

## Proposed 34 C.F.R. Part 604 – The Secretary’s Recognition of State Agencies for the Approval of Nurse Education From Laura King and Amy Ackerson

### Subpart A - General 604.1 – Scope

For the purposes of the Public Health Service Act, 42 U.S.C. 296, the Secretary recognizes State agencies for the approval of nurse education to ensure that those agencies are reliable authorities regarding the quality of the education or training offered by the programs or entities they approve.

604.2 - Definitions (a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 C.F.R. part 600:

(1) Secretary

(2) State

(b) The following definitions are contained in the regulations for the Secretary’s Recognition of Accrediting Agencies under the Higher Education Act of 1965, as amended, 34 C.F.R. part 602:

(1) Adverse action

(32) Recognition

(43) Senior Department official

(c) The following definitions apply to this part:

(1) State approval agency or agency means a legal entity, or that part of a legal entity, that conducts approval activities for programs of nurse education in a State and makes decisions concerning the approval status of programs of nurse education in that State.

(2) Approval means the status of public recognition that a State approval agency grants a program of nurse education that meets the agency’s standards and requirements.

### 604.3 – Publication of list

The Secretary publishes a list of recognized State approval agencies for the approval of programs of nurse education in their respective States, which includes State approval agencies that meet the criteria for recognition listed in subpart B of this part.

### 604.4 – Severability

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any other person, act, or practice will not be affected thereby.

### Subpart B – Criteria for Recognition

#### 604.10 – Purpose and organization

(a) The Secretary recognizes only State approval agencies with a statewide geographic area of operations.

(b) The State approval agency must have the appropriate legal authorization from the State to approve programs of nurse education.

#### 604.11 – Administrative and fiscal responsibilities

(a) The State approval agency must have an appropriate organization to carry out its approval activities and administrative staff qualified for their roles.

(b) The State approval agency must have a decision-making body, appointed or selected according to the requirements of relevant State law to make approval decisions.

(c) The State approval agency must have site visitors that are qualified by education and experience and trained by the agency on their responsibilities.

(d) The State approval agency must have clear and effective controls, including guidelines, to prevent or resolve conflicts of interest, or the appearance of conflicts of interest, by the agency's decision-making body, site visitors, and administrative staff.

604.12 – Approval standards The State approval agency must demonstrate that it has standards of approval that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of education or training provided by the programs of nurse education it approves. The agency's standards must set forth clear expectations for the programs of nurse education it approves in the following areas:

(a) Success with respect to student achievement, including consideration of [State licensing National Council Licensure Examination \(NCLEX\)](#) pass rates.

(b) Curricula.

(c) Qualified department head and faculty.

(d) Facilities, equipment, and supplies.

(e) Administrative capacity.

(f) Student support services.

(g) Recruiting and admissions practices.

(h) Student complaints.

(i) ~~Refund policies.~~

(j) Contractual arrangements which reflect upon the academic program, including for clinical and training sites

#### 604.13 – Site visit and documentation

Before reaching a decision to approve a program of nurse education, the State approval agency must –

(a) Conduct at least one site visit of the program of nurse education, during which it obtains sufficient information and documentation to determine if the program complies with the agency's standards.

(b) Allow the program of nurse education the opportunity to respond in writing to the report of the onsite review; and

(c) Provide the program of nurse education with a detailed written report that assesses the program's compliance with the agency's standards for use by the decision-making body in making an approval decision.

#### 604.14 – Annual report

(a) The State approval agency must demonstrate that it requires each program of nurse education it approves to submit a comprehensive annual report that enables the agency to identify problems with a program's continued compliance with agency standards.

(b) The required annual report for each approved program of nurse education must include current data and information in at least the following areas:

(1) Enrollment by class;

(2) Student-teacher ratios;

(3) Admissions data for prior five years;

(4) Graduation/completion data for prior five years;

(5) Performance of students on [State licensing NCLEX](#) examination(s) for prior 5 years;

(6) Any changes to the curricula;

~~(7) A copy of the course catalog;~~

(7) Any new contractual arrangements which reflect upon the academic program;

~~(9) A copy of its audited fiscal report;~~ and

(8) An attestation of financial resources sufficient to support program outcomes.

~~(10)~~ (9) Any other key indicators, as determined by the State approval agency.

#### 604.15 – Program evaluation

The State approval agency must evaluate a program of nurse education for initial approval and must reevaluate approved programs at regularly established intervals.

604.16 – Enforcement of standards (a) If the State approval agency's review of a program of nurse education under any standard, except a standard setting forth the agency's expectations for success with respect to student achievement as required under 34 C.F.R. § 604.12(a), indicates that the program is not in compliance with that standard, the agency must—

(1) Immediately initiate adverse action against the program of nurse education; or

(2) Require the program of nurse education to take appropriate action to bring itself into compliance with the agency's standards within a time period that must not exceed—

(i) Twelve months, if the program is less than one year in length;

(ii) Eighteen months, if the program is at least one year, but less than two years, in length; or

(iii) Two years, if the program is at least two years in length.

(b) If the State approval agency's review of a program of nurse education's compliance with a standard setting forth the agency's expectations for success with respect to student achievement, as required under 34 C.F.R. § 604.12(a), indicates that the program of nurse education is not in compliance with that standard, the State approval agency must provide the program of nurse education with a written timeline for coming into compliance that is reasonable, as determined by the State approval agency's decision-making body, based on the nature of the finding, the stated mission, and the educational objectives of the institution or program. The timeline may include intermediate checkpoints on the way to full compliance and must not exceed the lesser of four years or 150 percent of the length of the program of nurse education.

