

Agenda Item: 7.11
Board Meeting: April 16 & 17, 2014
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Consideration of Proposed New 22 Tex. Admin. Code §213.35
Pertaining to Knowledge, Skills, Training, Assessment and Research (KSTAR) Pilot
Program

Background:

The Texas Board of Nursing (TBON) has authority under the Texas Occupations Code Sections 301.453(b) to require a nurse who violates the Nursing Practice Act (NPA) to complete a remedial program as a form of discipline. Additionally, the Board has authority under section 301.1605(a) to approve and adopt guidelines and rules regarding pilot programs for innovation in nurse regulation.

In October of 2013, the Board approved a two-year pilot in consultation with Texas A&M Health Sciences Center College of Nursing and the Rural and Community Health Institute to offer the KSTAR program for nurses with practice violations that result in a disciplinary sanction of a warning and below.

Proposed rule 213.35 outlines the criteria for KSTAR pilot program approval and minimum requirement for participation. Additionally, it would permit additional providers than can meet the rule criteria to submit their program for approval.

A copy of the proposed new rule text is attached hereto.

Board Action:

Move to approve proposed new 22 Tex. Admin. Code §213.35, with authority for the General Counsel to make editorial changes as necessary to clarify rule and Board intent and to comply with the formatting requirements of the Texas Register. If no negative comments and no request for a public hearing are received, move to adopt proposed new 22 Tex. Admin. Code §213.35, as proposed.

22 Tex. Admin. Code §213.35, Pertaining to *Knowledge, Skills, Training, Assessment and Research (KSTAR) Pilot Program*

(a) This section is authorized by Texas Occupations Code Sections 301.1605(a) and 301.453 and implements the Knowledge, Skills, Training, Assessment and Research (KSTAR) pilot program approved by the Texas Board of Nursing on October 17, 2014. The pilot program will commence after the final adoption of this rule and will continue for a period not to exceed two years from the implementation date. The program may be extended upon an approval of a written application submitted to the Board.

(b) The purpose of the pilot program is to evaluate the effectiveness of the KSTAR program, or an equivalent, as an alternative method of discipline. The pilot will develop a comprehensive and individualized assessment of nurse practice competency based on identified violations of the Nursing Practice Act and use targeted remedial education to correct identified deficiencies in order to ensure minimum nurse competency. Additionally, the pilot will develop an alternative extensive orientation program consistent with Rule 217.6 (b) and Rule 217.9 (g) that will evaluate and remediate nurses who wish to re-enter practice after prolonged absences. The design of an alternative extensive orientation will provide evidence-based assurance of minimum nurse competency before returning to practice.

(c) Approval of the pilot program provider is within discretion of the Executive Director and any provider must be able to meet the requirements of this rule.

(d) The KSTAR pilot program order will be considered a method of discipline pursuant to Texas Occupations Code Sec. 301.453 or 301.6555; and will be considered public information subject to all reporting requirements of disciplinary actions under federal and state laws.

(e) Participation in the KSTAR pilot program will only be through an agreed order and the opportunity to enter into a KSTAR pilot program order is at the sole discretion of the Executive Director.

(f) Each nurse will be responsible for the entire cost of participation in the KSTAR pilot program. Each nurse subject to a KSTAR order must:

- (1) enroll in the pilot program within 45 days of the date of the order unless otherwise agreed;
- (2) submit to an individualized assessment designed to evaluate nurse practice competency and to support a targeted remediation plan;
- (3) follow all requirements within the remediation plan if any;
- (4) successfully complete the KSTAR order within one year from the effective date of the agreed order; and
- (5) provide written proof of successful completion of the KSTAR pilot program to the Board.

(g) The KSTAR pilot program provider should be capable of meeting the following requirements:

- (1) provide reasonable intake and assessment options within 45 days of enrollment;
- (2) perform an individualized comprehensive assessment designed to evaluate nurse practice competency;
- (3) develop a written individualized remediation plan to ensure minimum competency that may include a period of monitoring and follow-up;
- (4) if requested by the Board, provide the remediation plan to the Board for review and approval;
- (5) provide the education, resources, tools and support that the remediation plan requires; and
- (6) provide a written report to the nurse and the Board upon the successful completion of the remediation plan.

(h) Every KSTAR pilot program order shall require the person subject to the order to participate in a program of education and study that will include a course in nursing jurisprudence and ethics.

(i) If the individualized assessment identifies further violations of the NPA, including inability to practice nursing safely, further disciplinary action may be taken based on such results in the assessment.

(j) A KSTAR pilot program action under the pilot program will be available:

- (1) for individuals with no prior disciplinary history with the Board;
- (2) for violations of the Nursing Practice Act and/or Board rules that are proposed for resolution through the issuance of a Warning, a Warning with Stipulations, a Warning with Stipulations and a Fine, a Warning with a Fine, Remedial Education, Remedial Education with a Fine, or any deferred order issued pursuant to Rule 213.34.
- (3) only as a condition of settlement by agreement prior to the initiation of proceedings before the State Office of Administrative Hearings;
- (4) only if the probationary stipulations outlined in the KSTAR pilot program are designed to address an individual's practice deficit, knowledge deficit, or lack of situational awareness; and
- (5) for violations of the Nursing Practice Act and/or Board rules that were pending with the Board on January 1, 2014, or after.

(k) Violations involving sexual misconduct, criminal conduct, intentional acts, falsification, deception, chemical dependency, or substance abuse will not be eligible for resolution through a KSTAR pilot program action under the pilot program.

(l) KSTAR pilot program action under the pilot program will not be available to:

- (1) an individual who files a petition for declaratory order under §213.30 of this title (relating to Declaratory Order of Eligibility for Licensure);
- (2) an individual whose application under §217.2 (relating to Licensure by Examination for Graduates of Nursing Education Programs Within the United States, its Territories, or Possessions), §217.4 (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate From Nursing Education Programs Outside of United States' Jurisdiction), or §217.5 of this title (relating to Temporary License and Endorsement) is treated as a petition for declaratory order under §213.30 of this title; or
- (3) an individual who is practicing nursing in Texas on a nurse licensure compact privilege.

(m) If an individual fails to comply with a probationary stipulation required by the KSTAR pilot program order or if a subsequent complaint is filed against an individual during the pendency of the KSTAR pilot program order, the Board may treat the KSTAR pilot program action as prior disciplinary action when considering the imposition of a disciplinary sanction.

(n) The outcome and effectiveness of the pilot program will be monitored and evaluated by the Board to ensure compliance with the criteria of this rule and obtain evidence that research goals are being pursued.

(o) The Board may contract with a third party to perform the monitoring and evaluation of the KSTAR pilot program.