STATEMENT OF EMERGENCY
201 KAR 20:070E.

This emergency amendment to an existing administrative regulation is being promulgated to meet an imminent threat to public health and welfare. The Commonwealth of Kentucky is experiencing a critical nursing shortage, as evidenced by the Governor declaring a state of emergency under Executive Order 2021-913. This emergency administrative regulation is being filed on an emergency basis under Kentucky Revised Statutes (KRS) 13A.190, 39A.180, 314.011, 314.041, 314.051, and 314.131(1), to meet an imminent threat to public health, safety and welfare and to address the nursing shortage by easing the provisional licensing requirement for nurse applicants who have not passed the National Council Licensure Examination (NCLEX). The existing regulation provides that a provisional license is revoked after one failed attempt to pass the NCLEX. This emergency administrative regulation differs from the existing administrative regulation because it provides applicants for nurse licensure two opportunities within six months to take and pass the NCLEX, before their provisional license is revoked for failing to pass the exam. It further limits their provisional licenses to a period of six months. This emergency administrative regulation will be replaced by an identical ordinary administrative regulation.

ANDY BESHEAR, Governor
JESSICA WILSON, President

BOARDS AND COMMISSIONS

Board of Nursing

(Emergency Amendment)

201 KAR 20:070E. Licensure by examination.

RELATES TO: KRS 194A.540, 314.041, 314.051(3), (6), 314.103, 314.109, 314.475

STATUTORY AUTHORITY: KRS 39A.190, 314.041(2), 314.051(3), 314.103, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Kentucky Board of Nursing to promulgate administrative regulations to implement the provisions of KRS 314.011 to 314.991. KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.103 authorizes the board to require a criminal background check investigation of an applicant or nurse. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. This administrative regulation establishes the requirements for the licensure of nurses by examination. This Emergency Amendment is promulgated pursuant to KRS 39A.190.

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program.

(1) To be eligible for licensure by examination, an applicant shall:

(a) Submit:

1. A properly executed application for licensure, as required by and incorporated by reference in 201 KAR 20:370, Section 1(1);
2. The licensure application fee as established in 201 KAR 20:240;
3. A criminal record check completed within six (6) months of the date of the application by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card, and including payment of any required fee to the KSP and the FBI;
4. A certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3);
5. A letter of explanation that addresses each conviction, if applicable;
6. A certified copy of any disciplinary action taken on any professional or business license in another jurisdiction with a letter of explanation or a report if there is any disciplinary action pending on any professional or business license in another jurisdiction; and
7. Evidence of completion of the jurisprudence examination required by KRS 314.041(4) for RN applications or KRS 314.051(4) for LPN applications;

(b) Notify the board as soon as a new address is established after submitting the application;

(c) Submit a copy of a marriage certificate, divorce decree, Social Security card, or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;

(d) While taking the examination, abide by and cooperate with security procedures adopted by the board; and

(e) Apply to take and pass the National Council Licensure Examination.

(2) An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office or until the board receives the results of the examination.

(3)

(a) Except as provided in paragraph (b) of this subsection, the name of the applicant shall appear on the Certified List of Kentucky Program of Nursing Graduates or the Certified List of Out-of-state Program of Nursing Graduates.

(b) If the name does not appear on the list, the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements.

(c) The Certified List of Out-of-state Program of Nursing Graduates shall be submitted by the nurse administrator of the out-of-state program of nursing.

(4)

(a) The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

(b) The applicant shall complete the applicable~~[one-and-one-half (1.5) contact hour]~~ continuing education courses~~[course on pediatric abusive head trauma within three (3) years of licensure]~~ as required by 201 KAR 20:215, Section 5~~[(3)]~~.

(5) An applicant shall not be licensed until a report is received from the FBI pursuant to the request submitted pursuant to subsection (1)(a)3 of this section and any conviction is addressed by the board.

(6) A graduate of a school of nursing in Puerto Rico after September 1, 2006, in addition to the other requirements of this section, shall provide evidence of evaluation of the graduate's transcript by the Commission on Graduates of Foreign Nursing Schools or a credential evaluation organization that is a member of the National Association of Credentialing Evaluation Services. The evaluation shall indicate that the school of nursing is substantially equivalent to a school of nursing in this state.

Section 2. Retaking the Examination.

(1) An examination candidate who fails to achieve a passing result may retake the examination after meeting the requirements of Section 1 of this administrative regulation.

