MEMORANDUM

To: Members, Ohio Board of Nursing

From: Tom Dilling, Public and Government Affairs Officer/Liaison
      Betsy Houchen, Executive Director

Subject: Legislation, 134th General Assembly

Date: April 6, 2021

Bills of interest that have been introduced in the 134th General Assembly at the beginning of 2021 include:

**HB 6, Modify Laws Governing Certain Professions Due to Covid-19**

HB 6 was introduced on February 4, 2021 and referred to the House State and Local Government Committee the same day. A substitute version of HB 6 was reported out of committee on February 24, 2021 and passed the House on March 3, 2021. The bill has been heard twice to date in the Senate Government Oversight and reform Committee.

The bill would amend Section 30 of H.B. 197 of the 133rd General Assembly to modify the laws governing the HB 197 temporary nursing licenses and extend an exception to the NCLEX passing requirement for qualified applicants through July 1, 2021.

*Board position:* The Board testified in Committee as an interested party in the House. Because NCLEX testing is a core aspect of assuring entry-level safe nursing practice, the Board supported the current March 1, 2021 expiration date or an earlier end date to the HB 197 special license than July 1, 2021. The Board supported statutory language specifying that any extension of the HB 197 nursing license specify that failure of the NCLEX renders the HB 197 license invalid and other similar protections. The substitute version of the bill retained the proposed July 1, 2021 extension, but added various provisions to promote public safety related to grounds for denial or invalidation of the license.

**HB 110, Operating Budget**

HB110 was introduced on February 16, 2021 and referred to the House Finance Committee the next day. The bill makes operating appropriations for the biennium beginning July 1, 2021, and ending June 30, 2023, and provides authorization and conditions for the operation of state programs. The Board’s budget authorization was referred to the House Health and Human Services Subcommittee.
Board position: Director Houchen presented testimony on March 2, 2021 in support of the proposed authorization to the Board.

HB 142, Regards Doula Services
HB 142 was introduced on February 23, 2021 and referred to the House Health Committee. The bill would create a doula advisory board within the Nursing Board in a four-year pilot program, as well as a path for doulas to become professionally certified. These paths are augmented by the creation of four-year pilot programs in Medicaid to support payments for doula services and a four-year pilot program in the department of rehab and corrections to support doula nursery services in prisons. Doulas are individuals who provide emotional support to expectant mothers and families. They are non-clinical and do not deliver infants, but they can provide education about parenting and children to families.

It has been reported that Ohio has one of the worst infant mortality rates in the country, ranking 42nd out of all 50 states for the highest infant mortality rate, according to 2018 Centers for Disease Control (CDC) data. Outcomes for Black newborns are even worse. Data from 2019 shows Black infants die at nearly three times the rate of White infants. In Ohio, about five White babies die per 1,000 live births, compared to over 14 Black newborns per 1,000 live births.

Board position: The Board is an interested party to this legislation at this time.

HB 176, Revise Athletic Training Laws
HB 142 was introduced on March 4, 2021 and referred to the House Health Committee. The bill would revise the law governing the practice of athletic training and to amend the version of section 4755.62 of the Revised Code that is scheduled to take effect on October 9, 2021, to continue the changes to that section on and after that date. The bill would authorize the athletic trainer to practice under the referral of a certified nurse practitioner.

Board position: The Board is an interested party to this legislation at this time.

HB 221, Better Access, Better Care Act
HB 221 was introduced on March 23, 2021 and referred to the House Health Committee. The bill would modify the laws governing the practice of advanced practice registered nurses and to designate these provisions as the Better Access, Better Care Act. The bill proposes to eliminate the standard care arrangement with a transition period under certain requirements for new APRN licenses. CRNA practice is not a direct part of this bill.

Board position: The Board is an interested party to this legislation at this time.
SB 3, Nurse Licensure Compact
SB 3 was introduced on January 19, 2021 and referred to the Senate Health, Human Services and Medicaid Committee on January 26, 2021. SB 3 was reported out of committee and passed the Senate on February 24, 2021. The bill was referred to House Health Committee on March 3, 2021.

The Board continues to examine issues and learn about the experience of some Compact states participating in multistate licensure. Although the Board recognizes that multistate 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 Compact. We were attempting to address these issues before entering into the Compact.

Board position: The Board provided interested party testimony in committee. The Board testified and stated concerns regarding fiscal costs; integration with Ohio’s eLicense platform; and regulatory mechanisms addressing autonomous decision-making and public safety. We question whether we may safely and wisely commit to the eNLC set forth in SB 3 with questions remaining, as well as issues with related compact provisions.

