

SUMMARY OF EXPRESS TERMS

All changes have been presented and approved by the Board of Examiners of Nursing Home Administration (BENHA) and are recommended by the advisory council established pursuant to Section 2896-a(8) of the Public Health Law, representing both health professionals and the public. The requested changes clarify and update the nursing home administrator licensure program. The most significant change proposed is to change the examination trial period to make New York State consistent with most other states, thereby increasing the pool of eligible nursing home administrators in New York State. Candidates will be able to attempt the Nursing Home Administrator examination up to four times in an annual period, instead of three attempts in a five-year period. The remaining changes clarify existing requirements.

The revisions include:

- Section 96.1, subdivision (d), is amended to capitalize the word “department” when referring to the Department of Health.
- Section 96.1, subdivision (m), is amended to change “unlawful discrimination” to simply “discrimination”.
- Section 96.2, subdivisions (a) and (b), are amended by capitalizing the word “board” when referring to the Board of Examiners of Nursing Home Administrators.
- Section 96.3, subdivisions (d) and (e), are amended by capitalizing the word “board” when referring to the Board of Examiners of Nursing Home Administrators.
- Section 96.4, subdivision (b), is amended to the revise language to change the registration process from the board’s responsibility to the Department’s

- responsibility by replacing “board” with “Department”. Grammar was updated from “issuing of a license” to “issuance of a license”. “Commissioner” was replaced with “Department”, to be consistent with other sections of the regulation.
- Section 96.4, subdivisions (c), (d) and (e), are amended. The language “biennial registration card” is not commonly used and has been replaced with “certificate of registration.” The word “department” was capitalized when referring to the Department of Health.
 - Section 96.5, subdivision (a), is amended to change “established by the Board” to be “determined by the Department”.
 - Section 96.5, subdivision (c), is amended to change the exam trial eligibility period from three times in five years to four times within twelve months. This change will make our requirement consistent with other state requirements to allow for more eligible candidates. This will help the State retain candidates.
 - Section 96.7, subdivision (c) (4), is amended by capitalizing the word “board” when referring to the Board of Examiners of Nursing Home Administrators.
 - Section 96.8, subdivision (a)(3), is amended to require that the educational requirement to take a course in “legal issues in health care” be at the course level equivalent to 300 or higher. This is consistent with the current program policy.
 - Section 96.8, subdivision (a)(5)(i), is amended to remove the requirement that a training site have at least 80 beds. This will allow nursing homes that are also providers with multiple levels of care, such as independent living communities and assisted living beds, to qualify as training sites.

- Section 96.9 is amended to exclude the word “registration” from the title as it is not applicable to this section.
- Section 96.9, subdivision (e), is amended to delete the language that courses approved in this manner shall be added to the listing of approved courses. This requirement is not administratively feasible to have an up to date listing of all colleges and universities.
- The title of Section 96.11 has been renamed to replace “Continuation on education requirements” with “Continuing education requirements”.
- Section 96.11 has been amended by adding new subdivisions (c), (d) and (e) to clarify the continuing education requirements for late filers and/or inactive filers. This added language requires a proportionate adjustment in the clock hours in the event that a licensee fails or neglects to renew their registration and the requirement to pay a late fee. The new language also clarifies that the continuing education requirement shall be applicable to registration renewal and license reactivation only.
- Section 96.12, subdivision (c)(4), is amended to be consistent with the changes in section 96.5 by allowing the four exam attempts in any twelve-month period, instead of three attempts in five years.
- Section 96.13 is amended to include language that nursing home administrators must notify the Board of changes in email address or phone number, in addition to home address and place of employment.

Pursuant to the authority vested in the Board of Examiners of Nursing Home Administrators (BENHA) and the Commissioner of Health by Section 2896-b of the Public Health Law, Part 96 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register.

10 NYCRR, Part 96 - Licensure And Practice Of Nursing Home Administration

Part 96 of Title 10 is amended to read as follows:

Section 96.1 Definitions.

The following definitions shall apply to this Subchapter unless the context otherwise requires:

(a) Board means the Board of Examiners of Nursing Home Administrators as provided for in article 28-D of the Public Health Law.

(b) Department means the New York State Department of Health.

(c) Commissioner means the Commissioner of Health of the State of New York.

(d) Secretary means the officer or employee of the [department] Department designated by the commissioner to act as secretary to the [board] Board.

