



Ohio Board of Nursing

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The Honorable Dave Burke
Ohio Senate
Chair, Senate Health, Human Services and Medicaid Committee
Senate Building
1 Capitol Square
Ground Floor
Columbus, Ohio 43215

Chairman Burke and members of the Senate Health, Human Services and Medicaid Committee:

Thank you for the opportunity to provide testimony for Senate Bill 341, sponsored by Senator Kristina Roegner.

In 2005, the Ohio Board of Nursing (Board) examined issues and learned about the experience of some Compact states participating in multi-state licensure. Although the Board recognized that multi-state nurse licensure could be advantageous for occupational health nurses, traveling nurses, or employers, the Board discussed that potential risks of harm to the public outweigh the potential benefits.

Over the years, the Board reviewed the actual experience of other states and identified the potential impact of multi-state licensure on public safety. We were advised of nurses with multi-state licenses relocating to states as soon as they find themselves under investigation in their home state. While in theory, the home state would immediately report the investigation to the next state, the reality is neither state may learn of the relocation for a significant period of time. Furthermore, not all states had laws like that in Ohio permitting sharing of investigative information with other governmental entities. In addition, when the nurse moves to another state, the home state does not always continue its investigation. This means that Ohio would not receive vital information unless Ohio attempted to conduct an out-of-state investigation and this is not realistic. In fact, it is unclear whether Ohio would have the ability to compel the production of out-of-state documents or witnesses necessary to prepare a case.

Annually the Board discusses the Compact and has reaffirmed its belief that the potential risks of harm to the public outweigh the potential benefits because nurses with multi-state licenses could practice in Ohio without meeting the current statutory and regulatory standards established by the General Assembly and the Board to protect the public. The

Board continues to address these issues through the National Council of State Boards of Nursing (NCSBN).

The Board recognizes that an adequate and safe nursing workforce is vital during times of emergencies like the COVID-19 emergency we are fighting today. However, non-membership in the eNLC does not impede the deployment of licensed nurses from other states to Ohio during a disaster, or the deployment of Ohio licensed nurses to declared disaster areas in other states. The Nurse Practice Act, Section 4723.32(G)(7), ORC, allows nurses who hold an active, valid license in another state to practice in Ohio in the case of any declared disaster without being licensed in Ohio

During emergencies in other states, the Board has encouraged and facilitated Ohio participation by Ohio nurses in disaster relief through enrollment in the Medical Reserve Corp (MRC)/Red Cross (ARC). The ARC verifies state licensure status, provides emergency relief training, and organizes deployment by matching a nurse's area of expertise to the area of need. The ARC has negotiated reciprocal licensing agreements with each state, so if nurses with active, valid licenses in one state are activated through ARC, they are able to practice in other states without having a license to practice in that state.

We are aware that the NCSBN voted to approve new Compact model legislation, known as the enhanced Nurse License Compact (eNLC). During the NCSBN Annual Meeting in August 2015, an information session for state attorneys, regarding the legal implications of the eNLC, was provided by the Compact Special Counsel and NCSBN Legal Counsel. In January 2018 the e NLC became effective.

The Board reviewed the eNLC to weigh the benefits and potential risks. Concerns regarding the eNLC include (but are not limited to) the following: (i) the eNLC established a Commission that would be funded by state revenue but would not be subject to state transparency requirements (open meetings/open records acts); (ii) the Commission could adopt rules binding on Compact member states without undergoing state rule-making processes; (iii) concern was expressed that the state would be ceding their legal authority to a privately operated Commission.

Further, the Board continues to be concerned about public safety issues due to differences between states that are not addressed in the eNLC, such as mandatory reporting and complaints/investigations. Mandatory reporting is not a requirement for eNLC states as it is in Ohio. Also, complaints and investigations are handled differently. For example, some eNLC states require clear and convincing evidence to substantiate a violation of their Nurse Practice Acts. Ohio requires a preponderance of evidence. Because clear and convincing evidence is a higher standard than proof by a preponderance of the evidence, those boards may not investigate complaints that the Ohio Board of Nursing would investigate.

Here is a brief recitation of some of the issues and concerns the Board continues to raise with the NCSBN and NLC with respect to the NLC:

Authority of the Interstate Commission

Article VII establishes “a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators” (Commission) composed of the party states that adopt the new Compact. Article VII also grants powers to the Commission.

- Paragraph (b)(1): “Each party state shall have and be limited to one administrator...”
- Paragraph (b)(2): “Each administrator shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission....”
 - Consideration: Each member, regardless of the number of licenses regulated, or the amount of fees paid to the Commission, is represented by one person and has one vote.
- Paragraph (g) and (g)(1) “The Commission shall have the following powers: To promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all party states.”
 - Consideration: The Commission will have the power to enact rules that are binding on each State in the Compact by a simple majority vote. Each State would be subject to administrative rules not passed at the State level.
- Paragraph (a)(2): The Commission will be subject to the laws of the state in which it is organized, i.e., Illinois.
 - Consideration: If there is a dispute between Ohio and the Commission or another party state, the matter will be handled in the Illinois court system.
- Paragraphs (b)(5) and (i): “The Commission may convene in a closed, non-public meeting” for certain reasons; the Commission has immunity/defenses to lawsuits.
 - ↳ Consideration: The Commission is not subject to any independent auditor or legal authority with oversight over its operations or finances and has immunity/indemnification from lawsuits.
- Paragraph (g)(6): The Commission shall have the following powers: “To hire employees... fix compensation, define duties...”
- Paragraph (c): “The Commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact, including but not limited to: ...providing reasonable standards and procedures: for the establishment

and meetings of other committees; and governing any general or specific delegation of any authority or function of the Commission.”

