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Re: In the Matter of the Proposed Rules of the Minnesota Board of Executives for Long Term Services and Supports Governing Licensure of Health Services Executives, Licensure Requirements, Course and Practicum Requirements, Academic Program Review, and Continuing Education, *Minnesota Rules*, chapter 6400; OAH Docket No. 5-9028-36680; Revisor R-4621

Via e-mail: sonars@lrl.leg.mn

Dear Librarian:

The Minnesota Board of Executives for Long Term Services and Supports intends to adopt rules governing the licensure of health services executives, licensure requirements for licensees, course and practicum requirements, academic program review, and continuing education. The Board plans to publish a Dual Notice in the October 12, 2020, State Register.

The Board has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Board is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Dual Notice.

If you have questions, please contact me at 651.201.2731

Yours very truly,

/s/ Randy Snyder

Randy Snyder
Executive Director

Enclosure: Statement of Need and Reasonableness

Minnesota Board of Executives for Long Term
Services and Supports (formerly Minnesota
Board of Examiners for Nursing Home
Administrators)

In the Matter of Proposed Revisions of
Minnesota Rules 6400; Revisor ID No. 4621
OAH Docket No. 5-9028-36680

STATEMENT OF NEED AND
REASONABLENESS

September 2020

General information:

- 1) Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's Public Notices website: mn.gov/boards/nursing-home
- 2) View older rule records at: [Minnesota Rule Statutes](http://www.revisor.mn.gov/rules/status/)
- 3) Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Randy Snyder, Executive Director, Minnesota Board of Nursing Home Administrators, 2829 University Avenue SE, Suite 404, Minneapolis, MN 55414; telephone 651-201-2731; email randy.snyder@state.mn.us.
- 4) How to read a Minnesota Statutes citation: Minn. Stat. § 999.09, subd. 9(f)(1)(ii)(A) is read as Minnesota Statutes, section 999.079, subdivision 9, paragraph (f), clause (1), item (ii), subitem (A).
- 5) How to read a Minnesota Rules citation: Minn. R. 9999.0909, subp. 9(B)(3)(b)(i) is read as Minnesota Rules, chapter 9999, part 0909, subpart 9, item B, subitem (3), unit (b), subunit (i).

Acronyms:

APA	Administrative Procedures Act
ALJ	Administrative Law Judge
Minn. R. pt.	Minnesota Rules part
Minn. Stat.	Minnesota Statutes
MMB	Minnesota Management and Budget
MN	Minnesota
OAH	Office of Administrative Hearings
SONAR	Statement of Need and Reasonableness

INTRODUCTION

The Minnesota Board of Executives for Long Term Services and Supports (formerly Minnesota Examiners for Nursing Home Administrators) (“Board”) licenses and regulates nursing home administrators in the State of Minnesota. The Board’s mission is to promote the public’s interest in quality care and effective services for residents of nursing facilities by ensuring that licensed administrators are qualified to perform their administrative duties.

The Board is amending its rules to (1) incorporate a new legislatively-sanctioned pathway to licensure, the health services executive (“HSE”); (2) to make technical changes that incorporate legislative changes or better reflect the current terminology and practices; (3) to make necessary and reasonable changes to the practicum course and continuing education requirements; and (4) to repeal obsolete rules.

In order to adopt these proposed rules, the Board must demonstrate that it has complied with all procedural and substantive requirements for rulemaking. These requirements are as follows: 1) there is statutory authority to adopt rules; 2) the rules are necessary and reasonable; 3) all necessary procedural steps have been taken; and 4) any additional requirements imposed by law have been satisfied. This statement documents how the Board has met these requirements.

STATEMENT OF GENERAL NEED AND BACKGROUND

On May 22, 2019, Governor Walz signed into law Minnesota House File 90 (“H.F. 90”). H.F. 90 included the following provisions, which renamed the Board and which allowed for the Board to license HSEs in the State of Minnesota:

Minn Stat. sec. 144A.19 Board of Executives for Long Term Services and Supports.

Subdivision 1. Creation; membership. There is hereby created the Board of ~~Examiners for Nursing Home Administrators~~ Executives for Long Term Services and Supports which shall consist of the following members:....

EFFECTIVE DATE. This section is effective July 1, 2020.

...

Minn. Stat. sec. 144A.26 Reciprocity With Other States And Equivalency of Health Services Executive.

...

Subdivision 2. Health services executive license. The Board of Executives may issue a health services executive license to any person who (1) has been validated by the National Association of Long Term Care Administrator Boards as a health services executive, and (2) has met the education and practice requirements for minimum qualifications of a nursing home administrator, assisted living director, and home and community-based service provider. Licensure decisions made by

the Board under this subdivision are final.

