Michigan Nurses Association

2310 Jolly Oak Road · Okemos, MI 48864 · Phone (517) 349-5640 · (888) MI-NURSE · Fax (517) 349-5818 · www.minurses.org

TO: Members, House Health Policy Committee

FROM: Tom Bissonnette MS, RN, Executive Director

DATE: February 28, 2006

SUBJECT: House Bills 5493 and 5750
MNA Position: Oppose

The major concerns expressed by nurses in Michigan about the Nurse Interstate Licensure Compact are described below. Although these concerns primarily reference HB 5493, since HB 5750 is tie barred to HB 5493, the same concerns would apply to HB 5750.

1. **Consumer protection is not improved with this model.** If a license is not tied to the presence of the nurse, that is if licensure is tied to the physical location of the nurse, why have a state-based license? Standards of practice and regulation have arisen out of individual states. Generally those standards that improve consumer protection and advance the ability of nurses to provide care to the public start in one state but are adopted by other states as their value is understood and adoption becomes politically possible. Standards are tested state by state and nurses who are residents and licensees of a state, working with their regulatory agency, can exert the necessary pressure on their state legislators to change standards. If implementation of an interstate model is adopted, how will consumers and nurses be able to influence standards?

2. **Interstate practice must not be implemented in a way that allows persons to circumvent existing public policy as expressed by state's laws or policies, including laws on the use of strikebreakers and striker replacement or initial and continuing licensure requirements.** Provisions in the compact require party states to unconditionally accept the licensure standards of other states which could lead to a "lowest common denominator" of state licensure standards. This causes the following concerns: a) Michigan as an example would lose the ability to set licensure standards for nurses licensed in other states but practicing in Michigan. b) In addition, the inconsistency of standards also applies to those states that have differing continuing education standards from Michigan. Consequently, Michigan's continuing education requirement could not be enforced for nurses

licensed in other states while nurses licensed in Michigan would have to meet the requirements. c) Nurses working side by side with the same license would then have different requirements for practice. d) Also, if another state reduces its standards governing foreign educated nurses, this would result in Michigan decreasing its standards as well. e) Further, the ability of nurses to move between states without the time and paperwork to license them can have harmful effects on the negotiation of labor contracts as hospitals more readily utilize strikebreakers. *It is important to note that under current state requirements, a nurse can apply and be licensed in Michigan within three to six weeks by submitting an application affirming and verifying licensure in another state, answering a series of questions to determine fitness including criminal record and any substance abuse record, and by submitting the $48 fee.*

3. **Michigan also needs to consider the impact of disparities inherent in drug diversion treatment created by an interstate compact**. A nurse may have a record in one state for a drug offense while in another state, a nurse would not have a record even when conduct was identical due to differences in drug diversion programs and the way that licensees are treated that plead nolo contende.

4. **Under the bill there are no mechanisms that ensure that the Board of Nursing knows who is practicing in Michigan under authority of a license granted by another state.** Since the bill would not require a nurse from another state to register with the Board of Nursing in Michigan, the Board will not know if a nurse is practicing in that state. It will be difficult for consumers to identify or file complaints about a nurse's practice with the appropriate board of nursing. This bill does not include mechanisms to ensure that the Board of Nursing knows who is practicing in its state under authority of a license granted by another state.

5. **The right of individual nurses to a fair hearing on any disciplinary matter must be protected and no unfair or undue burden, financial or otherwise should be placed on the nurse exercising her or his right to a fair hearing.** Due process also arises when a nurse has to represent him/herself in multiple jurisdictions at one time with conflicting evidence standards for jurisdictions. An RN facing discipline may have to appear far from her home state for a hearing and satisfy different standards for defense: clear and convincing evidence in one state and a preponderance of evidence in another. It is not clear how much weight will be afforded another state to adverse action by Michigan and by Michigan to an adverse action by another state. What kinds of incidents would lead Michigan to limit or revoke the multistate licensure privilege of any nurse to practice in Michigan? Also, what are the financial implications for Michigan that comes with the responsibility of monitoring the multistate discipline?

6. **Less Revenue will come from nurse licensure fees.** It is estimated that 12% of nurses hold multiple licenses. Arguably, Michigan could suffer an average of

12% reduction in revenue. Also, will nurses renew licenses in states based upon the cost of a license within a state? Could they get licensed in the state with the lowest standards and lowest fees and practice in Michigan? Under the bill as proposed, the answer is clearly, yes.

7. **Approaches to interstate advanced practice nursing should be addressed for consistency in connection with interstate practice for other RNs.** Excluding advanced practice registered nurses (APRNs) (nurse practitioners, nurse midwifes, nurse anesthetists, and clinical nurse specialists) from the Nurse Interstate Licensure Compact and establishing a separate APRN compact pose important challenges for the continued development of both RN and APRN practice. Nursing organizations have generally approached nursing as a continuum of practice and rejected proposals to establish a separate or "second" licensure for APRN practice. Establishing a separate compact for APRNs would establish the need to have a separate distinct APRN license and a separate APRN scope of practice which goes against this approach.