SB 48, Cultural Competency-Health Care
SB 48 was introduced on February 3, 2021 and referred to the Senate Health, Human Services and Medicaid Committee on February 10, 2021. The bill would require certain health care professionals, including nurses, to complete instruction in cultural competency. Pursuant to the bill, the Board would be required to adopt rules that establish the following: (1) The number of hours of instruction in cultural competency an applicant must complete to be eligible for a board-issued license, certificate, or registration; (2) The number of hours of continuing education in cultural competency required for renewal of a board-issued license, certificate, or registration; (3) The criteria to be considered by the board when determining whether to waive cultural competency requirements for an applicant or health care professional, including evidence that the applicant or professional has attained experience that is substantially equivalent to the required number of hours of instruction or continuing education in cultural competency. When adopting these rules, the board shall consider race and gender-based disparities in health care and shall consult with one or more professionally relevant and nationally recognized organizations that review curricula offered by health care professional schools, colleges, and other educational institutions.

Board position: The Board is an interested party to this legislation at this time.

SB 129, Prohibit Mandatory Overtime-Nurses
The bill was introduced on March 16, 2021 and referred to Senate Health Committee on March 17, 2021. The bill would prohibit a hospital from requiring a nurse to work overtime as a condition of continued employment.

Board position: The Board is monitoring this legislation at this time.
SB 131, Licensure Reciprocity

SB 131 was introduced on March 16, 2021 and referred to Senate Workforce and Higher Education Committee on March 17, 2021. The bill would require an occupational licensing authority to issue a license or government certification to an applicant who holds a license, government certification, or private certification or has satisfactory work experience in another state under certain circumstances. HB 203 has been introduced in the House as a companion bill to SB 131.

Board position: The Board is an interested party to this legislation at this time.

Additional information and details related to the content and status of any state bill mentioned in the legislative report may be found at [https://www.legislature.ohio.gov/legislation/search](https://www.legislature.ohio.gov/legislation/search).
Braving New Pathways
Leading the Way for Regulatory Transformation
Model Act and Rules Committee

Ruby Jason, MSN, RN, NEA-BC Chair, MA&R Committee
Rebecca Fotsch JD Staff
Nicole Livanos JD Staff
Committee Charge

Perform ongoing review, revision, and development of Model Acts and Rules to reflect the current regulatory environment and to remove any other language that does not support public safety such as default on student loans.
Committee Members

- Ruby Jason Chair Executive Officer OR BON
- Amy Fitzhugh Board Liaison, Chief Legal Officer NC BON
- Peggy Benson Executive Officer AL BON
- Dusty Johnston General Counsel TX BON
- Linda Kmetz Board Member PA BON
- Linda Young Executive Officer SD BON
Committee Activity

- 6 in-person meetings over 2-year committee appointment
  - 1 additional meeting to address changes due to COVID-19
- Research
  - FARO Model
  - Occupational Licensure trends
- LPN experts consulted
- Up-to-date research considered
  - NCSBN Outcomes and Metrics Study
- Presentation of significant changes presented to NCSBN Board of Directors in February 2021
What is the Model Act and Rules?

• Adopted by NCSBN membership as the representation of best practices and processes for nursing regulation.

• Tool for reference when advocating for legislative or regulatory change.
Methods to Addressing Existing Model Act and Rules

Considerations included (not exclusive):

• Public Safety
• Occupational Licensure Considerations / North Carolina Dental
• Best Practices
• Evidence
• Modernization
• Streamlining
• COVID-19
Presentation of Recommendations
Today

• Organized by significant change
  – Current Language / Status Quo
  – Recommended Change
  – Discussion

• Non-significant changes made to be presented through full drafts at NCSBN Delegate Assembly
Member Terms

BON Membership

Current:
• “No member shall serve more than two consecutive full terms...”

Recommendation:
• “No member shall serve more than < > consecutive full terms or < > consecutive years.”