EFFECTIVE DATE. This section is effective August 1, 2019.

Because of the changes rendered by H.F. 90, the Board is proposing to amend its rules to reflect the new name of the Board and the new HSE pathway to licensure. As part of its rule review process, the Board also identified rules that required technical changes to better reflect the industry's current terminology and Board practices, rules that were obsolete, and rules that should be amended as reasonable and necessary changes to the practicum course and continuing education requirements. All of the proposed changes are set forth in this SONAR.

SCOPE OF THE PROPOSED AMENDMENTS

The following rules of Minnesota Chapter 6400 are affected by the proposed changes:

- 6400.5000 Scope
- 6400.5100 Definitions
- 6400.5150 Applicability (new rule)
- 6400.5200 Use of Title
- 6400.6000 Licensure Requirements
- 6400.6100 Applying for Licensure
- 6400.6500 Specific Course Requirements for Applicants Who Apply Before September 1, 2017 (repeal as obsolete)
- 6400.6550 Specific Course Requirements for Applicants Who Apply On Or After September 1, 2017
- 6400.6560 Waiver of Course Requirements
- 6400.6570 Evidence of Course Completion
- 6400.6600 Practicum Course
- 6400.6650 Practicum Duration for Applicants Who Apply Before September 1, 2017 (repeal as obsolete)
- 6400.6655 Practicum Duration for Applicants Who Apply On Or After September 1, 2017
- 6400.6660 Academic Program Review
- 6400.6700 Reciprocity
- 6400.6710 Licensee Responsibilities
- 6400.6720 Displaying Licenses
- 6400.6740 Renewing Licenses
- 6400.6750 License Reinstatement
- 6400.6800 Continuing Education Requirements
- 6400.6850 Number of CE Credits for Activities
- 6400.6870 Sponsoring Continuing Education
- 6400.6900 Grounds for Discipline

PUBLIC PARTICIPATION AND STAKEHOLDER INVOLVEMENT

To develop the proposed amendments, the Board appointed a Rules Development Team comprised of Board members, elder care advocates, and association representatives. The Rules Development Team provided input into the rule amendments. Minutes from the Rules Development Team meetings were available on the Board's website throughout the development process. The Board adopted the Rules Development Team's proposed amendments at its meeting in December 2019.

STATUTORY AUTHORITY

Minnesota Statutes section 144A.20, .21, .23, .24, and 214.06 authorize the Board to adopt rules necessary to administer and enforce sections 144A.04 through 144A.28. Minnesota Statutes section 214.12, subdivision 1, authorizes all health-licensing boards to promulgate by rule continuing education requirements. Moreover, as noted above, House File No. 90, passed during the 2019 legislative session, changed the name of the Board and authorized the Board to license HSEs.

NECESSITY AND REASONABLENESS OF AMENDMENTS

General Analysis

As noted above, the proposed rule amendments fall into the following four categories: (1) HSE-related amendments; (2) technical amendments; (3) practicum course and continuing education amendments; and (4) obsolete rules.

The HSE-related amendments are necessary and reasonable because they fulfill the statutory licensure framework for HSEs and bring the licensure, ongoing education, and practice requirements in line with licensed nursing home administrators ("LNHAs"), a highly comparable profession also regulated by the Board.

The technical amendments are necessary and reasonable because they incorporate legislative changes, such as the Board's name change, or better reflect the industry's current terminology and/or the Board's practices.

The practicum course and continuing education amendments are necessary and reasonable because they ensure that licensees' initial training and continuing education meet standards that fulfill the Board's role of public protection.

The repeal of obsolete rules is necessary and reasonable because the rules are no longer applicable to the practice of nursing home administration.

Rule-by-Rule Analysis

HSE-related amendments

The following rules, and their respective justifications, are included in the HSE-related amendments:

Minn. R. 6400.5000(A)(3) Scope – The proposed rule change adds HSE applicants and prospective applicants to the list of individuals to whom the chapter applies. This amendment is necessary and reasonable to make clear that Minn. Ch. 6400 applies to HSEs, in addition to LNHAs.

Minn. R. 6400.5100, subps. 9b, 10, 11, 16 Definitions – The proposed rule changes add language and/or definitions that are used in other proposed rule changes. These changes are necessary and reasonable because they fully incorporate the HSE license into the Board’s licensure and regulatory process as set forth in its rules and because they bring the rules in line with the statutory changes passed in House File No. 90.

Minn. R. 6400.5200, subp. 2 Use of Title – The proposed rule change specifies that only persons who qualify as an HSE and are licensed by the Board may use the title “licensed HSE” and the abbreviation “L.H.S.E.” This amendment is modeled after subpart 1, which applies to LNHAs. This amendment is necessary and reasonable to protect the public from unlicensed individuals seeking to use these titles without satisfying the licensure requirements.