(e) Advisory council means the body broadly representative of the health professions and the public established by the commissioner pursuant to subdivision 8 of section 2896-a of the Public Health Law.

(f) Nursing home administrator means an individual who has fulfilled all of the requirements of and has been duly granted a license by the New York State Board of Examiners of Nursing Home Administrators.

(g) Nursing home means a facility issued an operating certificate as a nursing home pursuant to article 28 of the Public Health Law.

(h) License means certification of an applicant who has met the requirements of the law, rules and regulations entitling him to serve, act, practice and otherwise hold [himself or herself] themselves out as a duly licensed nursing home administrator.

(i) Temporary license means a license issued by the Board, under such conditions and limitations as it shall determine, for a single period not to exceed six months to an applicant of good moral character and suitability, over twenty-one years of age, who meets such other standards as are established by the Board, who has paid the application fee as specified in Public Health Law Article 28-D and who is designated by the owner,

operator or other governing authority to administer a facility during a period when due to resignation, death or incapacity or for some other reason the position of nursing home administrator has been unexpectedly vacated. Such temporary licensee shall be subject to the supervision of a licensed and currently registered New York State nursing home administrator as determined by the Board. This provision may not be used in conjunction with or to extend the provisions of section 415.26(a) of this title permitting the facility to operate without a licensed and registered administrator for a period greater than six months.

(j) Practice of nursing home administration means planning, organizing, directing, managing the operation and implementing the policies of, a nursing home, including but not limited to making operating decisions, ensuring fiscal responsibility, providing general supervision, employing and discharging staff, programming and ongoing evaluation of the care and services provided in the nursing home to ensure the health and safety of the residents, visitors and staff and, where appropriate, integrating the services of the nursing home with the community's health resources.

(k) Course of study in nursing home administration means a course or courses of study, including completion of a Board approved Administrator-in-Training (AIT) program or Board approved alternative, in institutional administration approved by the Board.

(l) Registration means the biennial registration as required by all licensed nursing home administrators pursuant to the provisions of codes, rules and regulations established by

the Board. Only licensed nursing home administrators with a current registration may practice nursing home administration.

(m) Unethical conduct, for the purpose of section 2897 of the Public Health Law, shall include, but not be limited to:

(1) violation of any of the provisions of law pertaining to the licensing and registration of nursing home administrators or the rules and regulations of the Board pertaining thereto;

(2) violation of any of the provisions of law or codes, rules or regulations of the licensing authority or agency of the State having jurisdiction of the operation and licensing of nursing homes;

(3) conviction of a crime;

(4) practicing fraud, deceit or misrepresentation in securing or procuring a nursing home administrator license or registration;

(5) practicing fraud, deceit or misrepresentation in the capacity of a nursing home administrator;

(6) immoral conduct while engaged in the practice of nursing home administration; immoral behavior indicating an unfitness to practice nursing home administration; or

immoral conduct permitted by a nursing home administrator in a nursing home under [his/her] their supervision;

(7) willful falsification, destruction or theft of property or records related to the practice of nursing home administration;

(8) committing acts of misconduct in the operation of a nursing home;

(9) habitual drunkenness;

(10) addiction to the use of narcotic drugs;

(11) wrongfully transferring or surrendering possession, either temporarily or permanently, of a license or certificate as a nursing home administrator to any other person;

(12) being guilty of fraudulent, misleading or deceptive advertising;

(13) falsely impersonating another licensee of a like or different name;

(14) failure to exercise true regard for the safety, health and life of patients/residents;

(15) unauthorized disclosure of information relating to a patient/resident or [his or her] their records; and

(16) [unlawful] discrimination [in] with respect to patients/residents, employees or staff.

(n) Administrator of Record (AOR) means the individual who is charged with and has responsibility for the general administration of a nursing home, whether or not such individual has an ownership interest in such home, and whether or not [his or her] their function and duties are shared with one or more other individuals.

(1) Each nursing home must designate one New York State licensed and currently registered nursing home administrator as the facility AOR consistent with the requirements of 10 NYCRR Section 415.26(a).

(2) In the case of an acting administrator, appointed under the provisions of 10 NYCRR 415.26(a)(3), the AOR shall be the supervising administrator designated pursuant to such provisions.

(o) Qualifying field experience shall mean the verified full-time, minimum of 35 hours per week, service on the staff of a qualifying Article 28 in-patient health care facility as defined by the Board, in an administrative position within the five-year period preceding approval of the licensure application.