Other questions generated from these concerns include:

What will be done to ensure that nurses from another state have access to practice related information including current board of nursing policies?

What will prevent Michigan nurses, currently working in Michigan, from leaving Michigan to work in another compact state? This would worsen Michigan nursing shortage, not improve it.

What are the reasons for supporting HB 5493 when it contains language which prevents the State of Michigan from customizing the Compact language to fits the needs of Michigan's health care consumers and nurses?

What is the rush to move this complex legislation forward when the solutions suggested as being facilitated by this legislation may be reached by other means (e.g., current rules on temporary licensure) which do not have the drawbacks of this legislation?

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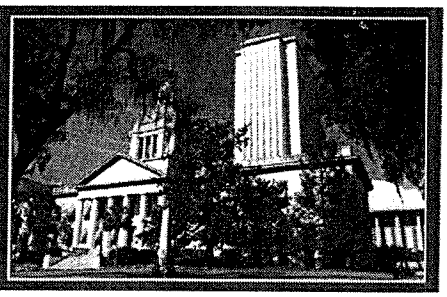


January 2006 Report No. 06-02

Nurse Licensure Compact Would Produce Some Benefits But Not Resolve the Nurse Shortage

at a glance

Joining the interstate Nurse Licensure Compact probably would not alleviate Florida's long-term nursing shortage but would remove barriers to bringing nurses into the state to meet short-term needs arising from events such as hurricanes and peak visitation seasons. Additionally, joining the compact could provide Florida with faster notification of nurses under investigation, improved access to other states' records, and the opportunity to influence compact policy.

However, joining the compact could increase the number of discipline investigations and state requirements for continuing education, and background checks of nurses would not apply to those working in Florida through the compact, although employers could continue to impose these requirements. Also, consumers would have less ready access to information on compact nurses who could work in Florida.

The Legislature may need to adopt alternate compact language to address public meetings and records access and unlawful delegation of authority issues. The State Board of Nursing would need to educate nurses and employers about the compact and implement additional reporting requirements if Florida were to join. The board projects no significant fiscal impact if Florida took this step.

Scope

The Florida Legislature requested OPPAGA to evaluate the possibility of the state joining the Nurse Licensure Compact (the compact). This report examines the potential effect of Florida participating in the Nurse Licensure Compact, including

- the compact's impact on the nursing shortage;
- the advantages and disadvantages to Florida's joining the compact;
- the barriers to implementing the compact; and
- the potential fiscal impact of joining the compact.

Background

In 1997, the National Council of State Boards of Nursing Delegate Assembly established the Nurse Licensure Compact. Under the compact, licensed practical and registered nurses enjoy the privilege of practicing in all member states by maintaining a single license in their primary state of residence. [1,2]

[1] The compact model rules and regulations define "primary state of residence" to mean the state of a person's declared fixed permanent and principal home for legal purposes.

[2] A second compact covers Advanced Practice Registered Nurses, such as nurse anesthetists, nurse practitioners, nurse midwives, and clinical nurse specialists.

Like other states, Florida has a nursing shortage. For the next seven years, the Agency for Workforce Innovation projects 7,158 job openings a year for registered nurses. In 2003-04, the latest year for which data are available, the number of students graduating from nursing programs was 5,734.

Traditionally nurses who wish to practice in more than one state must hold a license from each state in which they practice. Most states allow nurses who hold a license from another state to obtain the second license through endorsement, a process by which the second state examines the licensure standards of the first state and grants licensure if the standards are similar. As shown in Exhibit 1, the endorsement process requires applicants to submit extensive documentation.

Under the compact, nurses in member states are not required to obtain endorsements from other states that are members of the compact. Instead, these nurses hold licenses only from their home states and meet that state's licensure requirements.[3,4] This allows nurses to move quickly from state to state in response to short-term changes in demand. The nurses are responsible for following the practice regulations for the states in which they work.

Compacts are formal agreements between states that bind them to the compact's provisions, as a contract binds parties to a business deal. Compact states are bound to observe the terms of their agreements, which have the force of statutory law and take precedence over conflicting state laws. Exhibit 2 describes some of the Nurse Licensure Compact's key provisions.

[3] In designing the compact, the National Council of State Boards of Nursing decided to base the license on the nurse's state of primary residence instead of primary practice site as the primary practice site is difficult to define, and the definition of practice would be in the compact rather than the states' practice acts, which could vary from states' current definitions.

[4] Nurses may still obtain endorsements from other non-compact states.