Minn R. 6400.6000, subp. 2 Licensure Requirements – The proposed rule change reflects the Board’s authority to issue an HSE license to individuals if they meet the requirements set forth in the rule. These amendments are necessary and reasonable because they set forth statutory and other requirements for licensure and are modeled after the currently-existing licensure requirement rules for LNHAs. The proposed rule includes the following:

- the requirement that a licensee submit an application with specified required information, similar to the application required for nursing home administrators;
- the requirement that the applicant has satisfied the requirements of the new statute, Minn. Stat. sec. 144A.26, subd. 2;
- the passage of a state exam addressing the practice of nursing facility operations in Minnesota, which is authorized under the Board’s general jurisdiction under Minn. Stat. sec. 144A.23;
- the completion of a criminal background check required by Minn. Stat. sec. 214.075;
- the requirement that the applicant has not had an application rejected by the Board for failing to include all required information or for committing an act that would warrant disciplinary action under the Board’s authority, which are the same as the licensure requirements for LNHAs and several other health licensing board applicants;
- the payment of fees, which is required by and set forth in Minn. Stat. sec. 144A.291.

Minn. R. 6400.6600, subp. 3 Practicum Course – The proposed rule change adds specific authority for HSEs, in addition to LNHAs, to serve as preceptors for practicums that must be supervised. This amendment is necessary and reasonable because HSEs will be fully qualified to serve as preceptors and it will increase access to preceptors for HSE and LNHA candidates.

Minn. R. 6400.6700, subp. 2 Reciprocity – The proposed rule change specifically allows the Board to license HSEs who have been validated by NAB. The language of this rule models the language of Minn. Stat. sec. 144A.26, subd. 2, passed as part of House File No. 90. This amendment is necessary and reasonable to incorporate the legislative permission to license and regulate HSEs into the Board’s rules.

Minn. R. 6400.6710 (A), (C), (D) Licensee Responsibilities – The proposed changes to these three provisions add references to HSEs for all specified licensee responsibilities. These changes are necessary and reasonable to make clear that HSEs are expected to have the same responsibilities as the Board’s current licensees, LNHAs.

Minn. R. 6400.6720 Displaying Licenses – The proposed change to this provision is to strike the reference to “as a nursing home administrator.” This change is reasonable and necessary to make clear that this provision applies to all actively-practicing licensees, including both LNHAs and HSEs.

Minn. R. 6400.6750 (B) Licensee Reinstatement – The proposed changes to this provision add references to HSEs for the Board’s process for reinstating licenses that have lapsed. This change is necessary and reasonable to extend the Board’s authority to reinstate lapsed licenses to include HSEs.

Minn. R. 6400.6800, subps. 4D, 5 Continuing Education Requirements – The proposed changes specifically incorporate a reference to “health services executives.” These changes are necessary and reasonable to make clear that they apply to HSEs in addition to LNHAs.

Minn. R. 6400.6850 (D) Number of CE Credits For Activities – The proposed change to this provision adds a reference to HSE licensing authorities in other states that have approved continuing education to all the Board’s licensees to seek credit in Minnesota for those activities. This change is necessary and reasonable to reflect the fact that HSEs are being licensed by other boards nationwide.

Minn. R. 6400.6870, subp. 2 Sponsoring Continuing Education – The proposed change to this provision removes reference to “licensed administrator” and includes the more generic label “licensee” so that HSEs are included in this provision. This change is necessary and reasonable to clarify that HSEs, in addition to the Board’s other licensees LNHAs, are covered by this provision.

Minn. R. 6400.6900 (C), (E), (G), (H), (M), (N), (Q), (V), (W) Grounds for Discipline – The proposed rule changes add HSE references to all disciplinary provisions that are not currently broad enough to reflect the Board’s authority to take disciplinary action on HSEs as licensees of the Board. Parts (M) and (N) involve removal of the specific reference to LNHAs so that all licensees of the Board, which would include HSEs, are subject to those specific disciplinary provisions. These amendments are necessary and reasonable to allow the Board to take action against all licensees, including HSEs who violate Board rules and practice standards.