(1) Such experience must be obtained above the department head level but not above the AOR, requiring the candidate to actively participate in the day-to-day administration, direction, and operation of the facility at the facility level requiring the daily supervision of the department heads of multiple (2 or more) major departments or services areas.

(2) The position must include substantial supervisory responsibilities for patient care and facility staff and be compensated at a salary commensurate with the level of responsibility claimed.

(3) At least one major department or service area must directly impact on the provision of patient care or services. Major department and services areas with direct impact on the provision of patient care or services as defined by the Board for the purpose of licensure experience are: (a) Dietary/food services, (b) Nursing services, (c) Rehabilitation services (including all of physical therapy, occupational therapy, speech and audio therapy and recreational therapy) and (d) Social Services (including all of admissions, discharge planning and social service program).

(p) Active participation in the administration, direction and operation of a qualifying health care facility shall mean the daily participation in the management decisions that affect multiple (2 or more) major departments or service areas as defined in this Part, within the facility and directly impacts the provision of care and services to the patients in the facility.

(q) Code of Ethics for New York State Nursing Home Administrators shall mean the expectations of conduct for licensed nursing home administrators adopted by the Board. The Code of Ethics should not be construed as all-encompassing or as denial of the existence of other responsibilities or practices.

96.2 Board of examiners; general powers.

(a) The [board] Board by majority vote of the whole number shall adopt and amend rules and regulations, to be certified by the commissioner prior to filing with the Secretary of State, to effectuate the provisions and purposes of article 28-D of the Public Health Law.

(b) The [board] Board shall take such actions as may be necessary to enable the State to meet the requirements set forth in section 1908 of the Social Security Act, the Federal rules and regulations promulgated thereunder and other pertinent Federal authority.

96.3 Board of examiners; officers and duties.

(a) The term of office of the members of the Board shall be three years and shall expire on June 30 three years from the year of the appointment. No more than three (3) Board members may be appointed for a term that expires during the same year.

(b) The Board shall select from among its members a chair and vice-chair at least one of which shall be a licensed and currently registered New York State nursing home administrator.

(c) The chair shall preside at all meetings of the Board and shall sign all official documents of the Board.

(d) In addition to the duties imposed by law, the secretary shall attend all meetings of the [board] Board; keep a full and complete record of the minutes of said meetings; notify the members of the [board] Board of the time and place fixed for meetings of the [board] Board maintain the records pertaining to licenses and this Part; countersign all licenses and certificates of registration and official certification of approval and certification issued by the [board] Board.

(e) The secretary shall conduct all correspondence for the [board] Board, shall issue all notices of meetings and hearings, shall have custody of all books, records and property of the [board] Board and shall perform all duties pertaining to the office of the secretary.

96.4 Licenses and registrations.

(a) An applicant for a license as a nursing home administrator who has met the qualifications prescribed by article 28-D of the Public Health Law and this Part and who has passed the examination required by such article shall be issued a license by the Board

certifying that such applicant has met the requirements of the law and rules and regulations entitling [him or her]them to serve, act, practice and otherwise hold [himself or herself]themselves as a duly licensed nursing home administrator.

(b) Commencing January 1, 1972 and biennially thereafter, every licensee shall register with the [board] Department. Every licensee issued a license during a biennial registration period shall register with the [board] Department within 30 days following the [issuing date of the license] issuance of a license. The application for registration shall contain such information as may be specified by the [board] Board or [commissioner] Department including name, address, age, practice status, employer, and continuing education training taken. The [commissioner] Department shall issue a certificate of registration to those persons possessing a valid license and who meet the requirements of article 28-D of the Public Health Law.

(c) The [department] Department shall issue a [biennial registration card] certificate of registration to each duly licensed nursing administrator upon the submission of a complete and accurate application for registration in a form and manner determined by the Board.

(d) Every person entitled to engage in the practice of nursing home administration in the State shall permanently display in [his or her] their principal place of employment [his or her] their license to practice nursing home administration and shall have [his or her] their

current [biennial registration card] certificate of registration readily available while engaged in the practice of nursing home administration.

(e) The current [biennial registration card] certificate of registration must be exhibited when requested by any of the following:

(1) An officer or employee of the [department] Department, county or city health department, or other governmental agency engaged in the administration or enforcement of the Public Health Law, the Sanitary Code, the New York City Health Code or other laws, and rules and regulations pertaining to nursing homes or,

(2) an employer in whose employ the licensee practices or intends to practice nursing home administration.