Exhibit 1
Florida's Current Process for Licensure by Endorsement Requires Much Documentation

1. Apply to the Board of Nursing by submitting the following information:
   a. fee payment of $212;
   b. completed fingerprint card;
   c. copy of current active license;
   d. verification of licensure for the original and current license(s);
   e. copy of the licensure requirements of the original state of licensure at the time of original licensure and proof of a passing score on a licensing exam approved for the year the applicant took the exam; or, if applicant has not taken the National Council Licensure Examination (NCLEX), evidence of actively practicing nursing in another part of the United States for two of the preceding three years without having action against the license by the licensing authority;
   f. if the applicant completed his or her nursing education in a foreign country, a report evaluating the education from an approved credentialing agency;
   g. if the applicant admits to participating in a drug, alcohol, or an impaired practitioner program, or treatment or recurrence of a diagnosed mental disorder, physical impairment, or addictive disorder within the past five years, related documentation such as a self-explanation, court records, or letters from medical professionals;
   h. demonstration of English competency;
   i. if the applicant is a convicted felon, evidence of restoration of his or her civil rights;
   j. if the applicant was convicted of or pleaded nolo contendere to any offense other than minor traffic violations, arrest, and final disposition records, a letter from the applicant's current nursing employer, and a letter written by the applicant concerning the circumstances of the offense;
   k. if the applicant had any action against a license or has been denied a license, related documentation, including information on the final action; and
   l. documents in a foreign language must be accompanied by a certified English translation.
2. The Board of Nursing conducts the following activities:
   a. submission of a background check request to the Federal Bureau of Investigation (FBI);
   b. submission of a background check request to the Florida Department of Law Enforcement (FDLE);
   c. verification of the applicant's license(s) in the other state(s).
3. If the applicant clears the Florida Department of Law Enforcement background check, the applicant receives a temporary work permit pending receipt of the federal background check results.
4. Once the board receives the federal background check results, and the applicant receives a clear review, the board issues a final license.

Source: OPPAGA analysis of licensure application packet.

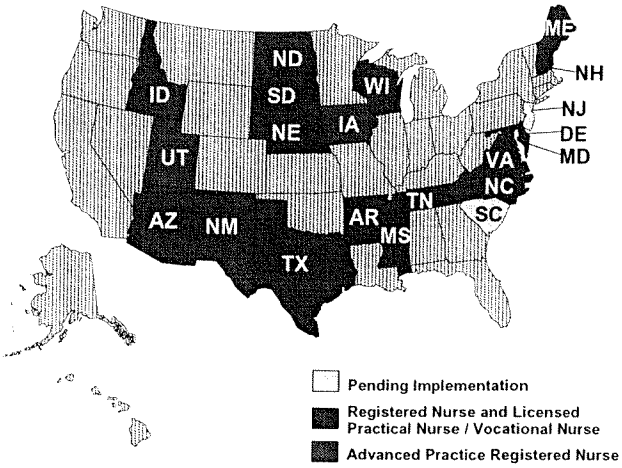
Exhibit 2
The Nurse Licensure Compact Has Eight Key Provisions

Issue	Key Provision
Nurses covered by the compact	▪ RNs and LPNs with an unencumbered license ▪ Nurses with an initial license issued after July 1, 2005, must pass the National Council Licensure Examination (NCLEX) in order to receive multi-state privilege to practice.
Jurisdiction	▪ Nurses are licensed in state of primary legal residence only; duplicate licenses in other compact states are not permitted. ▪ Nurses who move their permanent residence from one compact state to another, must switch their nursing license to their new state within 30 days of becoming a permanent resident; the license from the old home state is no longer valid. ▪ Nurses who move from a compact state to a non-compact state will have their licenses in the former home state converted to an individual state license. ▪ Nurses who have a permanent residence in a non-compact state and maintain a license to practice in a compact state will not have multi-state privilege to practice in other compact states. ▪ To practice in other non-compact states, a nurse must obtain a duplicate license. ▪ Every nurse practicing in a compact state must comply with the state practice laws of the state in which the patient is located at the time care is rendered.
Discipline	▪ "Home" state (state of residence/licensure) can take action against the license and revoke the nurse's multi-state privilege to practice. ▪ "Remote" state (other compact state in which the nurse practices) can take action against practice privilege in the remote state.
Information Sharing	▪ All participating states provide licensure, discipline, and significant current investigative information to a "coordinated licensure system," known as NURSYS™.
Administration	▪ Compact is administered according to rules and regulations adopted by the Nurse Licensure Compact Administrators who are the nurse executives of the participating states.
Impact on state licensure requirements	▪ States will continue to have complete authority in determining their own licensure requirements and disciplinary actions according to the respective Nurse Practice Act.
Implementation of the compact	▪ States must enact legislation to authorize participation in the compact; legislation must be essentially the same in each state to ensure consistency of administration.
Withdrawal from the compact	▪ States can withdraw from the compact by repealing the enabling legislation; six months notice must be given to the executive heads of all other compact states prior to the effective date of the withdrawal; there is no minimum length of participation.

