



December 1, 2020

Senate Health, Human Services & Medicaid Committee
Chairman David Burke
1 Capitol Square
Columbus, Ohio 43215

RE: Senate Bill 341 – Nurse Licensure Compact

Good afternoon Chairman Burke, Vice Chair Huffman, Ranking Member Antonio, and Members of the Senate Health, Human Services and Medicaid Committee. Thank you for allowing me to be here today to offer testimony on Senate Bill 341 and Ohio joining the Nurse Licensure Compact. My name is Deb Arms and I am the President of the Ohio Nurses Association (ONA). First, I would like to take the opportunity to thank Senator Roegner for engaging in conversations with the Ohio Nurses Association and bringing together a virtual interested party meeting between ONA, the Ohio Board of Nursing and the National Council of State Boards of Nursing.

As mentioned in Senator Roegner’s sponsor testimony, the Nurse Licensure Compact (Compact) allows registered nurses and licensed practical nurses to participate in the multi-state licensure compact, which enables nurses to practice in all Compact states. Currently, thirty-four states have enacted the Enhanced Nurse Licensure Compact, with five states, including Ohio, having pending legislation.

The former and enhanced Multi-State Nurse Licensure Compact model has been reviewed by the ONA leadership and consideration has been given to the Ohio Board of Nursing’s current position. While ONA remains committed to engaging in all conversations to address factors such as telehealth, cross-border nursing practice, and the Interstate Commission of Nurse Licensure Compact Administrators, we cannot support Senate Bill 341.

What Is the Ohio Board of Nursing’s Position?

While ONA cannot speak on behalf of our regulatory board, we have engaged in many conversations with the Ohio Board of Nursing regarding Compact licensure over many, many years. In 2005, the Ohio Board of Nursing (Board) reviewed and examined the multi-state licensure compact and, by Board vote, decided at that time to “delay action seeking the introduction of interstate compact legislation until such time more information [was] gathered to assure that the benefits of multi-state licensure outweigh[ed] any risks related to public safety”. The Board, since its first introduction to multi-state licensure, worked at the national level to address Ohio’s concerns. To date, not all of Ohio’s concerns have been addressed. At its April 2019 meeting, the Board updated and reissued its position statement. Per the 2019 statement, the Board states:

Since 2005, the Board has discussed multi-state licensure at numerous meetings and continuously has worked at the national level to address Ohio’s concerns. Annually the Board has discussed 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 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 would establish 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 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' licensure laws that are not addressed in the Compact, such as mandatory reporting, complaints and investigations. Mandatory reporting is not a requirement for all Compact states as it is in Ohio. Also, complaints and investigations are handled differently. For example, some Compact 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 of proof than a preponderance of the evidence, those boards may not investigate complaints that the Ohio Board of Nursing would investigate.

Why is ONA Concerned About the Compact?

State Sovereignty and Authority of the Interstate Commission-

The Attorneys General in Oklahoma, Indiana, Kansas, Louisiana, and Nebraska have rendered formal opinions that the multi-state nurse licensure compact interferes with state sovereignty. The Compact would impose complicated regulatory mechanisms that would allow the joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators (Commission), composed of the party states that adopt the Compact, to promulgate rules that are binding on each state in the Compact by a simple majority vote. This essentially grants full rule-making authority to the Commission, which is not a government entity or state agency, nor based in Ohio. This Commission is the equivalent to a professional association for the state boards of nursing and they do not have authority to pass laws or promulgate rules.

According to the National Council of State Boards of Nursing, each state would be subject to administrative rules not passed at the state level. In this way, the Commission is usurping policy-making authority from the Board and state Legislature. Additionally, the Commission has "enforcement action" authority, which means that the Commission has the authority to remove any state from the Compact, should a state board of nursing not adhere to the Compact statute and/or rules. This again, represents an appropriation of Ohio's sovereignty.



Lastly, the Commission would have the opportunity to hold closed, non-public meetings for certain reasons and would have immunity to lawsuits. Many of these provisions of the Compact may violate the Ohio Constitution, the Ohio Open Meeting Act, the Ohio Ethics Law and/or Ohio statute and may potentially create a monopoly system, where NCSBN holds full national licensure examination and regulatory authority. Some states that have joined the Compact are witnessing violations of their state's open public meeting laws. For example, New Mexico has open meeting laws similar to Ohio's, and when the New Mexico legislature passed a law requiring that documents related to the administration of the Compact be released per New Mexico's public disclosure laws, the Commission sent a letter threatening New Mexico with legal action.