96.5 Admission to the examination.

(a) An applicant shall be determined qualified and eligible to take the examination for licensing as a nursing home administrator when the applicant has successfully documented to the Board that he or she has met or exceeded the age, moral character and suitability, education including courses of study, and experience qualifications for licensure as [established by the Board] determined by the Department.

(b) An applicant for examination who does not qualify shall be given written notification by the Board of [his or her] their lack of qualification and the reasons therefor. Within 30

days of the mailing of such notification, the applicant may petition the Board in writing for a review of [his or her] their application.

(c) A candidate for licensure who does not receive a passing grade on [his or her] the licensing examination within [five years] twelve months of notification by the [board] Board of [his/her] eligibility to sit for the examination shall be required to reapply and requalify under the then current laws and rules and regulations. The candidate shall be permitted to take the licensing examination no more than [three] four times during the [five-year] twelve-month period of eligibility.

96.6 Grading of examination.

(a) Every candidate for a nursing home administrator license shall be required to pass an examination, as determined by the Board, for such license with a minimum grade determined by the Board.

(b) The Board shall determine the method of grading and shall apply the method uniformly to all candidates taking that examination.

(c) The Board shall not disclose the percentage ratings of candidates by individual identity to any of its officers or employees responsible for determining the final grading of an examination until such determination has been made.

96.7 Petition for admission to examination.

(a) Prior to submission of a petition under subdivision 2 of section 2896-c of Article 28-D of the Public Health Law, an applicant shall be required to have been denied admission to examination after formal application under section 2896-c.

(b) The Board may decline to entertain such petition on the basis of a finding that the applicant, either:

(1) fails to meet the requirements of paragraphs (a) or (b) of subdivision 1 of section 2896-c of article 28-D of the Public Health Law; or

(2) has practiced in violation of or otherwise has violated any provision of article 28-D of the Public Health Law.

(c) The Board, in the review of a petition, shall consider among other factors:

(1) the length and quality of the petitioner's training and experience in [his or her] their field;

(2) the extent of the petitioner's administrative and supervisory duties in [his or her] their relevant employment;

(3) the extent to which the petitioner has taken refresher or advanced course-work or otherwise evidenced a continuous effort to maintain or improve [his or her] their technical skill; and

(4) the professional reputation of the petitioner as evidenced by books and articles published, offices held in professional organizations, and professional honors received.

(d) The petitioner shall complete such forms, prepare such affidavits, and obtain such documents in support of [his or her] their petition as the Board deems necessary. The Board may require the petitioner to appear personally before the [board] Board or a committee thereof.

(e) Immediately upon the granting of a petition for admission to examination and the payment of the prescribed fee, a petitioner shall be subject to all of the provisions pertaining to an applicant contained in article 28-D of the Public Health Law.

96.8 Courses of study; standards for approval.

(a) The applicant shall provide official documentation acceptable to the Board of successful completion of a Baccalaureate or higher level degree from an accredited educational institution acceptable to the Board including, or supplemented by, a Board approved Administrator-In-Training (AIT) Program of at least 12 months full-time experience based upon the standard definition of full-time utilized in the facility but not

less than 1820 clock hours duration and at least 15 credit hours of required course work acceptable to the Board, completed at an accredited post-secondary educational institution in the following five areas:

(1) Nursing home facility administration (at least three (3) semester credit [-] hours) at the course level equivalent to 300 or higher, and

(2) Health care financial management (at least three (3) semester credit [-] hours) at the course level equivalent to 300 or higher, and

(3) Legal issues in health care (at least three (3) semester credit [-] hours) at the course level equivalent to 300 or higher, and

(4) Gerontology (at least three (3) semester credit [-] hours), and

(5) Personnel management (at least three (3) semester credit [-] hours).

(b) The applicant also shall provide official documentation acceptable to the Board of the successful completion of a structured internship conducted in a qualifying nursing home that meets the following requirements:

(1) The internship program is Board approved and is completed in a training site that has a valid operating certificate issued by the New York State Department of Health and shall

be under the full-time supervision of a New York State licensed and currently registered nursing home administrator.

(i) The training site shall [have at least 80 beds that are certified to] participate in the Title XVIII (Medicare) and Title XIX (Medicaid) programs and meet the definition of a nursing home under Public Health Law Article 28;

(ii) The nursing home shall have an acceptable surveillance history for the previous two years and have no formal enforcement action pending or in progress against it.