Technical Amendments

Minn. R. 6400.5100, subps. 3a, 3b, 16a, 18 Definitions – The proposed rule changes to 3a and 3b adds definitions for an “administrator in residence or AIR” and “administrator

in residence program or AIR program,” which are necessary and reasonable to provide definition to those terms and to reflect the current terminology for an individual who is in the training stage of the licensure process. The proposed rule change to 16a adds a definition for “quality assurance performance improvement,” which is a term commonly used in the long-term services and support field. Quality assurance performance improvement is an important tool that is part of an LNHA and HSE training program. This amendment is necessary and reasonable to provide an industry-wide definition to the term and to reflect current terminology. Finally, the proposed rule change to 18 adds a definition for “root cause analysis,” which is a term commonly used in the long-term services and supports field. Root cause analysis is an important tool that is part of an LNHA and HSE training program. This amendment is necessary and reasonable to provide an industry-wide definition to the term and to reflect current terminology. These terms are used and will be used as part of the Board’s application process, specifically as part of the topics that must be covered during the practicum course.

Minn. R. 6400.5150 Applicability – This proposed addition was recommended by the Minnesota Office of the Revisor of Statutes. The Board has begun the rulemaking process to license a new category of licensees, licensed assisted living directors. The rules related to those licensees will become part of Minnesota Rules Chapter 6400. The Revisor recommended adding this provision as reasonable and necessary to clarify for Board licensees which rules apply to which license categories.

Minn. R. 6400.5200, subp. 1 Use of Title – The proposed change adds the title “Licensed nursing home administrator” to subpart 1. This change is necessary and reasonable to differentiate it from the new subpart 2, which applies to licensed HSEs.

Minn. R. 6400.6000, subp. 1(G), (I) Licensure Requirements – The first proposed change adds the title “license; nursing home administrator” to subpart 1. This change is necessary and reasonable to differentiate it from subpart 2, which applies to licensed HSEs. The proposed addition to (G) includes a requirement that LNHA’s undergo a criminal background check. This change is necessary and reasonable to incorporate the criminal background check requirement set forth in Minn. Stat. sec. 214.075. The proposed change to (I) includes a removal of the reference to the now-obsolete rule wherein the Board’s fees were set. This change is necessary and reasonable because all Board fees are now set in statute.

Minn. R. 6400.6100 Applying for Licensure – The proposed changes to this rule include provisions that allow applications to be done electronically and require the applicant to provide an active e-mail address. These changes are necessary and reasonable to allow the Board to process applications more efficiently via electronic means. Several of the other health licensing boards process applications electronically.

Minn. R. 6400.6550, subps. Title, 2, 5, 9 Specific Course Requirements – The proposed change to the title removes the language “for applicants who apply on or after September 1, 2017.” This language is now obsolete so it is necessary and reasonable to repeal it. The other proposed changes to this rule include (1) changing the course requirement from

“managerial accounting” to “health care accounting” to better reflect current industry terminology and (2) changing the course requirement from “long-term care supports” to “long-term care services and supports.” Both of these changes are necessary and reasonable to better reflect current industry terminology and to bring subpart 5’s language in line with statutory changes made in House File No. 90, i.e., changing to the Board’s name to incorporate long-term care services and supports. The final change in subpart 9 corrects the reference to Minn. R. 6400.6655, subpart 2, which governs waiver of practicum depending on prior relevant experience. This change is necessary and reasonable to make the rule references accurate and understandable for applicants.

Minn. R. 6400.6560, subp. 1 Waiver of Course Requirements – The proposed changes include (1) correcting the rule reference to the rule governing specific course requirements and (2) removing the “administrator in training” language and replace it with “administrator in residence.” These changes are reasonable and necessary because (1) it makes the rule references accurate and (2) it better reflects current industry terminology.

Minn. R. 6400.6570, subp. 2 Evidence of Course Completion – The proposed change includes a specific reference to the practicum course. This change is necessary and reasonable to add specificity and clarity to the Board’s required evidence list and to update the rule with current Board practices.

Minn. R. 6400.6600, subps. 1, 1a, 3 Practicum Course – The proposed changes include (1) a specific reference to the NAB administrator in residence program with a completed assessment in subpart 1; (2) a specific criterium for waiver of the practicum course requirements; and (3) an inclusion of “health services executive” in subpart 3. The subpart 1 and 1a changes are necessary and reasonable because they bring the language in line with current Board practices (i.e., approving NAB administrator in training programs as a matter of course) and notifies stakeholders and the public that these practicum programs are approved as a matter of course. Subpart 1a also clarifies and sets forth the criterium the Board uses to determine if some portion of the practicum course has been pre-satisfied and therefore does not need to be included. The subpart 3 change is necessary and reasonable because it reflects industry practices whereby an HSE can oversee a practicum course.