Source: Virginia Joint Commission on Health Care and OPPAGA analysis of the Nurse Licensure Compact and its model rules

Currently, 19 states participate in the compact for licensed registered nurses or practical nurses. In addition, New Jersey and South Carolina have enacted legislation authorizing the compact with a future effective date and have not yet implemented it.[5] Utah and Iowa also have passed legislation authorizing an Advanced Practice Registered Nurse Compact, which has not been implemented (see Exhibit 3).

Exhibit 3
Twenty-One States Have Enacted the Compact and 19 States Have Implemented It



Source: National Council of State Boards of Nursing.

[5] The later effective date of legislation passed in those states allows time for state rule adoption, nurse and employer education, etc.

Findings

Joining the nurse compact will not help long-term nursing shortages, but will facilitate the movement of nurses into the state to respond to short-term needs

Joining the compact would likely have little or no impact on Florida's long-term nursing shortage. The states that have joined the compact report that it has not alleviated their nursing shortages. While the compact increases the mobility of nurses among member states, it does not create new nurses.

However, the compact does help alleviate short-term needs by making it easier for nurses to move from state to state in response to changes in demand. Currently, the Florida Board of Nursing acts as a gatekeeper to ensure that nurses practicing in Florida have the proper credentials, and it licenses nurses licensed in other states through endorsement.[6] The board reports that it issues temporary work permits within 30 days of receiving a complete application. Nonetheless, stakeholders we contacted regard Florida's current process for licensure by endorsement as cumbersome and believe the compact would reduce barriers to bringing nurses into the state.

The board has an expedited endorsement process for emergency situations. When the Governor issues an emergency declaration, such as during a hurricane, the board has authorized staff to waive fees and grant 90-day temporary permits to nurses coming into the state to respond to the emergency. Nurses can fax a one-page application to the board. The board then performs a background check through the Florida Department of Law Enforcement and verifies the license in the other state. During the 2004 hurricane season the board reports that it issued 207 of these permits; about two-thirds of the nurses had a license in a compact state. The board reports that the expedited endorsement process is very labor-intensive.

Under the compact, nurses with unencumbered licenses from other party states would have the privilege to practice in Florida without going through the board or obtaining an endorsement. This reduces barriers by allowing nurses to serve patients in other compact states without obtaining multiple licenses. It also provides a larger pool of nurses for employers to access when filling short-term needs and eliminates the wait period during the endorsement process. Nurses and some nurse recruiters would also benefit from not having to pay Florida's $212 endorsement fee.

Joining the compact could provide additional benefits

Joining the compact could provide Florida improved access to information and the ability to influence compact policy.

Improved information on licensure status could be available. By joining the Nurse Licensure Compact, the Board of Nursing could have better access to other states' nurse licensure information. The compact allows states to flag a nurse's record in its NURSYS™ data system, which indicates that the nurse is under investigation for a significant patient safety issue that could result in an emergency suspension of the nurse's license.[7] This could provide the Florida Board of Nursing with earlier notification of the issue and enable it to open its own investigation if the nurse is practicing in Florida. According to board representatives, this would provide six months or more of lead time to initiate an investigation if warranted. However, it is important to note that only the Board of Nursing would have access to this information. Florida employers verifying a nurse's license would not know if there is an investigation

[6] The Board of Nursing uses the endorsement process to determine if the standards that the nurse met at the time of original licensure were equivalent to or more stringent than Florida's standards at that time. Section 464.009(1)(a), *F.S.*

[7] States that join the compact must share information on their nurses through the NURSYS™ information system. The NURSYS™ database provides access to out-of-state information for employers, nurses, and state boards of nursing. The system contains personal, licensure, and discipline information. Currently all 19 compact states and 12 non-compact states, including Florida, use the NURSYS™ system. However, only compact states can access the disciplinary information posted by other compact states.

underway in another compact state unless they were directly contacted by the disciplining board to assist in the investigation. [8] Since Florida does not make this type of complaint and investigation information public until 10 days after finding probable cause, the Department of Health anticipates that the other state's information also would not be public record. [9]

Also, joining the compact may enable Florida to access nurse discipline information that is not accessible outside of the compact. Representatives from other compact states report that some jurisdictions with restrictive public records laws use the compact to expand the information that they will share with other member states. According to the Board of Nursing, Florida already shares with other state regulatory boards the information the compact requires it to report; therefore, joining the compact would not change what Florida shares with other states. However, the compact may allow the Board of Nursing to obtain information that it cannot currently access, depending on the state involved.

Opportunity to influence compact policy. A second advantage to joining the compact is that it would enable Florida to influence interstate nursing policies. Each member state becomes a member of the Nurse Licensure Compact Administrators (compact administrators' group). This group participates in monthly conference calls and meets twice a year to discuss issues and write the rules and regulations governing the compact. Due to the increased mobility the compact provides, issues that affect nurses in one state will have a greater impact on another state's nurses. These issues can range from background check requirements to policies regarding military nurses. As a member state, Florida would be able to participate in the negotiations and have a voice in developing new policies concerning these issues. These policies would be subject to the rulemaking process in Florida and other states before results were final. [10]

Joining the compact would pose some disadvantages

Joining the compact also poses some potential disadvantages to Florida. These include potential investigation problems, the inability to require some nurses who practice in Florida to meet the state's continuing education and background check standards, and less readily accessible public information on compact nurses.

