



GOVERNOR GREG ABBOTT

To: Kathy Shipp, President
Kathy Thomas, Executive Director
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Texas Board of Nursing

From: Erin Bennett, Director
Regulatory Compliance Division, Office of the Governor

Date: July 22, 2020

Subject: Proposed Title 22 Texas Administrative Code Sections 217.4 and 217.5 (RCD Rule Review #2020-005)

I. Preface

The Texas Board of Nursing (“board”) proposed amendments to 22 TAC §§217.4 and 217.5 to establish criteria for board approval of credential evaluation services (“CESs”) to assess nursing education obtained in other countries for purposes of licensure in Texas.¹ The Regulatory Compliance Division (“division”) initiated a review of the proposed rules pursuant to Section 57.106(g), Texas Occupations Code, and the board submitted proposed §§217.4 and 217.5 to the division for review on May 20, 2020. The division invited public comments on the proposed rules for a 30-day period ending June 25, 2020, but received no comments.

II. Analysis

Proposed §217.4 establishes the prerequisites for an individual to obtain an initial nursing license by examination if the individual graduated from a nursing education program outside of the United States, and proposed §217.5 outlines the requirements for a temporary license or permanent license by endorsement sought by nurses who have been practicing in another state within the past four years. Currently, both rules require applicants educated abroad to verify their educational qualifications by obtaining a full education course-by-course report from one of three specified CESs. The proposed amendments instead allow applicants educated abroad to obtain a report from any CES that meets certain minimum standards for board approval. The division agrees with the board that, compared to the current rules, the proposed amendments allow more CESs to provide these reports and could increase competition for CES reporting

¹ 45 Tex. Reg. 1941 (2020) (to be codified as amendments to 22 TAC §§217.4 and 217.5) (proposed March 20, 2020) (Tex. Bd. of Nursing).

services provided to applicants educated abroad.² Notwithstanding that, the establishment of criteria for board approval of CESs in proposed §§217.4 and 217.5 still creates a barrier to CESs' participation in the market for providing reporting services to applicants educated abroad. Thus, the proposed rules affect market competition pursuant to Section 57.105(d)(1), Texas Occupations Code, and the division initiated a review to assess their consistency with state policy.

The board has broad authority to evaluate applicants' education for licensure. Section 301.252(a)(2), Texas Occupations Code, requires all applicants seeking a registered nurse or vocational nurse license to complete an approved course of study. Sections 301.252(b) and (c) explicitly allow the board to waive that requirement for vocational nurse applicants who complete a level of education acceptable to the board in another state or country. Additionally, Section 301.259 allows the board to issue a permanent license by endorsement to a nurse from another jurisdiction if the other jurisdiction "required in its examination the same general degree of fitness required by [Texas]." And, Section 301.260(a)(2) requires applicants for a temporary license by endorsement to demonstrate their eligibility for an initial license in Texas, which includes education qualifications. The board uses this specific authority, along with its authority in Sections 301.151 and 301.157, to allow applicants educated abroad to seek an initial license or license by endorsement if their education is comparable to that required of applicants educated in Texas.³

CES reports provide the board with a "reliable method for evaluating the education of an individual who graduates from a nursing program outside the jurisdiction of the United States and seeks licensure in Texas."⁴ Proposed §§217.4 and 217.5 facilitate the board's evaluation of such applicants' education by requiring CES reports to include a course-by-course analysis of nursing academic records and to describe the comparability of the foreign education to United States standards. Building on standards employed by other states, the proposed rules establish criteria to ensure CESs have sufficient knowledge and experience and an acceptable national reputation to accurately evaluate nursing education programs, and provide timely, responsive services to applicants and the board.⁵ Additional proposed criteria require CESs to use reliable, verifiable sources to evaluate education and inform the board of any identified fraud, furthering the goals in Section 301.451. The proposed rules are reasonably construed to ensure the board has a legitimate, reliable means of evaluating the qualifications of applicants educated abroad, and, thus, proposed §§217.4 and 217.5 are consistent with state policy.

Additional amendments in proposed §217.4 eliminate the prerequisite to verify applicants educated abroad hold either high school diplomas or equivalent credentials, as CESs verify that

² Rule Submission Memorandum from the Texas Board of Nursing (May 20, 2020), at 4 and 13 (on file with the Regulatory Compliance Division of the Office of the Governor).

³ *Id.*, at 3 and 12.

⁴ *Id.*, at 2 and 11.

⁵ *Id.*, at 2-4 and 11-13; Agency Response to Request for Additional Information (June 12, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

information as part of the credential evaluation process; repeal the fee for accustomation permits, which the board no longer charges; and modernize language requiring applicants to submit fingerprints for criminal background checks to reflect updated processes and the board's authority under Section 301.2511.⁶ Proposed §217.5 also eliminates additional jurisprudence education required of applicants for licensure by endorsement who have not taken the national nursing exam — the NCLEX — or practiced nursing in another state in the four years preceding their application, which duplicates the education received in the required nursing refresher course, orientation, or program of study.⁷ These amendments reduce redundancies and outdated language in the rules and are consistent with state policy.

III. Determination

Because the division has determined that proposed §§217.4 and 217.5 are consistent with state policy, the rules are approved by the division and may be finally adopted.

⁶ 45 Tex. Reg. 1941-43 (2020) (preamble to and statutory authority for proposed amendments to 22 TAC §217.4) (Tex. Bd. of Nursing).

⁷ 45 Tex. Reg. 1945 (2020) (preamble to proposed amendments to 22 TAC §217.5) (Tex. Bd. of Nursing).