(iii) The applicant shall have no financial interest in the training site or be related to any person that has a financial interest in the training site.

(iv) The applicant may complete [his or her] their internship at a facility where the applicant is employed. In such case, payment of salary or wages by the facility to the employed applicant is not prohibited.

(2) The internship is conducted under the direct supervision of a preceptor who is the AOR of the nursing home;

(i) The preceptor shall have held a New York State nursing home administrator license for at least two years and shall hold a current registration certificate.

(ii) The preceptor shall have had at least three years of full-time experience as the AOR of a nursing home during the last five years, including at least one year in a New York State nursing home eligible for approval as a training site.

(iii) The preceptor shall not have had [his or her] their nursing home administrator license annulled, suspended, revoked, surrendered or forfeited, nor shall the preceptor have otherwise been disciplined by the Board or have any formal disciplinary action pending or in progress against [him or her]them.

(iv) The preceptor shall not be related to the applicant.

(3) The approval of the internship shall be withdrawn if the preceptor relinquishes [his or her] their AOR responsibilities at the training site.

(4) The internship must have been completed within the previous ten (10) years prior to the applicant's eligibility to take the licensure examination; and

(5) The applicant can not accept an appointment as Acting Administrator of any nursing home (residential health care facility) pursuant to 10 NYCRR 415.26(a)(3) during the period inclusively falling within the dates of the internship. The acceptance of such an appointment will result in the disqualification of the internship; and

(6) The internship meets or exceeds the requirements and guidelines for the Administrator in Training (AIT) Program established and adopted by the Board.

(i) The preceptor shall submit the internship to the Board for review and approval in the manner and format specified by the Board.

(ii) The internship must be approved by the Board prior to commencement unless the internship was completed as part of a degree program where the applicant was awarded such degree. In such case, it is the responsibility of the applicant to provide the Board with all required documentation and information pertaining to the completed internship necessary to conduct the review of the degree program internship.

(7) The applicant may, at the discretion of the Board, substitute the internship with two (2) years of verified full-time qualifying field experience in a licensed nursing home.

96.9 Approved courses of study [; registration].

(a) The Board shall establish an acceptable course content outline for each of the five required courses specified in Section 96.8 of this part identifying the minimum subject areas and topics required to provide the applicant with the knowledge and skills necessary to serve as a nursing home administrator.

(b) The content outlines shall be made available to accredited academic institutions seeking prior approval by the Board of their course(s) for the purpose of licensure.

(c) Academic institutions seeking prior approval of their course(s) shall follow the requirements set forth in Section 96.10 of this Part.

(d) The Board shall maintain a listing, available upon request, of approved courses offered by accredited academic institutions in each of the five subject areas, as such courses are approved by the Board.

(e) Applicants may submit course materials for review by the Board if the course does not have such prior approval. [Courses approved in this manner shall be added to the listing of approved courses.]

96.10 Training agencies; administration, organization and faculty.

(a) An accredited academic institution applying for approval of the course of study, degree program or course work in nursing home administration shall apply all data necessary for a complete evaluation of the administration, organization, faculty, physical facilities, student policies, curriculum and instruction and such other information and records as the Board may require which pertain to the course of study, degree program or course work.

(b) The Board shall be notified promptly of any proposed substantial changes in the approved degree program, course work or course of study, including on-line or correspondence courses, to obtain continued approval by the [board] Board.

(c) A site inspection of an academic institution or training agency or its affiliate may be made by an officer of the Board or a representative acceptable to the Board.

96.11 [Continuation on] Continuing education requirements.

(a) In order to qualify for registration for each biennial registration period beginning on or after January 1, 2008, a licensed nursing home administrator shall attain 48 clock hours of continuation or continuing education credit acceptable to the Board, which shall be attained during the two-year period immediately preceding the registration period [or, attained during the preceding two-year period prior to the registration effective date, if registration is requested during an ongoing registration period].

(b) The licensed nursing home administrator is responsible for participating in continuation education programs acceptable to the Board and maintaining records of programs attended for at least two-years past the end of the subsequent registration period.

(c) In the event that a licensee fails or neglects to renew their registration prior to its expiration date, the licensee may renew their registration, by attaining the proportionate

adjustment in the clock hours of continuation or continuing education credit, as determined by the Department, which shall be attained during the two-year period immediately preceding the registration period, and pay a late fee determined by the Department.