Minn. R. 6400.6655, subp. 2(C)(3), (E) Practicum Duration – The first proposed change is to strike the portion of the rule title that refers to applying after September 1, 2017. This change is reasonable and necessary because the language is obsolete. The next proposed changes include a change from “and” to “or” in subpart 2(C). This change is necessary and reasonable because it corrects an error made during the Board’s last rule amendment process in 2017. The Board has interpreted this provision with an “or” and the proposed change corrects the error. The proposed changes also include the addition of the language “assisted living facility” in subpart 2(C)(3). This change is necessary and reasonable because it reflects the new statutory language passed in House File No. 90 and specifically incorporates that language into the practicum duration provision. The proposed changes also include the addition of the language “senior leadership person

with an LNHA or LHSE reporting directly to them” in subpart 2(E). This addition is necessary and reasonable to reflect current Board practices and provide stakeholders and the public with notice that these individuals are specifically included in the waiver of the experience requirement. The Board finds that these individuals, as a class and by virtue of their roles, possess the required leadership experience to qualify for licensure.

Minn. R. 6400.6660, subp. 2(H)(3) Academic Program Review - The proposed change includes the addition of the language “or evidence of the use of the NAB preceptor training materials and self-assessment.” This change is necessary and reasonable to reflect current Board practice and provide stakeholders and the public with notice that these training programs will be automatically accepted by the Board as part of the academic program review.

Minn. R. 6400.6700 Reciprocity – The proposed changes include (1) changing the title of the rule to Endorsement; (2) removing the reference to obsolete rules in subpart 1D; and (3) changing the title of subpart 1 to “License; Nursing Home Administrator.” The change of title to Endorsement is necessary and reasonable because it better reflects industry terminology and the Board’s actual process of endorsement, allowing those licensed in other jurisdictions to seek licensure in Minnesota, as opposed to a pure reciprocity program, automatically licensing in Minnesota those licensed in specified other jurisdictions. The removal of the reference to the obsolete rules in subpart 1D is necessary and reasonable because the reference was to a fee rule that was repealed by statute. The change to the title of subpart 1 is necessary and reasonable to bring the rule in line with the statutory changes set forth in House File No. 90.

Minn. R. 6400.6740, subps. 1, 2 Renewing Licenses – The proposed changes include striking the language “as a nursing home administrator” in subpart 1. This change is necessary and reasonable because it clarifies that the rule will apply to all license types going forward. The proposed change to subpart 2 includes striking reference to a fee rule that was previously repealed by statute. This change is necessary and reasonable to bring the rule in line with current Minnesota statutes and rules.

Minn. R. 6400.6850 (G), (H), and (I) Number of CE Credits for Activities – The proposed changes to (G) and (H) are intended to clarify that these activities must relate to long-term services and supports in order to qualify for CE credit. These changes were recommended by the Minnesota Office of the Revisor to provide clarity. They are necessary and reasonable to ensure that licensees have prior knowledge about the types of activities that the Board will approve for CE credit. The proposed change to (I) is necessary and reasonable to provide clarity about how the Board approves CE credit for time spent on industry leadership positions.

Minn. R. 6400.6900 (Y) Grounds for Discipline – The proposed amendment is a specific provision notifying licensees that the Board has the authority to take disciplinary action on a license for the failure to meet minimum standards of acceptable and prevailing practice when supervising an administrator in residence. This provision is reasonable and necessary because the Board has previously interpreted the failure to adequately

supervise as a violation of (I), which is a failure to meet minimum standards of acceptable and prevailing practice. The addition of (Y) provides clarity for licensees. Moreover, it is consistent with the disciplinary provisions of other health care providers who have supervisory responsibility. See, e.g., Minn. Stat. sec. 147.091, subd. 1(h) (allowing the Minnesota Board of Medical Practice to take disciplinary action on the license of a physician for failing to adequately supervise); Minn. Stat. sec. 148.261, subd. 1(5) (allowing the Minnesota Board of Nursing to take disciplinary action on the license of a nurse for failing to adequately supervise). The addition of (Y) is not a substantive addition to the grounds for discipline; it is a clarification of the “minimum standards of acceptable and prevailing practice” that already exists.

Practicum Course and Continuing Education Amendments

Minn. R. 6400.6600, subp. 1(G) Practicum Course – The proposed change is a requirement that practicum courses include “the completion of a quality assurance performance improvement or root cause analysis on identified areas of need.” This change is necessary and reasonable because the Centers for Medicare and Medicaid Services (“CMS”) requires QAPI plans for long term care facilities be presented to state and/or federal surveyors. Moreover, root cause analysis is a tool commonly used by LNHAs and HSEs to determine sources of process weaknesses. The Board finds that it is necessary and reasonable for an applicant to have experience with one or both of these processes as part of the practicum experience.