Investigation problems may arise. If Florida joins the compact, the increased nurse mobility could increase the number of multi-state discipline cases and the costs associated in pursuing those cases. For example, if a nurse from Florida commits an offense in another compact state, the Florida Department of Health would need to coordinate with the other state on the investigation. This could result in two problems. First, it could be more difficult to subpoena witnesses from other states. Georgia, Alabama, and Louisiana have all refused to join the compact due to concerns that it could be more difficult to follow through with discipline investigations and supervision as a compact member. However, many compact administrators reported the ability to coordinate on investigations as a primary advantage of the compact. The National Council of State Boards Nursing reports that improved coordination decreases members' investigative difficulties and costs.

Second, the compact could increase the number of investigations due to increased nurse mobility. The potential fiscal impact of this is unknown because most compact states do not separate discipline cases involving compact nurses from cases involving their own nurses. In order to mitigate this, the compact administrators report that they primarily rely on investigations conducted in the state where the adverse event occurred and then send the investigative report to the nurse's home state to discipline the licensee, which reduces costs. Also, the compact

[8] This is the same level of access to investigation information that currently exists for Florida employers under Florida statutes.

[9] Section 456.073(10), *F.S.* See the discussion of public records later in this report.

[10] Florida would hold the largest number of active licensed nurses of any member state, which may enhance the state's ability to influence compact policy.

includes enabling language for the board to recoup investigation costs from the involved nurse if the case results in adverse action taken against the nurse. [11]

Florida's continuing education requirements would not apply to compact nurses. Some compact states, including Arizona, Nebraska, Idaho, and Virginia, do not require continuing education for nurses they license. In contrast, Florida requires its licensees to complete 24 hours of continuing education within each two-year licensure renewal period. Nurses working in Florida through the compact would not be subject to the Florida continuing education requirement as they would be governed by their home states' continuing education rules. Florida employers could require compact nurses that they hire to comply with the Florida continuing education standards, but this would not be mandated by law and some employers may not require this step.

Florida's background check requirements would not apply to compact nurses. Florida requires all licensees to submit to a state and federal background check to identify prior criminal offenses. However, some compact states such as North Dakota and Virginia do not mandate criminal background checks and require self-disclosure of criminal history by nurses. Although compact administrators report that they plan to move towards uniformity in this area, Florida would currently lack the ability to mandate background checks of compact nurses who practice in the state.

Florida law requires skilled nursing facilities, assisted living facilities, and home health agencies to conduct a Florida background check on nurses who have maintained continuous residency within the state for the past five years, and requires a federal background check for nurses who do not meet that requirement. Also, hospital association representatives report that although not mandated by law, member hospitals require their nurses to submit to a background check as a part of the hiring process. Thus, many Florida employers would likely mandate criminal background checks on nurses who enter the state through the compact. However, the Department of Health may not learn of the results of these background checks as there is no requirement that employers share this information with the department. Nonetheless, state law does require all Florida licensed health professionals to report to the department any person who the licensee knows is in violation of the applicable standards of practice for that profession. Therefore, if human resources personnel uncover a problematic criminal history through the background check and then inform the Director of Nursing of the results, the nursing director would be subject to discipline if he or she failed to report the information to the department. [12]

Public access to information on compact nurses would be less readily accessible. Currently, the public can access licensure status and disciplinary information on any Florida licensed health professional through the Department of Health's Medical Quality Assurance Health Care Provider Information website. However, the public would need to contact the Board of Nursing in Florida or the nurse's home state, if known, to access equivalent information on a compact nurse, because this information is not available on the Florida Department of Health's website. The Board of Nursing plans for the Medical Quality Assurance Call Center, which handles telephonic verification of licensure for all health care professions, to have access to the licensure data in the NURSYS™ system so that it can verify compact licensure status. [13]

There are some barriers to joining and implementing the compact

Joining and implementing the nursing compact would pose some challenges to resolve concerns about potential conflicts with constitutional public records and meetings requirements and unlawful

[11] Florida currently has authority to assess licensees for costs related to investigation and prosecution under s. 456.072(4), *F.S.*

[12] Section 456.072(1)(i), *F.S.*

[13] The compact will not change employers' access to licensee information. For a $5 fee per report, employers currently have the option to verify licenses directly through the NURSYS™ system via the Internet.

delegation of authority issues. It would also necessitate educating stakeholders about the compact, and requiring employers to report on their compact nurses. Revised compact language and a delayed effective date may be necessary to address these challenges.

