

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1209

Nursing Programs

SPONSOR(S): Grimsley

TIED BILLS:

IDEN./SIM. BILLS: SB 2284

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|---|--------|---------|----------------|
| 1) | State & Community Colleges & Workforce Policy Committee | | Calamas | White |
| 2) | Policy Council | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

The bill amends s. 464.008, F.S., to eliminate the licensure requirement that nurses graduate from "approved programs" or their equivalent, and to eliminate the requirement that nursing programs be approved by the Board of Nursing in order to operate. The bill requires nurses to graduate from an "eligible program," defined as a nursing program offered by: a school district, community college or state university; an entity licensed by the Commission for Independent Education; or an institution in this state with a nursing program accredited by a national accrediting organization recognized by the U.S. Department of Education.

The bill repeals s. 464.019, F.S., to eliminate the authority of the Board of Nursing to promulgate rules related to nursing education programs. The bill also deletes the definition of "approved program" and makes several other conforming changes.

The bill has no fiscal impact to local government. Although the Department of Health will lose the revenue related to nursing program application fees, there should be a cost savings to the Medical Quality Assurance Trust Fund due to the elimination of one position and a decrease in board oversight and travel.

The bill takes effect July 1, 2009

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

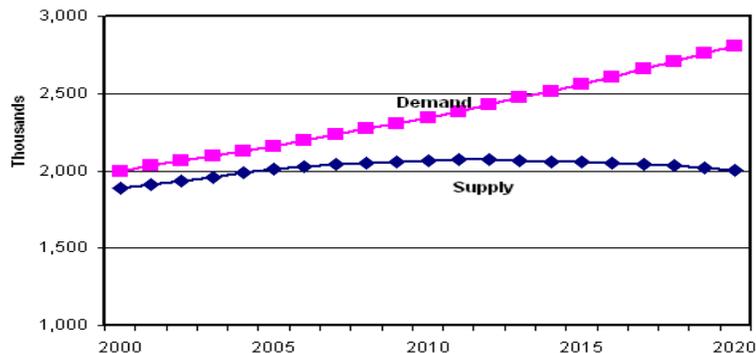
A. EFFECT OF PROPOSED CHANGES:

Current Situation

National Nursing Shortage

The National Center for Health Workforce Analysis at Health Resource and Service Administration has projected a growing shortage of RNs over the next 15 years, with a 12% shortage by 2010 and a 20% shortage by 2015.¹

National Supply and Demand Projections for FTE RNs, 2000 to 2005



Source: HRSA, Bureau of Health Professions, RN Supply and Demand Projections

The chart below shows that by 2014 it will be necessary to recruit more than 400,000 new RNs just to replace those RNs older than age 55 who are expected to retire from active nursing practice. Estimates by the U.S. Bureau of Labor Statistics in 2006 indicate that the U.S. will require 1.2 million new RNs by 2014 to meet the nursing needs of the country: 500,000 to replace those leaving practice and an additional 700,000 new RNs to meet growing demands for nursing services.²

¹U.S. Department of Health and Human Services, Bureau of Health Professions, National Center for Health Workforce Analysis, Nursing Workforce Data Analysis: Methods for Identifying Facilities and Communities with Shortages of Nurses, Technical Report. (February 2007). Available online at: http://bhpr.hrsa.gov/healthworkforce/nursingshortage/tech_report/default.htm (last viewed March 11, 2009).

²*Id.*

Active RNs in the U.S. by Gender and Age Group, 2004

| Age Group | Male | Female | Percent |
|----------------|-------------|--------------|------------------|
| < 25 | 1,731 | 57,843 | 2.5% |
| 25 to 29 | 10,955 | 148,721 | 6.7% |
| 30 to 34 | 15,508 | 205,543 | 9.2% |
| 35 to 39 | 19,217 | 237,693 | 10.7% |
| 40 to 44 | 23,951 | 336,195 | 15.0% |
| 45 to 49 | 30,986 | 418,634 | 18.8% |
| 50 to 54 | 24,098 | 382,650 | 17.0% |
| 55 to 59 | 13,469 | 257,640 | 11.3% |
| 60 to 64 | 4,909 | 131,281 | 5.7% |
| 65 + | 1,819 | 73,486 | 3.1% |
| Percent | 6.1% | 93.9% | 2,396,329 |

