

STATE OF MINNESOTA

BEFORE THE MINNESOTA

COUNTY OF RAMSEY

BOARD OF EXAMINERS FOR
NURSING HOME ADMINISTRATORS

In the Matter of the Proposed
Adoption of Rules Relating
to Establishing a Passing
Point on the National Examination

STATEMENT OF NEED FOR
AND FACTS ESTABLISHING
REASONABLENESS OF
PROPOSED AMENDMENTS

A. INTRODUCTION

The Minnesota Board of Examiners for Nursing Home Administrators is proposing an amendment to its existing rules to modify the passing score required on the national portion of the licensing examination. The existing rule is Minn. Rules pt. 6400.0600(F) (1989).

The proposed amendment is intended to create a more equitable passing score for the national examination, and to bring the rules in compliance with proposed federal standards. The Board presents this Statement of Need for and Facts Establishing Reasonableness of Proposed Amendments in support of the proposed rule change.

B. STATUTORY AUTHORITY

The Board's statutory authority to adopt and amend rules relating to licensing examinations is set forth in Minn. Stat. § 144A.24 (1988). This provision authorizes the Board to develop and enforce standards, including examination techniques, for nursing home administrator licensing.

C. ADDITIONAL REQUIREMENTS

1. Small Business Considerations.

Minn. Stat. § 14.115 requires administrative agencies, when proposing a rule or an amendment to an existing rule, to consider various methods for reducing the impact of the proposed rule or amendment on small businesses and to provide an opportunity for small businesses to participate in the rulemaking process.

It is the position of the Board that this provision does not apply to the rules it promulgates. Minn. Stat. § 14.115, subd. 7.b (1988) states that section 14.115 does not apply to "agency rules that do not affect small businesses directly." The Board's authority relates only to nursing home administrators not to the businesses they operate. Furthermore, although the Board does not compile statistics on the issue, the majority of nursing home administrators are simply employees of the facilities at which they work, much like nurses or nursing assistants. In these cases, it is clear that a nursing home administrator should not be considered a small business.

The Board is also exempt from the provisions of section 14.115, pursuant to its subdivision 7.c which states that section 14.115 does not apply to "service businesses regulated by government bodies, for standards and costs, such as nursing homes." Nursing homes are regulated by government bodies for standards and costs. The vast majority of nursing home costs are subject to Medicaid and Medicare funding. With

respect to standards, the Department of Health actively regulates nursing homes and issues violation orders and fines in cases where standards are not met. The Board believes that nursing homes very clearly fall under the specific exception provided in subdivision 7.c.

In the event that these proposed rules would in some way be construed as being subject to Minn. Stat. § 14.115, the Board considered the five methods listed in section 14.115, subd. 2, for reducing the impact of the rules on small businesses. The Board believes that these methods would not be appropriate for the following reasons:

1. The methods appear to contemplate a business which is already in operation. The proposed rule change deals with applicants for nursing home administrator licensure. In the vast majority of cases, these are persons who have completed the educational requirements for a nursing home administrator license but have not in the past and are not presently employed as a nursing home administrator. Thus, it is difficult to see how any of the proposed methods would be applicable to an applicant who is not in fact yet operating in the industry.

2. Reducing the impact of the proposed amendment on small businesses would undermine the objective of the Minnesota licensing law for nursing home administrators. Pursuant to Minn. Stat. § 144A.18 et seq., the Board is authorized to establish standards and regulate practices or behavior of all licensees. The Board believes it would be unwise and contrary

to its statutory mandate to adopt one set of standards for those administrators who work in a large business setting and adopt another, less stringent set of standards for those administrators who practice in a small facility. Since the Board regulates all licensed administrators the Board feels that its rules must apply equally to all administrators if the public whom it serves is to be adequately protected.

D. BACKGROUND

At the time the existing rule was adopted, no standards or governmental regulations existed describing or establishing parameters for setting the passing point on any required licensing examinations. The passing point for all examinations was established at 75 percent, which, in the considered judgment of the Board, was fair and reasonable.