To resolve issues concerning Florida's constitutional public records and meetings requirements the compact language may need to be revised. Differing public records requirements among compact states was an issue of concern during the 2005 legislative session. The compact requires states receiving information from another state to honor the confidentiality restrictions of the state providing the information. Concerns were raised during the 2005 session that this would conflict with Florida's broad constitutional right of access to public records. In practice, state compact administrators indicated they do not release their non-public documents to other member states. The Board of Nursing reports that it will adhere to Florida's public records laws for any information obtained from another state. Nevertheless the Legislature may wish to consider seeking prior approval from the compact administrators' group to use alternative compact language to recognize Florida's obligation to abide by its constitutional public records requirement.

In addition, there may be constitutional issues related to Florida's open meetings law. The compact administrators discuss policy issues and recommend the proposed rules and regulations that will govern the compact. The Florida Constitution requires that meetings of a group such as this must be open to the public with reasonable notice given and minutes taken. [14] Although not specifically addressed in the compact language, the compact administrators advised us that these meetings are open to the public, but the information on date, time, location and/or call-in numbers are currently not published in advance. The Legislature also may wish to consider seeking prior approval from the compact administrators' group to use alternative compact language to specify that the meetings must be noticed and open to the public with minutes taken. If Florida were to join the compact, the Board of Nursing should make information about these meetings available to the public by posting the relevant information on its website and in the *Florida Administrative Weekly*.

Another way of resolving the issues related to public records and meetings could be through the compact's severability clause. This provision allows a member state to sever any section of the compact held by its highest court of law to be contrary to its state constitution, and continue the balance of the compact in full force. However, the severability clause as currently written needs clarification. Before joining the compact, the Legislature may wish to consider asking the compact administrators' group to amend this clause by changing the third sentence to eliminate confusion about the intent of the language. [15]

Unlawful delegation of authority issues can be addressed. Another issue of concern during the 2005 legislative session was whether language authorizing the compact administrators' group to develop rules that must then be adopted by each member state would be an unlawful delegation of legislative authority to this group. Under the "non-delegation doctrine" the Legislature may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law. [16] The authority given to the compact administrators is very broad and could be construed as a violation of the non-delegation doctrine. Although 21 other states have overcome this issue and enacted the compact legislation, most states do not have the same legal

[14] Florida Constitution, Art. 1 § 24(b).

[15] Article 11 §a of the compact model language currently reads as follows: "This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters."

[16] Bush v. Schiavo, 885 So.2d 321 (Fla. 2004).

constraints on delegated authority that Florida does. [17, 18]

The chair of the compact administrators' group advised us that rules developed and proposed by the compact administrators' group are not effective in a state until considered and adopted by that state under its rulemaking procedures. However, this does not overcome the unlawful delegation concern as the compact requires the member states to adopt the rules developed by the compact administrators. Appendix A lists the compact's current model rules and regulations.

To alleviate concerns over the delegation of authority, if the Legislature decides to join the Nurse Licensure Compact, it may wish to seek prior approval from the compact administrators' group to use alternative compact language for Article VIII(c) of the Nurse Licensure Compact model legislation to address this issue. That language could limit the compact administrators' authority so that they could adopt only rules concerning multi-state licensure privilege and related information sharing as necessary to effectively and efficiently achieve the purposes of the compact. The language could also direct the Florida Board of Nursing or the Department of Health to adopt those rules in accordance with Ch. 120, *Florida Statutes*.

Stakeholder education would be needed. For the compact to work as designed, a strong education program would be needed to inform nurses and their employers and human resources personnel about the compact. It would be particularly important for these stakeholders to understand several key compact provisions. These include the provisions that nurses who come to Florida from another compact state can only work on the old home state license for 30 days after becoming a permanent Florida resident, are responsible for following the practice regulations for the states in which they practice, and can maintain a license in only one compact state at a time. It also will be critical for stakeholders to understand that nurses in states that enact the compact are not covered by its provisions until the states implement it.

The Board of Nursing plans a campaign to educate employers and nurses on the compact and its requirements. The board proposes to distribute information through mailings, workshops, advertisements, and a brochure on Florida's practice regulations. It will be important for the board to have accurate addresses of nurses to conduct these mailings. The National Council of State Boards Nursing provides educational materials that compact states can use to inform their stakeholders of the compact's details. The Arizona State Board of Nursing found including human resource personnel in workshops and information on the compact to be critical for effective implementation. To provide enough time for the board to educate stakeholders, the Legislature should provide an effective date for the compact that is 6-12 months after the legislation authorizing it is adopted.

The Board of Nursing is considering mandating employer reporting. The compact does not allow member states to require nurses to notify the licensing authority when they enter the state to practice. [19] This creates two problems. First, it inhibits Florida's ability to capture nursing workforce data and estimate workforce needs as the state would not know when nurses coming from other states would join Florida's workforce. Second, the Board of Nursing would not know if a potentially dangerous nurse who was being investigated by another state entered Florida to work, which may reduce the board's ability to protect the public.