Discussion:
• No evidence to support number of terms
• Balance value in institutional knowledge and new perspectives
Board Powers and Duties

BON Powers and Duties

Current:
• Lengthy detailed list

Recommendation:
• Slimmed down list
  • Focused on authorization to conduct activities

Discussion:
• Details belong in sections of acts pertaining to issue
• BON powers and duties in the act should be streamlined and outline basic authorization for each BON activity
Frequency of Meetings

BON Meetings

Current:
• “BON shall meet at least quarterly”

Recommendation:
• “BON shall meet at least <>”

Discussion:
• No evidence to support specific number of meetings
Current:
• “Develop and enforce standards for nursing education”

Recommendation:
• “Develop and enforce standards and processes for nursing education programs”

Discussion:
• Provide for authorization for enforcement of approval process
• *NC Dental* considerations
Data Sharing

BON Powers and Duties

Current:
• “Collect and analyze data regarding nursing education, nursing practice, and nursing resources.”

Recommendation:
• “Collect, analyze, and share data, where permissible, regarding ...”

Discussion:
• Provides for sharing of data BONs collect and analyze regarding education, practice, and resources.

*some data sharing may be limited by jurisdictional law 3.0 (b)
Licensee Public Announcement

BON Powers and Duties

Current:
• “Regulate the manner in which nurses announce their practice to the public”

Recommendation:
• Removed.

Discussion:
• Considered employer activity
• Model Act to include nurse identification and titles / abbreviations
Membership in Private Orgs.

BON Powers and Duties

Current:
• “Maintain membership in national orgs. that develop national licensure examinations and exclusively promote the improvement of the legal standards of the practice of nursing for the protection of public health, safety and welfare.”

Recommendation:
• “Participate or hold membership in national organizations that promote the provisions of this act”

Discussion:
• Not appropriate to include membership in NCSBN in BON powers and duties
• Occupational licensure reform considerations
Public Members

BON Membership

Current:
• No material financial interest in the provision of “nursing services”

Recommendation:
• No material financial interest in the provision of “health care services”

Discussion:
• Potential for conflicts with direct interest in any health care services, not just nursing services
1. Immunity
   Current:
   • BON members immune “from individual civil liability while acting within the scope of the duties as BOD members”
   Recommendation:
   • “BON members enjoy immunity as provided under jurisdictional law”

2. Lawsuits
   Current:
   • “In the event that the entire BON, an individual member or staff is sued, the attorney general shall appoint an attorney to represent the involved party, or pursuant to jurisdictional law”
   Recommendation:
   • Remove.

Discussion:
• Provisions should tie back to jurisdictional law governing the subject so as not to recommend BONs advocate for ‘special’ treatment.
Executive Officer

BON Powers and Duties

Current:
• “Appoint and employ a qualified RN to serve as executive officer”

Recommendation:
• “Appoint and employ a qualified individual to serve as executive officer”

Discussion:
• Occupational licensure concerns
• No evidence to support necessity of RN degree
• Plenary examples non-RN EO’s can effectively perform powers and duties of EO
Executive Officer Effectiveness

Current:
• “The BON shall monitor and periodically evaluate the effectiveness of the executive officer.”

Recommendation:
• Removed.

Discussion:
• Employment activity
• State-specific processes
Scope of Practice
Delegation

RN Scope of Practice

Current:
• Not located in act.

Recommendation:
• “Delegates to another only those nursing measures for which the delegatee has the necessary skills and competence to accomplish safely”

Discussion:
• Accountability for ensuring delegatee ability
Patient Diagnosis

RN Scope of Practice

Current:
• “Establish nursing diagnosis”

Recommendation:
• “Participates in and establishes patient diagnosis”

Discussion:
• Recommended by the National Academy of Medicine Committee on Improving Patient Diagnosis.
• Evidence indicates that nursing diagnoses do not contribute to the overall care of patients.
• Push for participation by all qualified health care providers.
Assessment
RN and LPN Scope of Practice

Current:
• LPN “focused assessment”
• RN “comprehensive assessment”

Recommendation:
• LPN “assessment”
• RN “assessment”

Discussion:
• Discussion with LPN experts
• Looked at definitions of ‘focused’ and ‘comprehensive’ assessments
  • Both involve collection, analysis and synthesis of data
NLC Conformity
**NLC Conformity**

Throughout the Act

1. **Active & Unencumbered**
   - Current: “licensed in good standing”
   - Recommendation: Active and unencumbered license

2. **Practice Authority**
   - Add *Privilege to Practice*

3. **Grounds for Discipline**
   - Current:
     - “a. Convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law Confidentiality, patient privacy, consent or disclosure violations.”
   - Recommendation:
     - “...or misdemeanor offense related to the practice of nursing”

Discussion:
Model Act and Rules should mirror NLC terminology where applicable and appropriate
Discipline in another jurisdiction

Grounds for Discipline

Current:
• None.