Source: HRSA, 2004 National Sample Survey of Registered Nurses

Florida Nursing Shortage

As of June 30, 2008, there were 57,682 active in-state licensed practical nurses (LPNs), 176,287 active in-state licensed registered nurses (RNs), and 11,280 active in-state licensed advanced registered nurse practitioners (ARNPs).³

According to a report prepared by the Florida Center for Nursing, there is a current shortage of RNs and LPNs in Florida, and that shortage is projected to grow significantly. In 2007, demand for RNs exceeded supply by 10,850 RNs. By 2020, that shortage is projected to increase to 52,209. Similarly, a shortage of 2,644 LPNs in 2007 is expected to grow to 7,018 by 2020.⁴

In response to this shortage, businesses have emerged offering to provide Florida healthcare employers with immigration services to bring in nurses from foreign countries. For example, D'Jobs International offers such services for a total cost of \$15,500 per nurse. The company's materials indicate the following immigration process and fee schedule: (a) file the Immigration Visa Petition -- \$2,000; (b) receive Notice of Receipt of Petition -- \$2,000; (c) receive Approval of Immigration Visa Petition -- \$2,000; (d) receive immigrant visa applicant bill -- \$2,000; (e) receive Embassy Appointment Letter -- \$1,500; and (f) nurse begins to work for employer -- \$6,000. The company's materials also indicate that it represents at least 19 Florida hospitals and other healthcare employers.⁵

There is, however, no shortage of potential nurses in Florida. In 2007, Florida produced nearly 6,000 new RN graduates and 3,400 new LPN graduates. The number of graduates increases about 1% per year.⁶ However, in academic year 2007-2008, over 12,500 qualified applicants were turned away by nursing schools in Florida because the schools were at capacity. Of the qualified applicants to RN programs, 68% were denied entry; 41% of LPN applicants were turned away.⁷

Low nursing school faculty salaries, lack of clinical sites, and lack of qualified applicants for faculty positions have been cited as factors that contribute to the nurse shortage.⁸

³ Florida Department of Health, Division of Medical Quality Assurance, Annual Report: July 1, 2007-June 30, 2008.

⁴ Florida Center for Nursing. *Forecasting Supply, Demand, and Shortage of RNs and LPNs in Florida, 2007-2020*, 5 (July 2008). Available at: <http://www.flcenterfornursing.org/workforce/researchreports.cfm> (last viewed March 11, 2009).

⁵ Document provided to Florida hospitals entitled, "D'Jobs International – Working Together Today for Tomorrow's Nurses." The company's corporate headquarters are in Clearwater, Florida and it has divisional offices in Honolulu and the Philippines.

⁶ *Id.* at 8.

⁷ Florida Center for Nursing. *2008 Nursing Education Program Annual Report and Workforce Survey*, 16 (January 2009). Available at: www.flcenterfornursing.org/files/06-07_Education_Survey_Report.pdf (last viewed March 11, 2009).

⁸ Florida Center for Nursing. *2008 Nursing Education Program Annual Report and Workforce Survey*, 2 (January 2009). Available at: www.flcenterfornursing.org/files/06-07_Education_Survey_Report.pdf (last viewed March 11, 2009).

Nurse Licensure and Regulation

Chapter 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (Department) and are regulated by the Board of Nursing (BON).

The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve four year terms. Seven of the 13 members must be nurses who reside in Florida and have been engaged in the practice of professional nursing for at least four years. Of those seven members, one must be an ARNP, one a nurse educator for an approved nursing program, and one a nurse executive. Three members of the BON must be LPNs who reside in the state and have engaged in the practice of practical nursing for at least four years. The remaining three members must be Florida residents who have never been licensed as nurses and are in no way connected to the practice of nursing, any health care facility, agency, or insurer. Additionally, one member must be 60 years of age or older.⁹

Applicants for a RN or LPN license must submit an application form to the Department, pay a fee, submit information for a criminal background check, and pass the BON's licensure exam.¹⁰ The exam used by the Department is the National Council Licensure Examination (NCLEX), developed by the National Council of State Boards of Nursing.