The Board of Nursing plans to address these concerns by requiring hospitals, long-term care facilities, and nurse registries to notify the board when they hire nurses practicing in Florida through the compact. This data, collected as a part of the hiring process, also would include estimated termination dates if known. The board also plans to require employers to notify it when they terminate employment of these nurses.

[17] Two of these states have enacted the compact but not yet implemented it.

[18] Florida Constitution, Art. 2, §3; Avatar Development Corp. v. State, 723 So.2d 199 (Fla. 1998).

[19] Georgia listed this as a reason for not joining the compact.

The Board of Nursing currently does not have the statutory authority to require employers to report on their compact nurses. The Agency for Health Care Administration retains authority over health facilities. However, the 2005 Florida compact legislation included language to authorize the board to collect this employment information.[20] The board reports that it has discussed the proposed requirements with affected employers, and the employers did not see the requirements as burdensome. However, hospital association representatives report that they would oppose any special reporting requirement for compact nurses.

The compact will increase the state's nurse licensure costs, but licensure fees will cover these costs

The Board of Nursing estimates that start-up costs associated with joining the compact would be $435,265 during the first year, with ongoing costs of $132,153 for subsequent years. The recurring costs for administering the compact consist of additional staff and an annual fee to the compact administrators. The estimated start-up cost consists of the following expenditures:

- hiring contract staff to process changes;
- hiring three additional employees to handle calls, process applications, and maintain the NURSYS™ database with current discipline information;
- mailing announcements on the changes to licensees and employers;
- conducting workshops to educate stakeholders;
- publishing advertisements to announce joining the compact; and
- paying the annual compact administrators' fee of $3,000.

The Board of Nursing does not expect to lose any license revenue from joining the compact, although this result is uncertain. Currently, nurses wishing to practice in Florida must either become licensed in the state by examination and pay a $190 fee, or become licensed through endorsement and pay a fee of $212. Under the compact, nurses already licensed in a member state would not pay a license fee to Florida; however, some additional nurses who are currently licensed in another state could move to Florida if they begin working here for extended periods of time. The board estimates a worst-case scenario of a revenue loss of $1.1 million, and a best-case scenario of gaining $1 million in additional revenue, depending on the number of nurses who subsequently establish Florida as their state of permanent residence. Compact state licensing authorities report that they typically have experienced little to no change in licensure revenues when new states have joined the compact.

The licensing boards of other states reported that joining the compact had little fiscal impact, with expenses averaging $9,597 from enactment to implementation. These states were generally able to implement the compact within their current licensure fee revenues, although some needed to increase fees slightly. Some states reported that they were able to absorb related workload with existing staff while others reported increased workload due to the number of calls they received regarding the compact.

The Florida Board of Nursing's estimated costs are much higher than the costs experienced by other states in implementing the compact. This is primarily because the Board of Nursing plans to hire three additional staff to perform activities related to joining the compact, notably the tracking of employment information. Most of the other member states do not track employment information (according to the board only Maryland currently tracks information on the compact nurses entering its state).

Currently the Board of Nursing has a positive fund balance. Regardless of joining the compact, the board estimates a need to raise fees in the coming years, and a $5 increase in renewal fees would raise an estimated $1.2 million biennially.

The compact's impact on employer costs is unclear. The compact would likely increase workload for employers if the Legislature imposed the requirement that employers submit information on the nurses practicing in their facility on multi-state privilege. However, the

[20] SB 2210 and HB 1101 filed for the 2005 regular legislative session.

compact could also reduce recruitment costs for employers who reimburse nurses for their endorsement fees. As a result, joining the compact probably would have little net impact on employers, although some recordkeeping expenses would be increased.

Recommendations

If Florida decides to join the Nurse Licensure Compact, the Legislature should consider the recommendations described below.

- The Legislature may wish to seek prior approval from the Nurse Licensure Compact Administrators to use alternative compact language to recognize Florida's obligation to abide by its constitutional public records requirement.
- The Legislature may wish to seek prior approval from the Nurse Licensure Compact Administrators to use alternative compact language to specify that their meetings must be noticed and open to the public with minutes taken.
- The Legislature should consider working with the Nurse Licensure Compact Administrators to request alternative compact language to clarify the severability clause.
- The Legislature may wish to seek prior approval from the Nurse Licensure Compact Administrators to use alternative compact language to authorize the compact administrators to adopt only rules concerning multi-state licensure privilege and related information sharing as necessary to effectively and efficiently achieve the purposes of the compact.
- The Legislature should authorize the Board of Nursing to require employers to report both hire and termination dates for nurses practicing in the state on multi-state privilege. This will enable the Florida Center for Nursing to track trends in the utilization of the compact.
- The Legislature should set the effective date for the compact 6-12 months after the enactment date in order to allow enough time to educate the employers and nurses and make the necessary process and rule changes.
- The Legislature should consider requiring the board to report information on the effects of the Nurse Licensure Compact two years after its implementation. The board should identify the compact's effect on Florida's ability to obtain nurses to meet short-term increases in demand, how the number of legally sufficient complaints the board receives per compact nurse compares to the number of legally sufficient complaints on nurses with Florida licenses, the costs of investigating complaints involving compact nurses, whether more lenient standards in other states contributed to any problems, and the compact's effect on employer recordkeeping and recruitment costs.