Recommendation:
• Grounds for discipline to include “revocation, suspension, or denial of, or any other action relating to, the person’s license or privilege to practice nursing in another jurisdiction or under federal law;”

Discussion:
• Reciprocal discipline
• Public safety concerns
Retained jurisdiction

Discipline and Proceedings

Current:
• None.

Recommendation:
• “The Board retains jurisdiction over an expired, inactive, or voluntarily surrendered license. The Board’s jurisdiction over the licensee extends for all matters, known or unknown to the Board, at the time of the expiration, inactivation, or surrender of the license.”

Discussion:
• BON should retain jurisdiction over individual for investigatory purposes
• Public safety concerns
Employment of unauthorized individual

Violations

Current:
• “Employ a nurse without verifying the nurse’s authority to practice in this jurisdiction”

Recommendation:
• “Employ, for compensation or without compensation, an individual claiming to be licensed under this act that does not have the authority to practice nursing in this jurisdiction.”

Discussion:
• Clarifies employer responsibility for employing nurses authorized to practice in the state
• Shifts violation activity from lack of verification to employing the individual
Automatic Suspension

Emergency Action

Current:

• “b. Automatic Suspension
  1. Unless the BON orders otherwise, a license to practice nursing is automatically suspended if…”

Recommendation:

• Deleted.

Discussion:

• Automatic suspensions raise due process concerns for licensees
• Summary suspensions and other emergency actions are still maintained in the Model Act
Student Loans and Child Support

Grounds for Discipline

Current:
• “14. Failing to pay child support or delinquent child support pursuant to the procedural laws and rules of the jurisdiction.
15. Defaulting on health education loan or scholarship obligations pursuant to the procedural laws and rules of the jurisdiction.

Recommendation:
• Deleted.

Discussion:
• Occupational licensure reform
• No nexus to nursing and public protection
Alternative to Discipline Programs

Throughout

Current:
• Extensive requirements for ATD programs

Recommendation:
• Remove program requirements
• Leave in authorization to have programs

Discussion:
• Ongoing ATD study to provide further guidance
• Much of what was in the rules is located in ATD program policies and contracts
Disciplinary Hearings

Allow for remote disciplinary process

Current:
• None.

Recommendation:
• **Section 6. (i).** Implement the discipline process either in person or virtually in accordance with a state’s statute and rules.
• **1.** Issue subpoenas in connection with investigations, inspections and hearings either in person or electronically.

Discussion:
• Streamline and modernize BON procedures
Licensure
Licensure entitlement

RN/LPN/APRN Licensure

Current:

• “an applicant for licensure by examination to practice as an RN or LPN/VN who successfully meets the requirements of this section shall be entitled to licensure as an RN or LPN/VN.”

Recommendation:

• “an applicant for licensure by examination to practice as an RN or LPN/VN must successfully meet the requirements of this section, as determined by the BON by rule.”

Discussion:

• Allows for BON flexibility
Temporary Licensure/Permit

Throughout

Current:
• Provisions in Model Act and Rules provides for temporary licensure

Recommendation:
• Temporary licensure provisions for initial licensure (by examination) removed.

Discussion:
• Public safety
  • Ex. employers not following up on whether the nurse is ultimately granted a permanent license
  • Ex. if temporary license is issued prior to analysis of CBC
Administration of Exam

Throughout

Current:
• Specifics on administration of examination
  • Location
  • Time
  • Etc.

Recommendation:
• Removed.

Discussion:
• Antiquated
• BONs do not administer the NCLEX-RN or PN
Applicant and Licensee

Background
Criminal Conviction Matrix

Criminal Background Check

Current:
• None.

Recommendation:
• Factors to consider:
  • Seriousness of crime
  • Age at time of conviction
  • Facts / circumstances
  • Nexus to nursing
  • Etc.

Discussion:
• Occupational licensure reform trends
• Providing a mechanism for BONs to make an assessment
Criminal Convictions- Sexual Offense

Criminal Background Checks

Current:
• Located in Model Rules:
  “All individuals convicted of a sexual offense involving a minor or performing a sexual act against the will of another person shall be subject to a BON order for evaluation by a qualified expert approved by the BON. If the evaluation identifies sexual behaviors of a predatory nature the BON shall deny licensure.”

Recommendation:
• Move to act.
• Expand to those unable to consent.
  “...against the will of another person including those without the mental capacity to consent shall be subject to a BON order...”

Discussion:
• Bars to licensure must be in act, not rules.
• Initial inclusion in Model Rules
  • Expert panel
COVID-19
Vaccine Administration

Delegation

Current:
• None.

