

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Nursing

RULE CITATION: 21 NCAC 36 .0405

DEADLINE FOR RECEIPT: Thursday, February 13, 2020

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends that the following technical changes be made:

What is the intent of (a)? Accept it for purposes of what? Is the intent here that any course approved by DHHSR can count as the base of education for a Nurse Aide II? I'm trying to understand how these fit together.

In (b), do you mean "the Board shall approve nurse aide II courses in accordance with this Rule"? Maybe this Paragraph?

In (b), by "may", do you mean "shall" in "may be offered..."

In (b)(1)(E)(i) and (F)(i), delete or define "successful" (unless this is already defined elsewhere in your Rules.)

In (b)(1)(E)(i) and (F)(i), are all nurse aide I classes approved by DHHSR or are some of these approved by you all? Given that (a) indicates that nurse aide classes are approved by DHHSR, here, do you mean "completion of a nurse aide I course approved by DHHSR"? I understand that if you all have any responsibility for approving nurse aide I courses, then this language doesn't work.

In (b)(1)(E)(iii), delete the "and" at the end.

Add either "and" or "or" at the end of (b)(1)(E)(iii)

In (b)(1)(G), delete or define "timely"

In (b)(2), what is a "Board-approved registered nurse faculty"? Is this just a registered nurse? If not, I assume that additional information on this is provided elsewhere in rule or statute? Here, do you mean "a nurse faculty meeting the requirements of Subparagraph (b)(3) of this Rule"?

In (b)(2), what is the Bulletin? Is this a policy as defined in G.S. 150B-2(7a)? If so, delete "Changed made by the Board in the nurse aide II course shall be published in the Bulletin"

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and posted on the Board's website at www.ncbon.com." If this is not a policy, what is the intent of this language? What are these changes and how are they made?

In (b)(2), what is "simulation"? Is this a term of art for your regulated public?

In (b)(2), what is meant by "A nurse aide II education course shall not use simulation as a substitute for the required 80 hours of clinical experience. Competency validation of up to three required nurse aide II skills shall be permitted in the simulated laboratory environment if validation of such skills is not available in the clinical experience site."? As written, these statements appear to conflict with each other. Please review and clarify.

Please write (b)(5) in active voice and say who is to do what. Here, I'm assuming that the responsibility is on the school, not the Board. So, a suggestion would be something like "When an approved nurse aide II course closes, it shall notify the Board of the closing and how student records will be stored."

In (b)(5), what is meant by "closes"? Is this the end of the class or is this when a school or program terminates in its entirety?

In (b)(5) and (f)(3)(C), delete or define "permanently" Are they really required to maintain these records forever? Maybe they are. Is this already provided elsewhere in Rule or statute? If so, it's okay. Please note that you don't need to define it in both places if you do this.

In (c), what is a "Board-approved format"? Please delete this language and say how they are to submit this report.

In (c), I don't understand the cross-reference to Paragraph (e). Paragraph (e) appears to speak to a "renewal" type process, not an administrative action. Please see my notes on (e) regarding this issue.

Overall, what is the intent of (e)? This appears to be a sort of renewal process that where the Board reviews the approval status of a course every year. G.S. 90-171.40 says "at least eight years or more often as considered necessary." I don't necessary have issue with your authority to do this if you're acting under 90-171.40 in making this determination, but I think it needs to be more clear.

Assuming that (e) is intended to address G.S. 90-171.40, please track the language of the statute more closely. For example, is the "approval with stipulations" intended to address a program that has not met or maintained the standards by the Board (your Rules) and for which you all have provided notice of the deficiencies? Please review and clarify in light of G.S. 90-171.40.

In (f), I assume here, by "If stipulations have not been met as specified by the Board", you mean "If the program fails to correct the deficiencies..."?

In (f)(3)(A), what is meant by "this action shall constitute discontinuance of the course"? Do you mean "The course shall cease operation"? Please write this in active voice and say who shall do what.

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In (f)(3), please provide some lead in language for (f)(3)(A) through (C). I assume that you mean something like "...the board shall withdraw approval and the course sponsors shall:" I don't think that this language is wholly accurate for your purposes, but gives you an idea of what I'm looking for.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

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21 NCAC 36 .0405 is proposed to be amended as follows:

21 NCAC 36 .0405 APPROVAL OF NURSE AIDE EDUCATION COURSES

(a) The Board shall accept nurse aide I courses that are approved by DHSR.

(b) The Board shall approve nurse aide II courses. Nurse aide II courses may be offered by a State-licensed individual, agency, or educational institution after the course is approved by the Board.

