



Ohio Board of Nursing

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The Honorable Stephen A. Huffman
Ohio Senate
Chair, Senate Health, Human Services and Medicaid Committee
Senate Building
1 Capitol Square
Columbus, Ohio 43215

Chairman Huffman, Vice Chairman Antani, Ranking Minority Member Antonio, and members of the Senate Health, Human Services and Medicaid Committee,

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

The Ohio Board of Nursing (Board) continues to examine issues and learn about the experience of some Compact states participating in multi-state licensure. Although the Board recognizes that multi-state nurse licensure can be advantageous for telehealth practice, traveling nurses, and employers, the Board has identified elements of the enhanced Nurse Licensure Compact (eNLC) in which potential costs to our licensees and the public may outweigh benefits of the Agreement. We were attempting to address these issues before entering into the Compact at a time when our ability to legislate amendments to aspects of Ohio's participation may be strongest.

eNLC Concerns

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.

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. Statistics and representative cases have been hard to come by to this point.

Lack of Mandatory Reporting Requirement in Compact States

Ohio is a mandatory reporting state, but mandatory reporting is not a requirement of the NLC. 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 boards of nursing knowing about unsafe practice.

- The lack of this requirement in other states impacts Ohio because employers and others may not report potential violations. This increases the possibility that nurses with multi-state licenses (MSLs) may not have been reported to their home state board of nursing and these nurses will be practicing in Ohio.

Lack of Continuing Education Requirement on Remote State Law and Rules

Ohio requires two hours of continuing education (CE) of Ohio law and rules for nurses seeking reciprocity in Ohio to assure some knowledge of the Ohio Nurse Practice Act and practice requirements. It 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. Upon discussions with NCSBN, Ohio was advised that this would not be acceptable to include in the NLC legislation. The lack of any requirement to have a basic understanding of practice in Ohio for those practicing in Ohio but licensed in their home state can impact patient safety in Ohio. This prohibition seems inconsistent with requirements for nursing practice by those licensees who do not hold a Compact license. The SB 3 compromise is for the Nursing Board to distribute a pamphlet explain Ohio law and rules.

Grandfathering of Nurses Without Criminal Records Checks

The Compact language specifies that nurses who held a MSL under the “old” NLC would retain their MSL without obtaining a criminal records check. 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.”

- Nurses who hold multi-state licenses issued under the old Compact are grandfathered into the new Compact. Therefore, nurses who never had criminal records checks could hold a multi-state license under the new Compact.

Impact on Nursing Workforce Data

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 prevents states from having accurate workforce data. Having correct information about nursing workforce is necessary for workforce planning and policy making.
- While SB 3 requires hospitals 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.

Open Meetings Act

The Compact language states, “The Commission may convene in a closed, non-public meeting” for certain reasons; the Commission has immunity/defenses to lawsuits. 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.

- This provision may violate the Ohio Open Meetings Act.

Rulemaking Powers of the Commission

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.

- Each State is subject to the majority rule of the Commission. 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. This provision may violate the Ohio Constitution and possibly federal anti-trust laws requiring “active state supervision” depending on the rule.

Fiscal and Implementation Concerns

From a cost and implementation perspective, the Board has asked for assistance in establishing or at least better estimating the costs of the NLC on Board operations. 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.

To determine the fiscal impact of joining the Compact, costs need to be identified and the impact on revenues estimated. The following is preliminary information which will require additional review and data to refine and finalize.

Implementation Costs

- Ohio eLicense System modifications – Estimate requested from DAS/OIT
 - Historically, the cost for modifying the system for the HB 216 APRN change from certification to licensing was about \$250,000.
- Administrative and staff time to plan and implement over 12-18 months
 - Costs will be determined based on the estimated time for planning and implementation by the Licensure Supervisor, Program Managers, IT staff, Ohio eLicense consultant, etc.; system testing by license staff; training of all license staff; Chief Legal Counsel consultation regarding licensing issues and rules; administrative/staff time for development of communications and website materials.

Ongoing Costs

- Annual maintenance cost for Ohio eLicense System
 - 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.
 - 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.
- Annual NLC fee – Currently \$6,000 but this is an unknown cost in the future.
- Staffing
 - 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.

Loss of Revenue

Based on data obtained from the Ohio eLicense system, for RNs and LPNs with Compact state addresses, the loss of revenue is estimated to be \$1,930,010 over a one-year period. Compact state residents with 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.

To further examine the impact on revenue, staff requested a Nursys licensure data report for Ohio from NCSBN. NCSBN provided the report during the week of January 25.

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.

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 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 we have an educated 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. We question whether we are there as yet in being able to safely and wisely commit to the enhanced Nurse License Compact set forth in SB 3.