ONA believes that, by adopting the Compact, the Ohio Board of Nursing and the state would be handing over significant authority to the Commission, which does not benefit the regulatory board or Ohio nurses.

Regulation, Public Safety, and Disciplinary Action-

The mission of the Ohio Board of Nursing is to actively safeguard the health of the public through the effective regulation of nursing. However, the Compact would not require that out-of-state nurses be licensed in the state of Ohio, which means that the Board would no longer review and approve license applications from out-of-state residents. In addition, the effects of how disciplinary actions would work in practice in other Compact states are unclear. Because a nurse would have jurisdiction to work in a remote state without that state's licensure, it is unclear how that remote state would know to check an individual nurse's license and previous disciplinary actions.

During the interested party call I mentioned in my opening remarks, the National Council of State Boards of Nursing (NCSBN) stated that disciplinary action is two-fold for states who join the Compact. The remote state Board of Nursing would have authority to discipline a non-Ohio nurse through privilege to practice restrictions, but only the home state Board of Nursing would have the authority to take action on the license itself. Thus, the Ohio Board of Nursing would not have the authority to place licensure restrictions or take action on an out-of-state Compact license. It is unclear how the remote state would stay in constant contact with each home state's licensees and how regulators would know what disciplinary actions have been taken on the license itself, and vice versa.

Additionally, the effects of regulation, licensing and the lack of absolute bars significantly compromises public safety and place the responsibility for screening licensees onto the employers. Under SB 341, employers would ultimately be the ones accepting or denying nurses for practice and not the regulatory Board.

Financial Impact to Ohio Board of Nursing-

The fiscal impact could vary from state to state and Ohio still needs to conduct a fiscal analysis to determine the impact on loss of licensure fee revenues. However, the additional expenses and losses potentially placed on the Board could result in a reduction of services and/or an increase in licensing fees. For example, the Board of Nursing in Vermont performed a fiscal analysis that showed it could lose a quarter of its revenue if the state joined the Compact. The Washington state Board of Nursing indicated that joining the Compact could potentially increase home state license fees to upwards of \$200.00.



Currently, the Ohio Board of Nursing charges \$75.00 for initial licensure by examination and by reciprocity, while the registered nurse license renewal fee is \$65.00 every two years.

Many states that have already joined the Compact offer both a regular home state license and a Compact license. For the states that have implemented these two licensing options, 12 – 16 percent of nurses have opted for the Compact license. Preliminary results from a recent ONA member survey on legislative priorities show that obtaining Compact licensure is not important to Ohio nurses, and joining the Compact would place undue financial burden on Ohio nurses, while not placing a similar burden on those coming from out of state.

Voices of Professional Nurse Associations-

The way the Compact shifts power to the Commission, giving it the authority to enact rules that are binding on each state in the Compact, takes power and authority away from the Ohio Board of Nursing. According to Compact rules, if there was a dispute between Ohio and the Commission, the matter would be handled in the Illinois court system, where NCSBN is located, and not in our state's jurisdiction. ONA believes this takes influence away from professional associations, like ONA, and does not provide other interested parties an opportunity to voice opinions, suggestions, or concerns during the promulgation or review of administrative rules. ONA currently has the valued opportunity to participate in such processes with the Ohio Board of Nursing and the Ohio General Assembly. We believe that participation is a critical part of informed policymaking.

The Commission holds four meetings a year, two of which are in Chicago and two of which are in other various locations across the country. While the meetings are open to the public, it is unclear as to how the voice of Ohio nurses would be heard at the meetings.

Ohio Already Offers State of Emergency Practice for Out-of-State Nurses-

Supporters of the Compact have stated that Ohio needs to join the Compact to allow nurse mobility during times of disasters or emergencies. ONA realizes that the ability to mobilize nurses to Ohio during such emergencies and disasters is critical; however, Ohio already covers this need under Section 4723.32(G)(7) of the Ohio Revised Code.