→ Consideration: The Commission is to be fully staffed and all of its costs will be paid for by annual assessments on members; the Commission would have exclusive say in how much each member is assessed. At this time, the cost for each party state to support the Commission is unknown.

Many of these provisions may violate the Ohio Constitution, the Ohio Open Meetings Act, the Ohio Ethics Law and other Ohio statutes. The budget impact is uncertain but due to required assessments, it is anticipated that it will not be budget neutral.

Mandatory Reporting

Mandatory reporting is not a requirement in the new Compact. The TERCAP data has shown the importance of mandatory reporting to assure boards of nursing are receiving complaints and preventing unsafe practitioners from moving from employer to employer without the board of nursing knowing about the unsafe practice.

→ Consideration: Ohio is a mandatory reporting state.

Grandfathering

Article III, paragraph (g) specifies that nurses who currently hold a multi-state license would retain their multi-state license. The exceptions would be (1) nurses who change their primary state of residence, must meet the requirements of the new Compact; or (2) a nurse who “fails to meet the multi-state licensure requirements due to a criminal conviction, enrollment in an alternative program, an adverse action or any other event occurring after the Compact’s effective date, shall be ineligible to retain or renew a multi-state license and the nurse’s multi-state license shall be revoked or deactivated in accordance with applicable Commission rules.”

→ Consideration: Nurses who currently have multi-state license under the old Compact would be grandfathered into the new Compact. Therefore, nurses who never had criminal records checks could hold a multi-state license under the new Compact.

Misdemeanors

Article III, paragraph (c)(7) states that for an applicant to obtain or retain a multi-state license in the home state, the individual “has not been convicted or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis....”

- Consideration: Each State will make its own case-by-case determination about whether to impose discipline for misdemeanors. If the state takes action on a misdemeanor, other party states could take action based on the other State's action, but if the State where the misdemeanor occurred declines to take action, the Board would not be aware of the misdemeanor.

Conversion of Licenses When Licensee Changes State of Residency

Article IV, paragraph (c) states that "If a nurse changes primary state of residence, by moving between two party states, the nurse must apply for licensure in the new home state and the multi- state license issued by the prior home state will be **deactivated** in accordance with applicable rules adopted by the Commission." (Emphasis added.)

Article IV, paragraph (d) states that "If a nurse changes primary state of residence by moving from a party state to a non-party state, the multi-state license issued by the prior home state will **convert** to a single state license, valid only in the former home state." (Emphasis added.)

- Consideration: Ohio could not "convert" or "deactivate" a license without affording the licensee due process.

Effect of Disciplinary Actions in Other Compact States

At the 2015 Midyear meeting, it was explained that if the home state takes a disciplinary action against a nurse, that action prevents the nurse from practicing in the remote states and the nurse is issued a single state license. However, if a remote state takes disciplinary action, the discipline is only effective in the remote state that took the action, so the nurse could continue to hold a multi-state license and practice in other Compact states. It was suggested that remote states would check Nursys to determine if other remote states have taken disciplinary actions and then could bootstrap the action taken in the other remote state.

- P Consideration: If the remote state does not know the nurse is practicing in their state, it is not clear how the remote state would know to check the individual nurse's license/discipline in Nursys? Perhaps it could be explored so when a nurse is disciplined in a home state or in a remote state, the multi-state license must be revoked, and the nurse could only be issued a single state license.

Fiscal implications

Currently there is a \$6,000 annual fee for Compact membership. The fiscal impact will vary from state to state. Ohio would need to conduct a fiscal analysis to determine the impact on loss of licensure fee revenues. NCSBN offers states grants of financial

assistance to help offset the expense of joining and implementing the NLC. The offset is temporary. It is paid for by the NCSBN of which we are a member state. The annual fee is just that—annual—and the offset may not last long.

In addition, each of Ohio's current 300,000 licensees pay a biennial renewal fee that funds the Board's operations and mission of public protection. The Board does not receive funds from the General Revenue Fund. The question arises as to why an Ohio licensee pays a fee to the Board, but a compact licensee residing in another state but practicing in Ohio whether as a telehealth nurse or a travelling nurse pays their fee to their home state? And the next question becomes whether that telehealth practice is subject to a tax in Ohio or whether the practitioner's wages are taxed in Ohio or whether the corporation residing out of state but doing business in Ohio pays any type of fee or tax in this state? What are the fiscal ramifications to the state?

What are the costs of board investigations concerning compact licensees in other states? The costs to adjudication of those matters, including appeals? If an Ohio patient is harmed resulting in lawsuit, what are the costs to the legal process considerations for a matter of care that originated in another state?

Summary

The Board is committed to its mission of public protection, following the laws enacted by the Ohio legislature, and enforcing regulations promulgated for patient safety. The Board has not been dismissive of compact discussions. To the contrary, the Board has engaged in discussions with proponents and interested parties to this matter, including a recent meeting with the bill's sponsor. The Board will continue to act in good faith in working toward finding a point where benefits outweigh costs in regard to patient safety, public protection and fundamental fairness and equity to Ohio patients and Ohio's 300,000 nurse licensees and not solely a small and particular segment of that population. If the compact can accomplish these goals, then let's also assure Ohio's nursing community that the change can be implemented in a manner that does not unfairly or unnecessarily compromise current licensure and disciplinary practices. We do not believe we are there as yet in being able to safely commit to the Nurse License Compact set forth in SB 341.