In addition, if the Legislature decides to join the compact, we recommend that the Board of Nursing take two actions.

- The board should move forward on its planned public education campaign. Public education will play a critical role in ensuring that the compact works as intended. Employers' human resource personnel should be included in the workshops for effective implementation.
- The board should post the compact administrators' meeting information on its website and in the *Florida Administrative Weekly* in order to make information about those policy discussions more readily accessible to the public.

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Florida Monitor: www.oppaga.state.fl.us

Project supervised by Martha Wellman (850/487-2977)
Project conducted by Deanna Hamilton (850/487-0579), Jan Bush, and Alex Gulde
Jane Fletcher, (850/487-9255) Staff Director for Education
Gary R. VanLandingham, OPPAGA Director

Appendix A

Nurse Licensure Compact Model Rules and Regulations Approved by the Nurse Licensure Compact Administrators January 10, 2000, Amended December 5, 2004

1. Definition of terms in the Compact.

For the Purpose of the Compact:

a. "Board" means party state's regulatory body responsible for issuing nurse licenses.

b. "Information system" means the coordinated licensure information system.

c. "Primary state of residence" means the state of a person's declared fixed permanent and principal home for legal purposes; domicile.

d. "Public" means any individual or entity other than designated staff or representatives of party state Boards or the National Council of State Boards of Nursing, Inc.

e. Other terms used in these rules are to be defined as in the Interstate Compact.

2. Issuance of a license by a Compact party state.

For the purpose of this Compact:

a. As of July 1, 2005, no applicant for initial licensure will be issued a compact license granting a multi-state privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX examination or its predecessor examination used for licensure.

b. A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but is not limited to:

   i. Driver's license with a home address;

   ii. Voter registration card displaying a home address; or

   iii. Federal income tax return declaring the primary state of residence.
   (Statutory basis: Articles 2E, 4C, and 4D) [s. 464.103(5), 464.107(3) and (4)] [1]

c. A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multi-state licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed 30 days. (Statutory basis: Articles 4B, 4C, and 4D[1]) [s. 464.107(2), (3), and (4)(a)]

d. The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the 30-day period in section 2b shall be stayed until resolution of the pending investigation. (Statutory basis: Article 5[B]) [s. 464.108(2)]

e. The former home state license shall no longer be valid upon the issuance of a new home state license. (Statutory basis: Article 4D[1]) [s. 464.107(4)(a)]

f. If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within 10 business days and the former home state may take action in accordance with that state's laws and rules.

3. Limitations on multi-state licensure privilege.

Home state Boards shall include in all licensure disciplinary orders and/or agreements that limit practice and/or require monitoring the requirement that the licensee subject to said order and/or agreement will agree to limit the licensee's practice to the home state during the pendency of the disciplinary order and/or agreement. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state Boards. (Statutory basis: State statute)

4. Information System.

a. Levels of access

i. The Public shall have access to nurse licensure information limited to:

(a) the nurse's name,

(b) jurisdiction(s) of licensure,

(c) license expiration date(s),

(d) licensure classification(s) and status(es),

(e) public emergency and final disciplinary actions, as defined by contributing state authority, and

(f) the status of multi-state licensure privileges.

ii. Non-party state Boards shall have access to all Information System data except current significant investigative information and other information as limited by contributing party state authority.

iii. Party state Boards shall have access to all Information System data contributed by the party states and other information as limited by contributing non-party state authority. (Statutory basis: 7G) [s. 464.110(7)]

b. The licensee may request in writing to the home state Board to review the data relating to the licensee in the Information System. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The Board shall verify and within 10 business days correct inaccurate data to the Information System.
(Statutory basis: 7G) [s. 464.110(7)]

c. The Board shall report to the Information System within 10 business days

i. disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements and orders relating to participation in alternative programs required to remain nonpublic by contributing state authority),

ii. dismissal of complaint, and

iii. changes in status of disciplinary action, or licensure encumbrance.
(Statutory basis: 7B) [s. 464.110(2)]

iv. Current significant investigative information shall be deleted from the Information System within 10 business days upon report of disciplinary action, agreement or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint. (Statutory basis: 7B, 7F) [s. 464.110(2) and (6)]

v. Changes to licensure information in the Information System shall be completed within 10 business days upon notification by a Board. (Statutory basis: 7B, 7F) [s. 464.110(2) and (6)]

[1] The statutory basis refers to the section of model compact language that provides authority for the action. The National Council of State Boards of Nursing used an article format in the model language it developed. 2005 Florida legislation (s. 1 of HB 1101 and SB 2210) proposed identical compact provisions as additions to the *Florida Statutes,* creating the new sections noted by brackets after each model rule reference.