(d) A licensee whose license is in inactive status may request to reactivate their license at any time and renew their registration upon complying with subdivisions (b) and (c) of this section, and shall be subject to a reactivation fee as determined by the Department.

(e) Initial registration shall not require completion of continuing education. The continuing education requirement shall be applicable to registration renewal and license reactivation only.

96.12 Applicants holding an out-of-state nursing home administrators license

(a) An individual holding a valid and current nursing home administrator license from another seeking a New York State nursing home administrator license must submit a complete licensure application and pay all applicable fees.

(b) The applicant must disclose all nursing home administrator and other professional licenses or comparable authorization granted or issued by any and all states, territories, possessions or foreign governments regardless of the status of such license(s).

(c) To obtain a New York State nursing home administrator license the applicant must demonstrate to the Board that the applicant:

(i) 1 is 21 years old or older;

(ii) 2 is of good moral character and suitability;

(iii) 3 is in receipt of a Baccalaureate or higher level degree from an accredited educational institution. The accrediting body must be recognized by the NYS Department of Education and acceptable to the Board. Official sealed school transcripts must be received by the Board directly from the educational institution.

(iv) 4 has performed successfully on the national nursing home administrator examination by passing this examination within [~~three (3)~~] four (4) attempts in any [~~five (5) year~~] twelve (12) month period.

(v) 5 has submitted satisfactory documentation that any and all other nursing home administrator licenses or comparable authorization granted to the applicant by other states, territories, possessions or foreign governments have not been suspended, revoked or otherwise restricted for any reason. Such documentation must be received by the Board directly from the licensing or authorizing agency. The Board retains the right and authority to review and assess the magnitude of any such discipline and solely determine the eligibility of the applicant for licensure; and

([vi]6) has submitted satisfactory verification from the applicant's employer(s) that the applicant has full-time (at least 35 hours per week) experience of at least two (2) years in the preceding five (5) years prior to submission of application, as the AOR in an out-of-state nursing home operated in full compliance with applicable state and federal Title 18 and 19 laws, rules and regulations.

(d) The Board retains the right and authority to review and assess the submitted application and documentation including the magnitude of any such discipline and solely determine the applicant's eligibility for licensure

96.13 Notification of change of address or employment.

A duly licensed and currently registered nursing home administrator shall notify the Board of any change of [his or her] their title, place of employment, home and e-mail address or [home] primary telephone number within 10 days of such change.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 2896-b of the Public Health Law and Part 96 of Title 10 (Health) of the Official Compilation of Codes; authorizes the Department to enact regulations. The Board of Examiners of Nursing Home Administrators (BENHA) issues licenses to applicants who meet specific qualifications and pass a nursing home administrator licensing examination.

Legislative Objectives:

The proposed rule accords with the legislative objectives to protect and promote the health and rights of all nursing home residents by ensuring that nursing home administrators can demonstrate the skills and abilities essential to competent practice of the profession. All changes have been presented and approved by the Board of Examiners of Nursing Home Administration (BENHA) and are recommended by the advisory council established pursuant to Section 2896-a(8) of the Public Health Law, representing both health professionals and the public.

Needs and Benefits:

The requested changes clarify and update the nursing home administrator licensure program. The most significant change proposed is to change the examination trial period to make New York State consistent with most other states, thereby increasing the pool of eligible nursing home administrators in New York State. Candidates will be able to attempt the Nursing Home Administrator examination up to four times in an annual period, instead of three attempts in a five-year period. The remaining changes clarify existing requirements. The revisions include:

- Section 96.1, subdivision (d), is amended to capitalize the word “department” when referring to the Department of Health.

- Section 96.1, subdivision (m), is amended to change “unlawful discrimination” to simply “discrimination”.
- Section 96.2, subdivisions (a) and (b), are amended by capitalizing the word “board” when referring to the Board of Examiners of Nursing Home Administrators.
- Section 96.3, subdivisions (d) and (e), are amended by capitalizing the word “board” when referring to the Board of Examiners of Nursing Home Administrators.
- Section 96.4, subdivision (b), is amended to the revise language to change the registration process from the board’s responsibility to the Department’s responsibility by replacing “board” with “Department”. Grammar was updated from “issuing of a license” to “issuance of a license”. “Commissioner” was replaced with “Department”, to be consistent with other sections of the regulation.
- Section 96.4, subdivisions (c), (d) and (e), are amended. The language “biennial registration card” is not commonly used and has been replaced with “certificate of registration.” The word “department” was capitalized when referring to the Department of Health.
- Section 96.5, subdivision (a), is amended to change “established by the Board” to be “determined by the Department”.
- Section 96.5, subdivision (c), is amended to change the exam trial eligibility period from three times in five years to four times within twelve months. This change will make our requirement consistent with other state requirements to allow for more eligible candidates. This will help the State retain candidates.