This section states the following regarding out-of-state nurses:

(G) The activities of an individual who currently holds a license to practice nursing or equivalent authorization from another jurisdiction, but only if the individual's activities are limited to those activities that the same type of nurse may engage in pursuant to a license issued under this chapter, the individual's authority to practice has not been revoked, the individual is not currently under suspension or on probation, the individual does not represent the individual as being licensed under this chapter, and one of the following is the case:

(7) The individual is providing nursing care during any disaster, natural or otherwise, that has been officially declared to be a disaster by a public announcement issued by an appropriate federal, state, county, or municipal official;



While ONA acknowledges the struggles of Ohio hospitals during the current pandemic, the Compact is not a quick fix to increase the healthcare workforce during COVID-19. Even if the legislature passed Senate Bill 341 during Lane's term, the Compact would take roughly a year and a half to be fully implemented. Therefore, enacting compact licensure for Ohio is irrelevant and unnecessary when it comes to protecting Ohioans in the case of an emergency or the current pandemic. Licensed nurses from other states may already practice in Ohio in these situations without having a multi-state license.

Complexity of Telehealth Services-

ONA understands and appreciates the need for mobility and flexibility for nursing practice in today's healthcare environment, as well as the accessibility that telehealth services offer to healthcare professionals and patients. While telehealth is necessary, the services provided and where they are provided need to be considered. License jurisdiction and the preeminence of both patient and nurse location has been long discussed among regulatory boards and nurses throughout the country.

Nurse regulatory boards believe license jurisdiction and practice belongs where the patient is located, while professional nurses' associations and nurses believe license jurisdiction and practice should lie where the nurse is practicing. The Compact has and will always be based on the premise that the practice of nursing occurs where the patient is located. This fundamental belief that governs the operations of the compact hold the nurse, patient, and the employer at significant risk.

Based on the ideology that practice follows the patient, a nurse engaging in telehealth must know the exact location of every patient he/she is providing care to. It also means that any nurse offering telehealth services should know, understand, and abide by all fifty states' practice laws and rules. A patient could theoretically be on vacation in another state or in an entirely different country and it would be the responsibility of the nurse to know where the patient is located and what the nurse can practice through telehealth services to be safe and effective in that state. The Compact assumes that scope of practice is identical in all fifty states and that every nurse working in telehealth is familiar with every state in which they are practicing. This is neither accurate, nor is it realistic. ONA believes this puts patients, nurses, and the employers at risk.

Protecting Ohio Nurse Jobs-

The Ohio Nurses Association is committed to protecting nurses across the state through labor representation and collective bargaining contracts. Part of this representation includes advocating for a fair contract and protecting nurses' jobs. Healthcare organizations will lose incentives to come to fair collective bargaining agreements with Ohio nurses if the licensure Compact is enacted, as it allows out-of-state nurses to easily replace Ohio nurses who are advocating for safe work environments and fair compensation. Furthermore, the ONA opposes the Compact because it allows greater opportunities for out-of-state nurses to work in Ohio facilities in the event of a labor union strike. Not only does this directly impact the jobs and financial security of our members, the ONA has great concerns about public safety should an influx of out-of-state nurses, who are not familiar with our state's Nurse Practice Act, begin practicing and caring for Ohioans.



Coupled with the decreased regulatory authority of the Board and the complex disciplinary processes outlined by NCSBN, the ONA believes the Compact is not in the best interest of Ohio's nurses and all Ohioans. Lastly, ONA believes that, as a state, we should be recruiting and retaining our own nurses. We want nurses to become and/or remain Ohio residents so that we can build our economy, pay taxes to our state, and lay roots and raise children in our state, while supporting the nursing workforce.

Due to the concerns addressed in my testimony today, the Ohio Nurses Association believes the Nurse Licensure Compact impedes the Ohio General Assembly and Ohio Board of Nursing's authority, while also impacting the Ohio nurse workforce into the future. Therefore, the ONA opposes Senate Bill 341 and we respectfully request that this committee oppose the bill as well. Thank you for your time today. I would be happy to answer any questions you may have at this time.

Sincerely,

Deborah Arms, PhD, RN

ONA President