Minn. R. 6400.6800, subp. 6 Continuing Education Requirements – The proposed change is a provision that allows the Board to designate specified areas for continuing education “when compelled by an advancement in scope of practice or emerging long-term services and supports issues.” The provision requires the Board to give notice to licensees by May 1 if it plans to exercise this authority. The Board has broad authority under Min. Stat. sec. 214.12, subd. 1 to require continuing education “to promote the continuing professional competence” and “to improve professional skills.” This proposed change is necessary to ensure professional competence and skill when the long-term services and supports industry has a rapid change in standards. The proposed change allows the Board to identify those areas of change and require licensees to become educated on the changes. The rule is reasonable because it requires the Board to notify licensees of the designated subject area before the continuing education cycle begins on May 1 and allows licensees a full year to complete a course in the subject matter. (See Minn. R. 6400.6800, subp. 1 for renewal requirements and continuing education deadlines.)

Minn. R. 6400.6870, subp. 6 Sponsoring Continuing Education – The proposed change includes an addition that allows the Board to waive the fee for course program providers who are able to validate attendance and record and merge the attendance records with the Board’s online reporting system. This change is necessary and reasonable to encourage more providers to provide the data to the Board electronically, which in turn streamlines the Board processes and creates economic efficiencies.

Obsolete Rules

Minn. R. 6400.6500 Specific Course Requirements for Applicants Who Apply On or After September 1, 2017 – This rule, by the deadline specified in its title, is now obsolete. There are no longer applicants who could apply on or before September 1, 2017.

Minn. R. 6400.6650 Practicum Duration for Applicants Who Apply Before September 1, 2017 - This rule, by the deadline specified in its title, is now obsolete. There are no longer applicants who could apply on or before September 1, 2017.

REGULATORY ANALYSIS

A. Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

HSE Amendments: Currently 21 percent of the eligible HSE candidate pool hold an existing LNHA license. The persons most affected by these rules would be these individuals, already licensed as LNHA, who have met the additional national HSE certification requirements and are seeking HSE licensure. This class of individuals may bear costs in the form of fees required to become licensed as an HSE. There is debate at the Board level about whether a person who seeks both LNHA and HSE licensure would be required to pay fees for each, so this might be an additional cost. The Board anticipates that the majority, if not all, of current LNHA will choose to obtain the higher credential of the licensed HSE. It remains an option.

Technical Amendments: The persons most affected by these rules would be licensees and applicants. To the best of the Board's knowledge, these classes of individuals will bear no additional costs related to these amendments. If anything, Board costs may eventually decrease because a number of the amendments streamline Board processes and clarify rules, which may lead to savings for staff costs.

Practicum/Continuing Education Amendments: The persons most affected by these rules are licensees and applicants. Applicants will now have the requirement that a QAPI analysis be part of the practicum course, but this requirement should not add to the overall expense for an applicant to become licensed. Licensees may now, if the Board issues a notice, be required to take continuing education in specific areas. The Board is not increasing the actual number of continuing education courses required, but rather, when "compelled by an advance in scope of practice or emerging long-term services and supports issues," directing the content of currently-required continuing education. This should not increase the expense or add cost to licensees.

The public is also tangentially affected by the continuing education and practicum amendments by a stronger knowledge base in emerging topics and a better preparation for licensure with QAPI experience.

Repeal of Obsolete Rules: The obsolete rules are obsolete because, by their terms, they have expired. No individual or class of people would be affected by them.

B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

HSE Amendments: There will also be a marginal cost to the Board to get an application process set up to license HSEs and to license and regulate additional licensees. The legislature mandated the licensing of HSEs and sets all the fees charged by the Board.

The Board would also have a marginal increase in revenues in the form of licensing fees. The Board's revenues and expenses are state governance special revenue dollars, not part of the state's general fund. The Board anticipates no costs or additional revenues to any other agencies resulting from the HSE amendments.

Technical Amendments: The Board anticipates no additional costs related to the technical amendments. The Board's expenses may eventually decrease because a number of the amendments streamline Board processes and clarify rules, which may lead to savings for staff costs. The Board anticipates no costs or additional revenues to any other state agencies resulting from the technical amendments.

Practicum/Continuing Education Amendments: The Board anticipates no additional expenses or revenues, for itself or any other state agency, resulting from the practicum/continuing education amendments.

Repeal of Obsolete Rules: The Board anticipates no additional expenses or revenues, for itself or any other state agency, resulting from the repeal of obsolete rules.

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

HSE Amendments: There is no less costly or less intrusive method of licensing by endorsement those individuals who have HSE accreditation from NAB.

