experience.~~

21 ~~(o)~~(p) Programs ~~holding national nursing accreditation~~ shall limit simulation experiences to:

- 22 (1) no more than 25 percent in the focused client care experience; and
- 23 (2) no more than 50 percent of clinical experience time in each course.

24 ~~(p)~~(q) External standardized examinations shall not be used to determine a student's progression or graduation in a
25 nursing education program preparing students for initial nurse licensure. When used, external examinations shall not
26 weigh more than 10 percent of the final course grade or final course points calculation.

27
28 *History Note: Authority G.S. 90-171.23(b)(8); 90-171.38;*
29 *Eff. February 1, 1976;*
30 *Amended Eff. June 1, 1992; January 1, 1989; January 1, 1984;*
31 *Temporary Amendment Eff. October 11, 2001;*
32 *Amended Eff. December 1, 2016; December 1, 2005; August 1, 2002; July 1, 2023.*
33 *Readopted Eff. January 1, ~~2019.~~ 2019;*
34 *Amended Eff. [January 1, 2024] March 1, 2024.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Board of Nursing

RULE CITATION: 21 NCAC 36 .0322

RECOMMENDATION DATE: February 7, 2024

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

Paragraph (a) requires that programs provide "facilities consistent with the totals need of the program." This is an ambiguous standard.

Paragraph (b) requires the program to "provide students with educational reference materials that are required as part of the curriculum pursuant to Rule .0321 of this Section." While Rule .0321 establishes a curriculum, it does not identify any materials which a program would be required to provide. It is unclear what programs are required to provide to students. Further, it is unclear what the Board means by "provide." It could mean granting access or transferring title.

Accordingly, staff recommends objection pursuant to G.S. 150B-21.9(2) for ambiguity.

William W. Peaslee
Commission Counsel

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 21 NCAC 36 .0322 is amended, **with changes**, as published in NCR 38:06, pages 340 - 353 as follows:

2
3 **21 NCAC 36 .0322 FACILITIES**

4 (a) ~~Campus facilities shall be appropriate in type, number, and accessibility for~~ **The program shall secure facilities**
5 **consistent with** the total needs of the program.

6 ~~(b) Classrooms, laboratory and simulation space, and conference rooms shall be sufficient in size, number, and types~~
7 ~~for the number of students and purposes for which the rooms are to be used. Lighting, ventilation, location, and~~
8 ~~equipment shall be suitable for the number of students and purposes for which the rooms are to be used.~~

9 ~~(c)(b) Office~~ **The program shall make available office** and conference space for ~~nursing~~ program faculty members
10 ~~shall be appropriate and available~~ for uninterrupted work and privacy, including conferences with students.

11 ~~(d)(c) Learning resources, including~~ **The program shall provide students with** educational reference materials ~~and~~
12 ~~clinical experiences, shall be comprehensive, current, developed with nursing faculty input, accessible to students and~~
13 ~~faculty and shall support the implementation that are required as part~~ of the ~~curriculum. curriculum~~ pursuant to Rule
14 **.0321 of this Section.**

15
16 *History Note: Authority G.S. 90-171.23(b)(8); 90-171.38;*

17 *Eff. February 1, 1976;*

18 *Amended Eff. January 1, 1996; June 1, 1992; January 1, 1989; May 1, 1988;*

19 *Temporary Amendment Eff. October 11, 2001;*

20 *Amended Eff. December 1, 2016; April 1, 2006; August 1, 2002; July 1, 2023.*

21 *Readopted Eff. January 1, ~~2019.~~ 2019.*

22 *Amended Eff. [January 1, 2024.] March 1, 2024.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: North Carolina Board of Nursing

RULE CITATION: 21 NCAC 36 .0323

RECOMMENDATION DATE: February 7, 2024

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Paragraph (e) requires "programs" to file an annual report; however, the Board does not state what information must be included in the report.

Accordingly, staff recommends objection pursuant to G.S. 150B-21.9(2) for ambiguity.

William W. Peaslee
Commission Counsel

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

21 NCAC 36 .0323 is amended, with changes, as published in NCR 38:06, pages 340 - 353 as follows:

21 NCAC 36 .0323 RECORDS AND REPORTS

~~(a) The controlling institution's publications describing the nursing program shall be current and accurate.~~

~~(b)(a) The controlling institution program shall maintain a system for maintaining official records. records consistent with the policies of the controlling institution.~~ Current and permanent student records shall be stored in a secure manner that prevents physical damage and unauthorized access.

~~(c)(b) Both permanent and current records shall be available for review by Board staff.~~

~~(d)(c) The official permanent record for each graduate shall include documentation of graduation from the program and a transcript of the individual's achievement in the program.~~

~~(e)(d) The record for each currently enrolled student shall contain up-to-date and complete information, including the following:~~

- ~~(1) documentation of admission criteria met by the student;~~
- ~~(2) documentation of high school graduation, high school equivalent, or earned credits from post-secondary institution approved pursuant to G.S. 90-171.38(a); and~~
- ~~(3) a transcript of credit hours achieved in the classroom, laboratory, and clinical instruction for each course that reflects progression consistent with program policies.~~

~~(f)(c) The nursing program shall file an annual report with the Board records, data, and reports in order to furnish information concerning operation of the program as prescribed in the rules in this Section, including:~~

- ~~(1) an annual report to be filed with the Board by November 1 of each year; year. [This report shall include information about the program's use of simulation;] The annual report shall be available to the program director through the Board's website at www.ncbon.com.~~

~~(2)(f) In addition to the annual report in (c), a program description report for non-accredited programs filed with the Board at least 30 days prior to a scheduled review by the Board; and shall file a program description report with the Board at least 30 days prior to a scheduled review by the Board. The program description report shall be available on the Board's website at www.ncbon.com.~~

~~(g) The program shall concurrently submit to the Board all communications regarding accreditation that are submitted to the accrediting body.~~

~~(h) The Board may require additional records and reports for review at any time to provide evidence and substantiate compliance with the rules in this Section by a program and its controlling institutions.~~

~~(i) The program shall notify the Board~~

- ~~(3) notification by institution administration of any change of the nursing program director. director This notification shall include a curriculum vitae for the new director and shall be submitted no later than at least 10 business days before the effective date of prior to the change.~~

~~(g) All communications relevant to accreditation shall be submitted to the Board at the same time that the communications are submitted to the accrediting body.~~

1 ~~(h) The Board may require additional records and reports for review at any time to provide evidence and substantiate~~
2 ~~compliance with the rules in this Section by a program and its controlling institutions.~~

3 (i)(j) The part of the application for licensure by examination to be submitted to the Board by the nursing program
4 shall include a statement verifying satisfactory completion of all requirements for program completion and the date of
5 completion. The nursing program director shall verify to the Board in writing all students who have completion of
6 requirements to the Board completed the program no later than one month following completion of the Board-
7 approved nursing program.

8
9 *History Note: Authority G.S. 90-171.23(b)(8); 90-171.38;*

10 *Eff. February 1, 1976;*

11 *Amended Eff. December 1, 2016; January 1, 2015; December 1, 2005; January 1, 2004; June 1,*
12 *1992; January 1, 1989; January 1, 1984;*

13 *Readopted Eff. January 1, 2019;*

14 *Amended Eff. [January 1, 2024;] March 1, 2024; November 1, 2020.*