More recently, the Board has become aware of a need to change its national examination passing score. The Board is a member in the National Association of Boards of Examiners for Nursing Home Administrators (N.A.B.), the entity responsible for administering the national nursing home administrator licensing examination. Through its membership in N.A.B., the Board has learned of proposed changes by the Department of Health and Human Services in Washington. The changes involve a new federal regulation which would require setting the passing score on national licensing examinations at a pass/fail level established in a manner that is generally accepted in the psychometric community as fair and reasonable. The proposed federal requirement is as follows:

Sec. 1919(f)(4) SECRETARIAL STANDARDS QUALIFICATION OF ADMINISTRATORS. For purpose of subsections (d)(1)(c) and (e)(4), the Secretary shall develop standards to be applied in assuring the qualifications of administrators of nursing facilities. These standards shall address:

i) educational requirements for initial state licensure;

ii) administrator-in-training or other pre-licensure experience;

iii) continuing competency requirements for re-licensure;

iv) completion of a national competency examination with a minimum passing score set at a pass/fail level established in a manner that is generally accepted in the psychometric community as fair and reasonable, and . . .

v) standards of conduct and behavior.

In response to section iv of the proposed regulation, N.A.B. authorized a study to determine a passing point for the N.A.B. licensing examination. The purpose of the study was to investigate the feasibility of using a criterion-referenced cut score as a recommended standard for the N.A.B. program. The study used a method known as the modified-Angoff technique. At the conclusion of the study it was recommended that N.A.B. adopt a particular passing score as its new recommended passing score to be implemented in 1990. In addition, it was recommended that N.A.B. adopt a scale score distribution so that a uniform scale score can be applied to future examinations, thus ensuring a constant passing point from administration to administration despite shifts in raw scores.

On June 16, 1989, N.A.B. recommended that beginning January 1, 1990, all state nursing home administrator licensing

boards adopt as their passing score the score derived from the N.A.B. passing point study.

E. STATEMENT OF NEED

The proposed amendment creates a new passing score for the national licensing examination. This change is necessary to bring the Minnesota Board rule regarding the passing score on the national examination into compliance with the proposed federal standard and the N.A.B. recommendations.

The proposed amendment is also necessary to provide a more equitable examination for Minnesota applicants. The present scoring method does not utilize any generally accepted psychometric method for setting the passing point, but merely sets the passing point at 75 percent correct answers. This method does not take into account the varying difficulty levels of the examination. By implementing the new score the Board can ensure that the passing point will remain constant from test administration to test administration despite shifts in the difficulty level of examinations. The proposed method, then, is more effective and more equitable than the present method because it works to prevent prejudice to candidates who are administered a more difficult examination.

F. STATEMENT OF REASONABLENESS

The proposed rule amendment is reasonable in that it is based on well recognized psychometric methods and supported by a professional study conducted by experts in the testing field. The study authorized by N.A.B. was conducted by Professional Examination Services of New York (PES), a

professional testing organization. The pass point study was conducted in two phases. Phase I involved convening an expert panel to set a passing score for a particular examination form. The panel was composed of three educators, three entry level nursing home administrators, three experienced nursing home administrators, and three state licensing board representatives to serve as judges for the standard setting session. A PES psychometrician led the group through a modified-Angoff passing point procedure. This procedure is a well known and often utilized method in the psychometric community for establishing a pass/fail position on an examination.

During Phase II of the study, PES computed a passing scale score based on the panel's judgments, and applied the cut score to the distribution of scores for candidates who sat for the national examination between November 1988 and May 1989. The result of the study was the recommended passing scale score adopted by N.A.B. and recommended for all state nursing home administrator licensing boards. A description of the N.A.B. study and the modified-Angoff method is attached hereto and incorporated herein.

The proposed amendment is also reasonable because it helps to establish a uniform scale score passing point to be applied to the scores from each national test administration. This use of scale scores for score reporting purposes will ensure that the passing point will remain constant from administration to administration despite shifts in raw scores.

Finally, the proposed amendment is reasonable in that it does not substantially change the present passing point required by the Minnesota Board for the national examination. The present passing point is 75 percent. The Board estimates that the proposed amendment will lower the passing point by approximately one percent. Thus, any applicants who have relied on a fixed 75 percent passing score will not be prejudiced by the change.