(2) The applicant shall not be eligible to take the examination more often than once every forty-five (45) days.

Section 3. Release of Examination Results. The board shall release examination results to:

(1) The candidate;

(2) Other state boards of nursing;

(3) The National Council of State Boards of Nursing, Inc.;

(4) The candidate's program of nursing; and

(5) An individual or agency who submits an applicant's or licensee's written authorization for their release, if applicable.

Section 4. Provisional License.

(1) An applicant shall request a provisional license by completing the application for licensure required by Section 1 of this administrative regulation.

(2)

(a) The board shall issue the provisional license to the applicant after Section 1(1)(a) and (3) of this administrative regulation are met, but not until the report is received from the FBI and any conviction is addressed by the board.

(b) In this~~[the]~~ case of a graduate of a foreign nursing school, the board shall issue the provisional license after the requirements of 201 KAR 20:480~~[, Section 1(1) and (4),]~~ are met.

(3) To qualify as direct supervision pursuant to KRS 314.041(5) and KRS 314.051(6), the nurse responsible for the applicant shall be physically present in the facility and immediately available to the applicant during work hours while the applicant holds a provisional license.

(4) The nurse responsible for the applicant shall be currently licensed or privileged to practice pursuant to KRS 314.475 as a nurse in Kentucky.

(5) Upon notification to the board that the applicant has failed the NCLEX examination after two (2) attempts, the provisional license shall be voided.

(6) A provisional license shall be valid for a period not to exceed six (6) months.

Section 5.

(1) An applicant not from a party state under the Nurse Licensure Compact who is issued a license and who does not have permanent residency in Kentucky shall be issued a license that indicates on the license that it is only valid in Kentucky.

(2) The board may request that an applicant provide evidence of the applicant's state of residence.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Certified List of Kentucky Program of Nursing Graduates", 6/10, Kentucky Board of Nursing; and

(b) "Certified List of Out-of-State Program of Nursing Graduates", 6/10, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

JESSICA WILSON, President

APPROVED BY AGENCY: March 25, 2022

FILED WITH LRC: April 6, 2022 at 9:00 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, May 23, 2022, at 10:00 a.m. (EDT) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, May 16, 2022, five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m. EDT) Tuesday, May 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey R. Prather, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 338-2851, email Jeffrey.Prather@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Jeffrey R. Prather

(1) Provide a brief summary of:

(a) What this administrative regulation does:
This administrative regulation establishes the requirements to obtain an RN or LPN license by examination.

(b) The necessity of this administrative regulation:
This administrative regulation is necessary because of KRS 314.041 and KRS 314.051.

(c) How this administrative regulation conforms to the content of the authorizing statutes:
of KRS 314.041 and KRS 314.051, which requires the Board to promulgate an administrative regulation concerning obtaining an RN or LPN license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
This administrative regulation assists in the effective administration of the statutes by setting the standards and process for obtaining an RN or LPN license.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:
The amendment includes recent educational requirements un-der 201 KAR 20:215; expands requirements for graduates of foreign programs of nursing to include passing a English proficiency exam under 201 KAR 20:480 before they are issued a provisional license. Provides that graduates of nursing programs may take two attempts to pass the National Council Li-censure Examination (NCLEX) before their provisional license is voided; and it limits provisional licenses to be valid for a period of six months.

(b) The necessity of the amendment to this administrative regulation:
To address changes to existing regulations, and to address the nursing shortage by allowing new graduates to stay in the workforce if they fail their first attempt at passing the NCLEX.

(c) How the amendment conforms to the content of the authorizing statutes:
The Board is authorized to make these changes.

(d) How the amendment will assist in the effective administration of the statutes:
By clearing up inconsistencies in current regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
Applicants for nursing licensure, number unknown.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Nurses of foreign programs of nursing will be required to pass an English proficiency exam before given a provisional license. All graduates of nursing programs will need to pass the NCLEX after a second attempt within 6 months.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Applicants will be allowed two attempts at the NCLEX to keep their provisional licenses.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

No additional costs.

(b) On a continuing basis:

None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increase is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

It does not.

(9) TIERING: Is tiering applied?

There is no tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 314.131.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

None.

(c) How much will it cost to administer this program for the first year?

No additional cost.

(d) How much will it cost to administer this program for subsequent years?

No additional cost.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: