



MEMORANDUM

To: Board Members
Ohio Board Of Nursing

From: Betsy Houchen
Executive Director

Subject: New/Enhanced Compact – Areas For Consideration

Date: March 24, 2016

The Board's reviewed and discussed the following areas of concern at the 2015 and 2016 Board Retreat.

Authority of the Interstate Commission

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

- Paragraph (b)(1): "Each party state shall have and be limited to one administrator..."
- Paragraph (b)(2): "Each administrator shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission...."
 - ⇒ Consideration: Each member, regardless of the number of licenses regulated, or the amount of fees paid to the Commission, is represented by one person and has one vote.
- Paragraph (g) and (g)(1) "The Commission shall have the following powers: To promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all party states."
 - ⇒ Consideration: The Commission will have the power to enact rules that are binding on each State in the Compact by a simple majority vote. Each State would be subject to administrative rules not passed at the State level.
- Paragraph (a)(2): The Commission will be subject to the laws of the state in which it is organized, i.e., Illinois.
 - ⇒ Consideration: If there is a dispute between Ohio and the Commission or another party state, the matter will be handled in the Illinois court system.
- Paragraphs (b)(5) and (i): "The Commission may convene in a closed, non-public meeting" for certain reasons; the Commission has immunity/defenses to lawsuits.

- ⇒ Consideration: the Commission is not subject to any independent auditor or legal authority with oversight over its operations or finances, and has immunity/indemnification from lawsuits.
- Paragraph (g)(6): The Commission shall have the following powers: “To hire employees... fix compensation, define duties...”
 - Paragraph (c): “The Commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact, including but not limited to: ...providing reasonable standards and procedures: for the establishment and meetings of other committees; and governing any general or specific delegation of any authority or function of the Commission.”
- ⇒ Consideration: The Commission is to be fully staffed and all of its costs will be paid for by annual assessments on members; the Commission would have exclusive say in how much each member is assessed. At this time, the cost for each party state to support the Commission is unknown.

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

Grandfathering

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

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

Misdemeanors

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

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

Alternative Program for Chemical Dependency (AP)

Article III, paragraphs (c)(9) and (10) state that a nurse enrolled in AP cannot obtain or retain a multi-state license and that the nurse is “subject to self-disclosure requirements regarding current participation in an alternative program.”

Article V, paragraph (c) states that a party state has authority to place a nurse in an alternative program “in lieu of adverse action.” The paragraph further states that the home state shall deactivate the multi-state license privilege under the multi-state license for the duration of the nurse’s participation in an alternative program.

- ⇒ Consideration: Article V allows each State to place a nurse in AP, however, not all Boards know when nurses are participating in their State’s Alternative Program because, for example, the program is outsourced to a third party. If States do not know their AP participants, those licensees would be able retain multi-state licenses if the licensee did not report their participation to the State.

Uniform Licensure Requirements and Absolute Bars

The Uniform Licensure Requirements (ULRs) adopted by NCSBN in 2012, are to be included in the new Compact rules rather than in statute. A copy of the ULRs is attached (Attachment F).

The new Compact language and the ULRs do not include absolute bars for licensure, except that the ULRs specify if an “evaluation identifies sexual behaviors of a predatory nature the board of nursing should deny licensure.”

- ⇒ Consideration: The Ohio Nurse Practice Act includes absolute bars for licensure. The following list of crimes that make an individual ineligible for licensure in Ohio, or if already licensed, require an automatic suspension of licensure: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, and aggravated burglary, as defined under Title XXIX [29] of the Ohio Revised Code, or, with regard to offenses committed in other jurisdictions, offenses comparable to the offenses defined in Title XXIX [29] of the Revised Code.

Conviction Language

Article III, paragraphs (c)(7) and (8) state that for an applicant to obtain or retain a multi-state license in the home state, the individual “has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense...and has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing....”

For felonies and misdemeanors, the Ohio Nurse Practice Act specifies the Board can take action based on a “conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction for, ...”

Consideration: The new Compact language, “not been convicted or found guilty, or has entered into an agreed disposition” is too 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.

Social Security Number

Article III, Paragraph (c)(11) specifies that an applicant for a multi-state license would be required to have a social security number. This is not consistent with Ohio law or federal law.

Conversion of Licenses When Licensee Changes State of Residency

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

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

⇒ Consideration: Ohio could not “convert” or “deactivate” a license without affording the licensee due process.

Mandatory Reporting

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

⇒ Consideration: Ohio is a mandatory reporting state.

Response to Disaster Situations

At the 2015 Midyear Meeting, the Compact was cited as being necessary to assure an adequate nursing workforce during disaster situations. However, single state licensure can also effectively address disaster situations. When this question has been presented to the Board, we have responded as follows:

Non-membership in the NLC does not impede the deployment of licensed nurses from other states to Ohio during a disaster, or the deployment of Ohio licensed nurses to declared disaster areas in other states. The Nurse Practice Act, Section 4723.32(G)(7), ORC, allows nurses who hold an active, valid license in another state to come to Ohio in the case of any declared disaster. Further, under Section 4723.32, ORC, providing emergency assistance does not require a nursing license in Ohio.

During the aftermath of Hurricane Katrina, the Board encouraged and facilitated Ohio nurses to provide disaster relief by enrolling in the Medical Reserve Corp (MRC)/Red Cross (ARC). Through enrollment, state license status was verified; the deployment of nurses was organized so nurses were matched to the area of need, based on the nurse’s education and experience; and emergency relief training was provided as needed. Also, nurses with active, valid licenses in one state were considered federal employees and did not need a license to practice in the state where they are going. In addition, the ARC has negotiated reciprocal licensing agreements with each state, so if nurses with active, valid licenses in one state are activated through ARC, they are able to practice in other states without having a license to practice in that state.

Sharing of Investigative Information

At the 2015 Midyear meeting, it was emphasized that an advantage of the Compact is that states can share investigative information with each other, which they could not do previously as single states.

⇒ Consideration: As a single state licensure board, Ohio is authorized to share investigative information with other boards of nursing under the Ohio Nurse Practice Act.

Effect of Disciplinary Actions in Other Compact States

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

would check Nursys to determine if other remote states have taken disciplinary actions and then could bootstrap the action taken in the other remote state.

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

Fiscal implications

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