

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.*