Technical Amendments: There is no less costly or less intrusive method of achieving the purpose of the technical amendments. The technical amendments will save cost because they incorporate legislative changes, such as a name change, or better reflect the industry's current terminology and/or the Board's practices

Practicum/Continuing Education Amendments: There is no less costly or less intrusive method of achieving the purpose of the practicum amendment, i.e. mandating that QAPI analysis be part of the practicum. There is no less costly method of achieving the purpose of the continuing education amendment, i.e. assuring that all licensees are appropriately educated when an advancement in scope of practice or long-term services and support issues. The Board could have chosen to use a suggestive approach with licensees, which would have been slightly less intrusive, however the trade-off would be a decrease in public protection.

Repeal of Obsolete Rules: There is no less costly or less intrusive method for the repeal of these obsolete rules. By their terms, they have expired.

D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.

HSE Amendments: Prior to passage of House File No. 90, the Board briefly considered other methods for licensing HSEs, including possibly creating its own accreditation program, but ultimately decided that licensing NAB-validated HSEs via endorsement was the least costly and most efficient method. Moreover, the legislation authorizing HSE licensure specifically stated that NAB validation is one criterium. The legislature provided the Board with specific criteria for HSE licensure and the Board does not have authority to deviate from legislative mandates by creating alternative methods.

Technical Amendments: The Board did not consider alternative methods for achieving the purposes of the technical amendments. By their nature, there are no alternatives to incorporate statutory changes and to better reflect current terminology and/or Board practices.

Practicum/Continuing Education Amendments: The Board did not consider alternative methods for achieving the purpose of the practicum or the continuing education amendment. The inclusion of the QAPI analysis as part of the practicum is supported by federal law. The Board discussed but did not seriously consider a “suggestive” approach to the continuing education amendment. A suggestive approach, as opposed to a mandatory approach, would decrease public protection.

Repeal of Obsolete Rules: There are no alternatives to the repeal of rules that, by their terms, have expired.

E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

HSE Amendments: There will be a minimal cost to the Board to get an application process set up to license HSEs and to license and regulate additional licensees. The Board has reached out to the legislature to seek an appropriation from the special revenue fund to address these cost issues. The legislature mandated the licensing of HSEs and sets all the fees charged by the Board.

There are no anticipated costs to other governmental units, businesses, or individuals.

Technical Amendments: There are no anticipated costs to the Board or to other governmental units, businesses, or individuals from the technical amendments. There may be some long-term cost savings to the Board from efficiency of operations.

Practicum/Continuing Education Amendments: There is a possibility that the Board would have increased costs from enforcing either or both of these amendments. This would be a nominal increase to the Board’s current enforcement role.

Repeal of Obsolete Rules: There are no costs to the repeal of these rules that, by their terms, are obsolete.

F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

HSE Amendments: The Board does not have the option of not adopting the proposed rules because they are mandated by legislative changes.

Technical Amendments: The costs or consequences of not adopting the technical amendments could be increased and/or continued inquiries from licensees, applicants, and the public about rule requirements. This has the potential to raise Board staff costs.

Practicum/Continuing Education Amendments: The costs or consequences of not adopting the practicum amendment would be that future licensees, would not be required to have experience with QAPI analysis, when CMS requires QAPI plans for long term care facilities be presented to state and/or federal surveyors.

The costs or consequences of not adopting the continuing education amendment would be a decrease in public protection with emerging or developing scope of practice issues. The current COVID-19 impact on long-term care facilities highlights the importance of this continuing education role for the Board.

Repeal of Obsolete Rules: The costs or consequences of not repealing obsolete rules are the presence of rules that, by their terms, are obsolete. This makes the Board rules less clear.

G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

HSE Amendments: The HSE amendments are not in conflict with any existing federal regulations.

Technical Amendments: The technical amendments are not in conflict with any existing federal regulations.

Practicum/Continuing Education Amendments: The practicum/continuing education amendments are not in conflict with any existing federal regulations.

Repeal of Obsolete Rules: The repeal of obsolete rules are not in conflict with any existing federal regulations.

H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

HSE Amendments: The Board has found no cumulative effect with the HSE amendments and currently-existing federal and state regulations.

Technical Amendments: The Board has found no cumulative effect with the technical amendments and currently-existing federal and state regulations.

Practicum/Continuing Education Amendments: The Board has found no cumulative effect with the practicum/continuing education amendments and currently-existing federal and state regulations.

Repeal of Obsolete Rules: The Board has found no cumulative effect with the repeal of obsolete rules and currently-existing federal and state regulations.