- Section 96.7, subdivision (c) (4), is amended by capitalizing the word “board” when referring to the Board of Examiners of Nursing Home Administrators.
- Section 96.8, subdivision (a)(3) is amended to require that the educational requirement to take a course in “legal issues in health care” be at the course level equivalent to 300 or higher. This is consistent with the current program policy.
- Section 96.8, subdivision (a)(5)(i), is amended to remove the requirement that a training site have at least 80 beds. This will allow nursing homes that are also providers with multiple levels of care, such as independent living communities and assisted living beds, to qualify as training sites.
- Section 96.9 is amended to exclude the word “registration” from the title as it is not applicable to this section.
- Section 96.9, subdivision (e), is amended to delete the language that courses approved in this manner shall be added to the listing of approved courses. This requirement is not administratively feasible to have an up to date listing of all colleges and universities.
- The title of Section 96.11 has been renamed to replace “Continuation on education requirements” with “Continuing education requirements”.
- Section 96.11 has been amended by adding new subdivisions (c), (d) and (e) to clarify the continuing education requirements for late filers and/or inactive filers. This added language requires a proportionate adjustment in the clock hours in the event that a licensee fails or neglects to renew their registration and the requirement to pay a late fee. The new language also clarifies that the continuing

education requirement shall be applicable to registration renewal and license reactivation only.

- Section 96.12, subdivision (c)(4), is amended to be consistent with the changes in section 96.5 by allowing the four exam attempts in any twelve-month period, instead of three attempts in five years.
- Section 96.13 is amended to include language that nursing home administrators must notify the Board of changes in email address or phone number, in addition to home address and place of employment.

Costs:

Costs for the Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

There will be little to no additional cost to the regulated entities for the implementation of or continuing compliance with the regulation.

Costs to State and Local Governments:

There will be no costs to the State or local governments.

Costs to the Department of Health:

There will be no costs to the Department of Health.

Local Government Mandates:

There will be no duty or responsibility imposed on local governments as the result of this rule.

Paperwork:

The Department will be required to order new applications and update forms. The Department can implement this regulation using existing resources.

Duplication:

This rule does not duplicate, overlap, or conflict with any other legal requirements of the State or federal government.

Alternatives:

The alternative of not promulgating this regulation was considered, but the Board decided that revising the current regulations was the only method to keep New York's policies current and comparable to other States and their nursing home administration policies.

Federal Standards:

The proposed rule aligns with federal regulations and does not overlap or conflict with any legal requirements.

Compliance Schedule:

The rule will take effect immediately following publication of a Notice of Adoption in the State Register.

Contact Person:

Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS**

No regulatory flexibility analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

**STATEMENT IN LIEU OF
RURAL AREA FLEXIBILITY ANALYSIS**

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas because of the proposed amendments.

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

ASSESSMENT OF PUBLIC COMMENT

The New York State Department of Health (Department) received comments from a non-profit advocacy group and the New York State Assembly in regard to the amendments to the Board of Examiners Nursing Home Administrator (BENHA) regulations. The Department believes these amendments to the regulations will increase the pool of qualified Nursing Home Administrator candidates for licensure and are authorized pursuant to NYS Public Health Law Section 2896-b. The comments and the Department's responses are summarized below.

COMMENT: One commentor supported the proposal made in 10 NYCRR, Section 96.8, subdivision (a)(5)(i) to eliminate the requirement that an internship training site has at least 80 beds. They concluded that allowing smaller nursing homes and those that are also providers with multiple levels of care to qualify as training sites will increase the pool of potential sites and training experiences.

RESPONSE: The Department is in agreement with this comment. No changes to the regulation are needed as a result of this comment.