(c) If the program of nurse education does not bring itself into compliance within the specified period, the State approval agency must take immediate adverse action unless the agency, for good cause, extends the period for achieving compliance.

(d) Nothing in this part prohibits a State approval agency from permitting the program of nurse education to be out of compliance with one or more of its standards, policies, and procedures for a period of time, as determined by the agency annually, not to exceed three years unless the agency determines there is good cause to extend the period of time, and if –

(1) The State approval agency and the program of nurse education can show that the circumstances requiring the period of noncompliance are beyond the program's control, such as—

(i) A natural disaster or other catastrophic event significantly impacting the program of nurse education's operations;

(ii) Accepting students from another program of nurse education that is closing;

(iii) Significant and documented local or national economic changes, such as an economic recession or closure of a large local employer;

(iv) Changes relating to State licensure requirements; or (v) The normal application of the State approval agency's standards creates an undue hardship on students.

(2) The grant of the period of noncompliance is approved by the State approval agency's decision-making body;

(3) The State approval agency projects that the program of nurse education has the resources necessary to achieve compliance with the standard, policy, or procedure within the time allotted; and

(4) The program of nurse education demonstrates to the satisfaction of the State approval agency that the period of noncompliance will not—

- (i) Contribute to the cost of the program of nurse education to the student without the student's consent;
- (ii) Create any undue hardship on, or harm to, students; or
- (iii) Compromise the program of nurse education's academic quality.

604.17 – Operating procedures

(a) The State approval agency must maintain and make available to the public written materials describing—

- (1) Each type of approval it grants;
- (2) The procedures that programs of nurse education must follow in applying for approval;
- (3) The standards, policies, and procedures it uses to determine whether to grant, reaffirm, reinstate, restrict, deny, revoke, terminate, or take any other action related to each type of approval that it grants;
- (4) The programs of nurse education that it currently approves and, for each program, the year it will next review or reconsider the program for approval;
- (5) Actions taken by the agency's decision-making body; and
- (6) A list of the names of—
  - (i) The members of the agency's decision-making body; and
  - (ii) The agency's principal administrative staff.

(b) The State approval agency must—

- (1) Review any complaint it receives against an approved program of nurse education that is related to the agency's standards or procedures in a timely, fair, and equitable manner. The agency may not complete its review and make a decision regarding a complaint unless, in accordance with published procedures, it ensures that the program of nurse education has sufficient opportunity to provide a response to the complaint and may not refuse to accept a complaint on the basis that it does not identify the complainant or specify a particular approval standard. The State approval agency must review complaints to determine whether they raise concerns related to possible noncompliance by the program of nurse education with the agency's standards, policies, and procedures. The State approval agency's complaint procedures must include –
  - (i) Clear timelines for the complaint review process, including the timely notification of the complainant regarding the status of the complaint;
  - (ii) Allowance for more than one complaint submission method;
  - (iii) A requirement that agency staff must provide feedback to a complainant who does not submit a complaint correctly under the agency's prescribed

method(s), or that the agency must accept a complaint even when the complainant does not technically follow the agency's complaint procedures;

(iv) Allowance for the confidentiality of the complainant, including the complainant's ability to elect to keep their personally identifiable information confidential from the program of nurse education that is the subject of the complaint;

(v) A clear explanation of whether, and under what circumstances, an agency requires the complainant to first submit the complaint to the program of nurse education and to allow the program of nurse education to reach a conclusion prior to filing a complaint with the State approval agency;

(vi) Clear complaint procedures, including with respect to the responsibilities and roles of agency staff in handling and responding to complaints; and

(vii) Accessibility for individuals with disabilities.

(2) Adequately document the review and decision and, if applicable, take and document follow-up action, as necessary, including enforcement action, based on the results of its review; and

(3) Review in a timely, fair, and equitable manner, and apply unbiased judgment to, any complaints against itself and take and document follow-up action, as appropriate, based on the results of its review.

#### 604.18 Due Process

(1) The State approval agency must demonstrate that the procedures it uses throughout the approval process satisfy due process. The State approval agency meets this requirement if the agency does the following:

(i) Provides for adequate discussion during the ~~on~~-site visit between the visiting team and the faculty, administrative staff, students, and other appropriate persons;

(ii) Furnishes as a result of the evaluation visit, a written report to the program of nurse education commenting on areas of strength, areas needing improvement, and, when appropriate, suggesting means of improvement and including specific areas, if any, where the program of nurse education may not be in compliance with the agency's standards;

(iii) Provides the Department head of the program of nurse education with opportunity to comment upon the written report and to file supplemental materials pertinent to the facts and conclusions in the written report of the visiting team before the agency takes action on the report;

(iv) Provides the Department head of the ~~institution~~ program with a specific statement of reasons for any adverse action, and notice of the right to appeal such action before an appeal body designated for that purpose;

(v) Publishes rules of procedure regarding appeals;

(vi) Continues the approval status of the program of nurse education pending disposition of an appeal;

(vii) Furnishes the Department head of the program of nurse education with a written decision of the appeal body, including a statement of its reasons therefor.

#### Subpart C – The Recognition Process

The Department will follow the regulations at Part 602, Subpart C for the recognition process except that each State approval agency recognized under this subpart will be reevaluated by the Secretary at his discretion, but at least once every ~~four~~ five years.