ADDITIONAL NOTICE PLAN

By Orders dated February 4, 2020 and July 15, 2020, Administrative Law Judge Jim Mortenson approved the Board's Additional Notice Plan. The Additional Notice Plan includes the following:

- On June 10, 2019, the National Association of Long-Term Care Administrator Boards ("NAB") issued a press release announcing that the Minnesota legislature had passed legislation authorizing the Board to license health services executives. The press release was posted on the NAB website and released to NAB members.
- On July 24, 2019 and September 10, 2019, the Board met in properly-noticed meetings and discussed (1) the rule amendments mandated by the passage of the legislation authorizing the licensing of health services executives and (2) the housekeeping and substantive amendments set forth above. Members of the public were invited to attend and participate.
- The Board posted the Revisor's Draft RD4621 on its website. There is a direct link on the Board's website that allows members of the public to make comments about the rules draft.
- The Board provided notice of the proposed rule change postings on the website either verbally, via its newsletter, and/or via email to all stakeholders including the two trade associations, all licensees, and nine educational institutions.
- When the Board published its Request for Comments, the Board sent out an email blast to all persons on the email list, to the two trade associations, and to the nine educational institutions notifying them that the Request for Comments and the Revisor's Draft was on the Board's webpage. Additionally, a WebEx was conducted with current academic programs on March 18, 2020.
- As the Board continues the rulemaking process through the OAH, the Board will post all filings on its website, including specifically the Dual Notice, the Statement of Need and Reasonableness, and the most recent rules draft. The Board will send out an email blast to all persons on the email list, to the two trade associations, and to the nine educational institutions notifying them that the Dual Notice, the Statement of Need and Reasonableness, and the most recent rules draft are posted on the Board's website. The Board will also include a link to the OAH's eComments page during the comment period.

PERFORMANCE-BASED RULES

Minnesota Statutes, section 14.002, requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the Board's regulatory objectives while allowing maximum flexibility to regulated parties and to the Board in meeting those objectives.

With respect to the HSE amendments, the Board modeled the licensing requirements on the currently-existing licensing requirements for LNHAs. The Board has not found the currently-existing licensing requirements to be overly prescriptive and inflexible. The Board's objective in licensing HSEs is to allow an additional class of applicants who are nationally-recognized as qualified in education and experience to serve as HSEs in Minnesota. The Board has used a flexible licensing framework to meet that objective.

With respect to the technical amendments, the Board is incorporating a statutorily-mandated name change and providing clarity to Board processes and procedures. While achieving the goals of additional clarity and incorporating statutorily-mandated changes, the Board has not decrease flexibility with any of these amendments.

With respect to the practicum amendment, the Board's goal is to ensure that all practicum participants have experience with QAPI analysis, which is part of the CMS regulatory framework under which licensees will operate. Requiring it as part of the practicum experience is a flexible means of achieving the Board's goal, especially because the rule allows the participants to determine the focus of the QAPI analysis.

With respect to the repeal of obsolete rules, the Board is omitting language that is now obsolete, thereby achieving the Board's goal of a more relevant and understandable rules chapter. There is no decreased flexibility in this process.

CONSULT WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Board consulted with Minnesota Management and Budget (MMB). On June 12, 2020, the Board sent a copy of the proposed rules, the SONAR, and the Dual Notice for MMB review.

During the prior two legislative sessions (2018 and 2019) and when creating the prior biennial budget, MMB was consulted through the executive budget officer ("EBO") specific to the creation of the new line of licensure, the HSE. There does not appear to be a local government impact.

IMPACT ON LOCAL GOVERNMENT ORDINANCES AND RULES

Minnesota Statutes, section 14.128, subdivision 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The Board has determined that the proposed amendments will not have any effect on local ordinances or regulations.

COSTS OF COMPLYING FOR SMALL BUSINESS OR CITY

Minnesota Statutes, section 14.127, subdivisions 1 and 2, require an agency to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees." The Board has been unable to identify any small business or city that would have a cost increase of \$25,000 or more as a result of complying with these rules.

AUTHORS, WITNESSES, AND SONAR EXHIBITS

- 1) Randy Snyder, LNHA, Executive Director, Minnesota Board of Examiners for Long-Term Services and Supports.
- 2) Michael Tripple, J.D., Chair – Rules Development Team, Minnesota Board of Examiners for Long-Term Services and Supports
- 3) Jennifer Pfeffer, LNHA, Chair, Minnesota Board of Examiners for Long-Term Services and Supports.

Witnesses and other staff

The Board expects that the proposed amendments will be noncontroversial. In the event that a hearing is necessary, the Board anticipates having the listed authors testify as witnesses in support of the need for and reasonableness of the rules.

SONAR Exhibits

None.

CONCLUSION

In this SONAR, the Board has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules, chapters 6400. The Board has provided the necessary notice and documented in this SONAR its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.

/s/ Randy Snyder_____

Randy Snyder, Executive Director
Minnesota Board of Executives for Long Term
Services and Supports

September 14, 2020
Date