



Ohio Board of Nursing

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The Honorable P. Scott Lipps
Chairman, House Health Committee
Ohio House of Representatives
77 South High Street, 13th Floor
Columbus, Ohio 43215

Chairman Lipps, Vice Chairman Holmes, Ranking Minority Member Russo, and Members of the House Health Committee,

Thank you for the opportunity to provide testimony for Senate Bill 3, sponsored by Senator Kristina Roegner.

As an interested party to the eNLC and SB 3, the Ohio Board of Nursing (Board) continues to examine issues and learn about the experience of some Compact states participating in multi-state licensure. The Board has not been dismissive of compact discussions. To the contrary, the Board has engaged in continuing discussions with the sponsor, proponents and interested parties here in Ohio, and with the administration of the enhanced Nurse Licensure Compact (eNLC) and the National Council of State Boards of Nursing (NCSBN) and their individual member boards.

The Board recognizes that multi-state nurse licensure can be advantageous for telehealth practice, traveling nurses, and employers. However, the Board has identified elements of eNLC in which potential costs to our licensees and the public may outweigh benefits of the Agreement. We are attempting to address these issues before entering into the Compact, since this time when Ohio's ability to legislate amendments to aspects of Ohio's participation may be strongest.

Concerns with the eNLC

Fiscal and Implementation Issues

The Board's spending authorization does not take from the General Revenue Fund, individual licensure fees pay for licensing and disciplining Ohio's 300,000 nursing licensees. The Board believes that the costs of the NLC should be borne by license and transaction fees paid by participating nurses in the Compact and that cost and principle should be reflected in the legislation itself.

NLC implementation by way of integrating the unique licensing structure into Ohio's eLicense professional licensing platform is integral to the operationalization of Compact membership for each participating licensing board. Of course, each Compact system is unique to the profession and the Board must work with DAS to build in the system.

Under the eNLC, Compact state residents with multistate licenses (MSLs) would no longer reinstate, reactivate, or renew in Ohio. For example, Compact nurses are required to renew in their home state/state of residence. Therefore, for nurses with addresses in Compact states who practice in Ohio, it is likely they will have or will obtain MSLs. In these cases, the nurse will renew in their home state and no longer renew in Ohio. Ohio will lose the renewal fees previously paid. The same applies if their license lapses or is made inactive – they will not reinstate or reactivate their license in Ohio and those fees will be lost.

The losses may be offset somewhat by fees for MSL licenses. If higher fees are charged for a MSL, this may provide an offset; however, an increase in license fees would need to be enacted by the General Assembly and is not within the Board's control.

To determine the fiscal impact of joining the Compact, costs need to be identified and the impact on revenues estimated. Estimates are based on current available data and are subject to further review or updates in data. Costs from the outset include implementation/startup costs, ongoing costs, loss revenue, and gains in revenue.

(1) Scenario #1

Assumes NCSBN pays estimated \$500,000 for anticipated implementation/startup costs

Estimated loss: \$1,738,111 after offset of \$75 fee for MSL

(2) Scenario #2

Assumes NCSBN does not pay estimated \$500,000 for anticipated implementation/startup costs

Estimated loss: \$2,245,967 after offset of \$75 fee for MSL

(3) To offset losses, legislature could increase fees for MSL license

- a. To offset total costs if NCSBN pays for implementation costs, the legislature could establish fee of \$190 for a MSL license
- b. To offset total costs, if NCSBN does not pay for implementation costs, the legislature could establish fee of \$223 for a MSL license
- c. To offset partial costs, the legislature could double the fee and establish a fee of \$150 for a MSL license

On-going annual costs include staffing, annual maintenance of the state's eLicensing system, and eNLC membership fees.

(1) Staffing

- a. Because MSLs will increase work of the Licensure Unit, additional staff will be requested. Current staffing is already inadequate to handle the licensing workload with increasing demand based on volume, need for communications and timeliness, especially when any type of additional work is added. Although in the past, we met outcome measures during peak licensure season, it is difficult and would not be possible to meet with the addition of a new license type in a period of continuing emergency and off-site work.

(2) Annual maintenance cost for Ohio eLicense System

- a. The number of records in the system will increase based on the MSL licenses issued. According to the experience of NLC states, NCSBN advises to expect to issue 1% MSL licenses per month and to reach 15-20% MSLs at the end of 24-months.
- b. Using this estimate, Ohio would issue nearly 3,000 MSLs a month, based on the number of active RNs and LPNs in Ohio. An increase in the number of “records” in Ohio eLicense for which DAS/OIT charges the Board an annual maintenance fee will depend on the final configuration of the MSLs in the system.

(3) Annual NLC fee – Currently \$6,000 but this is an unknown cost in the future.

State Sovereignty Issues

Concerns regarding the eNLC and who is in charge include (but are not limited to) the following concerns: (i) that the state is ceding their legal authority to a privately operated Commission; (ii) 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); (iii) and the Commission could adopt rules binding on Compact member states without undergoing state rule-making processes.