COMMENT: One commentor supported the proposal made in 10 NYCRR, Section 96.5 subdivision (c) to allow candidates to attempt the Nursing Home Administrator examination up to four times in 12 months instead of three attempts in a five-year period. While another commentor supported this proposal, they suggest following some other

state models that require additional training or instruction before allowing a candidate to take the examination the 4th time to ensure that any efforts to increase the pool of licensed administrators in New York do not lessen the “caliber of training and experience” that NYS Public Health Law Section 2895 recognizes as a key to providing adequate and proper administration of nursing homes.

RESPONSE: The Department disagrees that the absence of an additional requirement for continuing education and or training should a nursing home licensure candidate fail the exam three times will lessen the “caliber of training and experience” of such candidates. Candidates for Nursing Home Administrator licensure must complete a rigorous set of qualifications outlined in NYS Public Health Law Section 2896-c and 10 NYCRR Section 96.5. The Department and the Board’s intent in changing the examination period was to increase the pool of qualified candidates for Nursing Home Administrator licensure, especially during a time when the need for qualified Nursing Home Administrators is on the rise.

COMMENT: One commentor expressed concern over the proposed elimination of the word “unlawful” before “discrimination” in 10 NYCRR, Section 96.1 subdivision (m) because they believe it renders the ground for discipline vague.

RESPONSE: The Department disagrees that eliminating the word “unlawful” before “discrimination” in the definition section of the regulations is problematic and could lead to unintended consequences. The intent of the Board and the Department is to capture all discrimination and not just unlawful discrimination, distinguished by protected parties. All motions for disciplinary proceedings by BENHA are referred to the Bureau of

Administration Hearings for review, and therefore, the Department provides for due process for any disciplinary proceeding recommended by the Board against any Nursing Home Administrator.

COMMENT: One commentor suggested modifying the current Department regulations 10 NYCRR Section 96.8(b) that require the preceptor of the Administrator in Training Program (AIT) to be an administrator of record (AOR) of the training site, hold an administrator license for at least two years, have at least three years of full-time service as the AOR of a facility during the last five years, including at least one year in a New York nursing home eligible for approval as a training site or hold a current administrator certification from the American College of Health Care Administrators. Specifically, the commentor suggested that if a facility is otherwise qualified to serve as a training site but does not have an AOR that meets all of the above requirements and has another senior executive with a Nursing Home Administrator license and substantial experience, the regulations should allow either that executive to serve as the preceptor or the AOR to serve as a preceptor with the support of the qualified executive.

RESPONSE: No changes to the regulation are being made as a result of this comment; however, the Department will take this suggestion under advisement for any future rulemaking.

COMMENT: One commentor suggested modifying Department guidelines that reduce AIT or field experience time requirements based on work experience other than Director of Nursing in a nursing home, such as CFO, general counsel, medical director, or

Director of Social Work. In addition, the commentor suggested that the duration of the AIT internship or field experience should be reduced based on the attainment of other degrees, such as a Juris Doctor degree.

RESPONSE: No changes to the regulation are being made as a result of this comment; however, the Department will take this suggestion under advisement for any future rulemaking.

COMMENT: One commentor suggested relaxing the regulation10 NYCRR Section 96.8 that requires candidates to hold a bachelor’s degree or higher that includes or is supplemented by 15 credit hours of coursework in five areas where the courses will be considered only if completed from five to 10 years, depending on the course, from the date of successful completion. Specifically, the commentor suggested relaxing the requirement that courses will be considered only if completed from five to 10 years, depending on the course, from the date of successful completion for candidates who can demonstrate advanced levels of education and /or work experience in the five areas.

RESPONSE: No changes to the regulation are being made as a result of this comment; however, the Department will take this suggestion under advisement for any future rulemaking.

COMMENT: One commentor questioned the proposed regulation change of Section 96.5(a) which is amended to give flexibility by changing “established by the Board” to “determined by the Department.” Specifically, the commentator asked whether the

experience necessary to take the exam for licensing should be determined exclusively by the Department rather than established by the Board.

RESPONSE: The Department agrees with the commentor that the Board is responsible for establishing the experience necessary to take the exam for licensing but amended the regulation to provide added flexibility by allowing the Department to determine whether an individual applicant meets the criteria established by the Board. As such, no amendments are necessary to the proposed regulation.

COMMENT: One commentor suggested providing reciprocity for nursing home administrators licensed in other states.

RESPONSE: Reciprocity would require a statutory amendment and is therefore outside the scope of this regulation. As such, no changes to the regulation are being made as a result of this comment.