(1) Each entity desiring to offer a nurse aide II course shall submit a course approval application 60 days prior to offering the course. It shall include documentation of the following standards:

(A) the students shall be taught and supervised by qualified faculty as defined in Subparagraph (b)(3) of this Rule;

(B) the clinical-experience faculty to student ratio shall not exceed 1:10;

(C) the selection and utilization of clinical facilities shall support the course curriculum as outlined in Subparagraph (b)(2) of this Rule;

(D) a written contract shall exist between the course provider and clinical facility prior to student clinical experience in the facility;

(E) admission requirements for all programs except those offered as career and college promise tract programs shall include:

(i) successful completion of nurse aide I ~~training~~ course or DHSR-established equivalent and ~~current~~ active nurse aide I listing on DHSR Registry;

(ii) High School or High School Equivalency diploma; and

(iii) other admission requirements as identified by the course provider; and

(F) Admission requirements for all career and college promise tract programs shall include:

(i) successful completion of a nurse aide I course or DHSR-established equivalent;

(ii) active nurse aide I listing on DHSR Registry after the first attempt to pass nurse aide I test and within no more than five calendar days from enrollment in the nurse aide II course;

(iii) expected High School diploma or High School Equivalency diploma not more than three months from completion of the nurse aide II course;

(iv) other admission requirements as identified by the course provider; and

~~(F)~~(G) a procedure for timely processing and disposition of course and student complaints shall be established.

(2) Nurse aide II courses shall include a minimum of 80 hours of theory and 80 hours of clinical instruction, supervised by a Board-approved registered nurse faculty, consistent with the nurse aide II curriculum as defined by the Board in Rule .0403(b) of this Section. Changes made by the Board in the nurse aide II course shall be published in the Bulletin and posted on the Board's website at www.ncbon.com. A nurse aide II education course shall not use simulation as a substitute for the required 80 hours of clinical experience. Competency validation of up to three required nurse aide

- 1 II skills shall be permitted in the simulated laboratory environment if validation of such skills is not
2 available in the clinical experience site.
- 3 (3) Minimum competency and qualifications for faculty for the nurse aide II courses shall include:
- 4 (A) an active unencumbered license to practice as a registered nurse in North Carolina;
- 5 (B) at least two years of direct patient care experiences as a registered nurse; and
- 6 (C) experience teaching adult learners.
- 7 (4) Each nurse aide II course shall furnish the Board with records, data, and reports requested by the
8 Board that provide information concerning the operation of the course and all individuals who
9 attended the course within the past five years.
- 10 (5) When an approved nurse aide II course closes, the Board shall be notified in writing by the course.
11 The Board shall be informed as to the permanent storage of student records.
- 12 (6) A Board-approved nurse aide II course that will provide nurse aide II competency evaluation shall
13 obtain Board approval prior to offering competency evaluation.
- 14 (A) Board-approved nurse aide II course shall be in full approval status for at least one year
15 prior to submitting an application to provide nurse aide II competency evaluation; and
- 16 (B) full approval course status shall be maintained to provide nurse aide II competency
17 evaluation.
- 18 (c) An annual course report shall be submitted by the course director to the Board in a Board-approved format by
19 March 31 of each year. Failure to submit an annual report shall result in administrative action affecting approval status
20 as described in Paragraphs (e) and (f) of this Rule.
- 21 (d) Complaints regarding nurse aide II courses shall result in an on-site survey by the Board if necessary to resolve
22 the complaint.
- 23 (e) Approval status shall be determined by the Board using the annual course report, survey report, and other data
24 submitted by the program, agencies, or students. The determination shall result in full approval or approval with
25 stipulations.
- 26 (f) If stipulations have not been met as specified by the Board, a hearing shall be held by the Board regarding course
27 approval status. A course may continue to operate while awaiting the hearing before the Board; however, in the case
28 of summary suspension of approval as authorized by G.S. 150B-3(c), the course shall immediately cease operation.
- 29 (1) When a hearing is scheduled, the Board shall cause notice to be served on the course and shall
30 specify a date for the hearing, to be held not less than 20 days from the date on which notice is given.
- 31 (2) If evidence presented at hearing shows that the course is complying with all federal and State law,
32 including the rules in this Section, the Board shall assign the course full approval status.
- 33 (3) If evidence presented at hearing shows that the course is not complying with all federal and State
34 law, including the rules in this Section, the Board shall withdraw approval.
- 35 (A) This action shall constitute discontinuance of the course.

- 1 (B) The parent institution shall present a plan to the Board for transfer of students to approved
2 courses or shall fully refund tuition paid by the student. Closure shall take place after the
3 transfer of students to approved courses within a time frame established by the Board.
4 (C) The parent institution shall notify the Board of the arrangements for storage of permanent
5 records.
6

7 *History Note: Authority G.S. 90-171.20(2)(4)(7)d.,e.,g.; 90-171.39; 90-171.40; 90-171.43(4); 90-171.55; 90-*
8 *171.83; 42 U.S.C.S. 1395i-3 (1987);*
9 *Eff. March 1, 1989;*
10 *Amended Eff. November 1, 2008; April 1, 2003; August 1, 2002; July 1, 2000; December 1, 1995;*
11 *March 1, 1990;*
12 *Readopted Eff. January 1, 2019.*
13 *Amended Eff. March 1, 2020.*