The Compact language states, “The Commission may convene in a closed, non-public meeting” for certain reasons; the Commission has immunity/defenses to lawsuits. This provision while similar to boards going into executive session in Ohio is not subject to Ohio limitations in the Ohio Open Meetings Act. 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. We understand that certain states have included enabling legislative language designed to address Open Meetings Act issues.

The Compact language states, “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.” The Commission will have the power to enact rules that are binding on each State in the Compact by a simple majority vote. Ohio would have one vote. Each State would be subject to administrative rules not reviewed under the same State processes as other rules and not passed or reviewed at the State level. We understand

that certain states have included enabling legislative language designed to restrict enactment of rules related to scope of practice.

NLC legislation does not include requiring nurses with MSLS to register in remote states. States that attempted to include this provision in the Compact legislation have been informed by NLC that they cannot be part of the Compact if this provision is enacted. This hinders states from having accurate workforce data. Having correct information about nursing workforce is necessary for workforce planning and policy making.

While SB 3 requires employers to report to the Board those nurses working who hold a Compact license, it is questioned whether this reporting would be consistent for all employers. Based on Ohio nursing workforce data reports, 47% of Ohio nurses are employed by hospitals, and 53% report they work for other types of nursing employers. Workforce reporting through the Compact itself would help ensure accurate and uniform data.

Public Safety Issues

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 take action on complaints for which the Ohio Board of Nursing would propose to impose disciplinary action.

Board concerns include disciplinary actions taken under the eNLC whose effects vary depending on whether the action is taken by the home state or remote state. Differing laws involving criminal convictions also limit certain persons from becoming eNLC license holders who qualify for a State license placing them on unequal footing. The Board is still working through the differences in investigations and actions based on anecdotal information from the Boards.

- (1) Lack of mandatory reporting in Compact states: Mandatory reporting is not a requirement in the Compact. NCSBN data studies have 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 boards knowing about the unsafe practice. Ohio is a mandatory reporting state.
- (2) Grandfathering of nurses without criminal records checks: Nurses who currently have multistate licenses under the prior NLC Compact would be grandfathered into the new eNLC Compact. Therefore, nurses who never had criminal records checks could hold a multistate license under the new Compact.

- (3) Ohio will lack timely knowledge about practitioners in Ohio who have disciplinary action in other states: A remote/party state has authority to take disciplinary action on the multistate license privilege to practice, however the discipline is only effective in the party state that took the action, so the nurse would continue to hold a multistate license and practice in other Compact states. Although the action would be noted in Nursys, Compact party states would not check Nursys because they would not know the nurse is practicing their state, unless a complaint is filed with our Board.
- (4) Ohio will lack knowledge about practitioners in Ohio who are involved in confidential drug/alcohol use disorder programs in other states: While Article V allows each State to place a nurse in confidential drug/alcohol use disorder programs (AP), not all Boards know when nurses are participating in their state's AP because many programs are outsourced to a third party. If Compact states do not know their AP participants, those licensees could retain multistate licenses if the licensee did not report their participation to the state. These nurses would be in AP could practice in Ohio without Ohio being aware.
- (5) Lack of authority of Compact states to take disciplinary action without clear and convincing evidence: Ohio requires a preponderance of evidence to prove violations of the Nurse Practice Act. At least two states, Missouri and North Carolina, are only authorized to impose discipline if they have clear and convincing evidence, a higher evidentiary requirement. Compact states who must have clear and convincing evidence may not take action on cases for which Ohio could have proceeded. These nurses could practice in Ohio without possible Board action to address nursing violations. processed.
- (6) Variation of Compact states in imposing discipline for misdemeanors: Each state makes 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. These nurses could practice in Ohio without possible crimes impacting nursing practice being investigated properly.
- (7) Compact language will lengthen the investigative and hearing processes: The Compact language, "not been convicted or found guilty, or has entered into an agreed disposition" is narrow. Under Ohio law, the Board can also take action on judicial findings of eligibility for a pretrial diversion or similar program, or intervention in lieu of conviction. Without these options, the Board would need to base action on the underlying facts which would greatly lengthen the investigative and hearing processes.
- (8) Lack of Continuing Education Requirement: Ohio requires two hours of continuing education (CE) on Ohio law and rules for nurses seeking reciprocity to practice in Ohio following practice in another state; this is designed to promote safe nursing practice in Ohio in compliance with regulatory requirements. Under the NLC, nurses are not

required to take CE in any remote state in which they are practicing which can result in not having a basic understanding of practice in Ohio and patient safety. The bill currently requires the Board to distribute written education to Compact applicants in Ohio or post online the education for Compact licensees temporarily practicing in Ohio. Further, nurses with multistate licenses from other states will not have a license to renew in Ohio, so any legislative mandated CE requirements will not apply to them.

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 will continue to act in good faith in working toward finding possible solutions 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 place the financial burden on licensees who do not choose to use the eNLC, nor compromise current licensure and disciplinary practices. We do not believe Ohio yet has an adequate understanding of fiscal costs and how they will be realized. We also do not have an adequate understanding of the implementation of the computer system integration with Ohio's eLicense platform. The Ohio Board of Nursing questions whether we are currently able to safely and wisely commit to the enhanced Nurse License Compact set forth in SB 3. Thank you for your consideration of our concerns.