Recommendation:
• “In the event of a declared state of emergency in this state, the Board may waive the requirements of this Article to allow emergency health services to the public.”

Discussion:
• Public safety
• Grants broad powers to waive requirements during a state of emergency including delegating the task of vaccine administration.
Licensure Exemptions and Renewal Delays

Current:
• None.

Recommendation:
• “In the event of a declared state of emergency in this state, an individual currently holding an unencumbered license as an LPN/VN, RN, or APRN in any jurisdiction in the United States may practice in this state without obtaining a license in this state. The duration of the practice shall be determined by the board.”

Recommendation:
• In the event of a declared state of emergency in this state, the board may delay licensure renewal dates for any licensees in the state.
Licensure Exemptions and Renewal Delays

Retired and Inactive Licenses

Current:
• None.

Recommendation:
• In the event of a declared state of emergency in this state, an individual who retired from licensed practice of practical nursing, registered nursing, or advanced practice registered nursing in this state in the last <> years shall be issued a temporary license to practice for <time period> from the date of issuance. The individual must have retired with an unencumbered license to qualify for a temporary license.

Recommendation:
• In the event of a declared state of emergency in this state, an individual who retired from licensed practice of practical nursing, registered nursing, or advanced practice registered nursing in this state in the last <> years shall be issued a temporary license to practice for <time period> from the date of issuance. The individual must have become inactive with an unencumbered license to qualify for a temporary license.
Licensure Exemptions and Renewal Delays

Waive Disciplinary Action

Current:
• None.

Recommendation:
• In the event of a declared state of emergency in this state, the board may temporarily waive disciplinary action for licensees who have been removed from practice due to administrative issues that have no nexus to public safety.

Discussion:
• Public safety
• Streamline assistance from out of state nurses during a disaster.
• Allow largest number of safe nurses as possible to practice during an emergency.
Academic Programs

Emergency Preparedness

Current:

• None.

Recommendation:

• Section 6. (b) (5). Creation of an emergency preparedness plan for addressing situations including but not limited to a reduction in the availability of student clinical sites, a transition from in-person to virtual learning platforms, and a need for increased use of simulation.

New Section: During a declared state of emergency, the board may authorize approved nursing education programs to implement mitigation efforts to address, including but not limited to, the availability of clinical placement sites, transition to virtual learning from in-person platforms, and changes in use of simulation. The program shall keep records of any mitigation policies or strategies used and shall include the information in the annual report submitted to the board.

Discussion: Gives BON flexibility to exclude certain academic requirements during an emergency.
Other
Telehealth

Location of Practice

Current:
• None.

Recommendation:
• Section 6. (q). Regulate the practice of nursing, which occurs where the patient is located at the time telemedicine technologies are used.

Discussion:
• Public safety
• Consistent with NLC.
Unlicensed Assistive Personnel

Throughout

Current:
• Model Act and Rules provide for regulation of UAPs, defined as Certified Nursing Assistants and Medication Assistant Certified
• Also provides for program approval for UAPs

Recommendation:
• Remove from Model Act and Rules.

Discussion:
• Nursing assistive personnel growth beyond two defined roles
Duty to Report In Timely Manner

Duty to Report

Current:
• None.

Recommendation:
• “A licensee shall report any conviction, finding of guilt, or entrance into an agreed disposition, of a felony offense under applicable state or federal criminal law.”

Discussion:
• Public safety
• Duty to report ongoing, not only captured at renewal
BON ordered examinations

Immunity and protection from retaliation

Current:
• None.

Recommendation:
• “Any licensed health care professional who examines an applicant or licensee under this act at the request of the BON shall be immune from suit for damages by the nurse examined if the examining health care professional conducted the examination and made findings or diagnoses in good faith. The immunity does not extend to willful or wanton behavior by the licensed health care professional.”

Discussion:
• Extend protections for those performing board ordered examinations
Title “Dr.”

APRN Titles and Abbreviations

Current:
• “The APRN with an earned doctorate may use the term doctor or abbreviation ‘Dr.’”

Recommendation:
• Delete

Discussion:
• Not appropriate for regulatory model legislation
• Model act and rules does not address PhD or doctorate candidates who are RNs or LPNs
Next Steps

• Discussion at Area Meetings
• BOD to review feedback from membership
• Drafts prepared for May BOD meeting
• Drafts and presentation at Annual Meeting ahead of Delegate Assembly Vote
Thank you!

Questions?