NCLEX Pass Rate 2008¹¹

| Jurisdiction | LPNs | RNs |
|---------------|-------|--------|
| Florida | 77.9% | 84.94% |
| United States | 76.2% | 69.9% |

Source: NCBN

In addition, an applicant must complete the requirements for graduation from an "approved program" or its equivalent, as determined by the BON.¹² Florida law requires any institution desiring to offer a nursing education program to submit an application to the Department and pay a program review fee. The BON reviews the application and may reject it or provide conditional approval pending final approval after the graduation of the first class.¹³

Florida Nursing Programs¹⁴

| Type of Program | Number of Approved Programs |
|----------------------------|-----------------------------|
| LPN Programs | 78 |
| ADN Programs | 48 |
| Pre-Licensure BSN Programs | 26 |
| RN-BSN Programs | 23 |

Source: Florida Center for Nursing; Survey data from 2007-2008.

These BON-approved nursing programs are currently offered in Florida by: public school districts, community colleges, and state universities; private institutions licensed by the Commission for Independent Education (CIE); private institutions that are accredited by the Commission on Colleges of the Southern Association of Colleges and Schools (SACS), but are not licensed by the CIE; and Pensacola Christian College which is statutorily authorized by s. 1005.06(1)(e), F.S.¹⁵ Some of the

⁹ Section 464.004, F.S.

¹⁰ Section 464.008, F.S.

¹¹ National Council of State Boards of Nursing, *Number of Candidates Taking NCLEX Examination and Percent Passing, by Type of Candidate*, January 2009. Available at: <https://www.ncsbn.org/1237.htm> (last viewed March 11, 2009); *National Council Licensure Examination for Practical Nurses 01/01/2008 - 12/31/2008*, January 2009. www.nh.gov/nursing/education/documents/2008_Q04_G1FirstTimeMB-EdResults-RQNCLEX-PN_RollingQtr1.pdf (last viewed March 11, 2009).

¹² Section 464.008, F.S.

¹³ Section 464.019, F.S.

¹⁴ Florida Center for Nursing, *2008 Nursing Education Program Annual Report and Workforce Survey*, January 2009. Available at: http://www.flcenterfornursing.org/search_quick.cfm (last viewed March 11, 2009).

¹⁵ This section of law exempts schools from the Commission on Independent Education's licensure requirements if the institution: had been so exempted prior to 2001; is incorporated in this state; the institution's credits or degrees are accepted for credit by at least three colleges that are fully accredited by an agency recognized by the U.S. Department of Education; and the institution does not enroll any students who receive state or federal financial aid.

nursing programs offered by these institutions are programmatically accredited by specialized accrediting agencies recognized by the United States Department of Education (USDOE).¹⁶ Specialized accrediting agencies include the: Commission on Collegiate Nursing Education; National League for Nursing Accreditation Commission; Commission on Accreditation of Nurse Anesthesia Educational Programs; and American College of Nurse-Midwives Accreditation Commission.¹⁷

Section 464.019, F.S., requires the BON to adopt rules necessary to ensure that approved nursing programs graduate nurses capable of competent practice, including rules related to educational objectives, faculty qualifications, curriculum guidelines, administrative procedures, and clinical training.

The BON's rules require each education program (i.e., professional, baccalaureate, or practical nursing) and each campus offering an initial nursing education program to obtain separate, individual program approvals by the BON.¹⁸ In addition, the BON requires nursing programs to obtain BON approval before making changes to a program.¹⁹ Programs must resubmit proof of compliance with the BON's rules every three years to maintain approval.²⁰

The rules include program approval processes, submission of an organizational plan showing the placement of the nursing program within the organization and the allocation of funds within the program, and facility requirements (addressing classrooms, libraries, laboratories, equipment, office space, telephones, audio-visual aids and record-keeping).²¹ The BON has significant discretion under the rules in approving facility proposals.

The rules include faculty credential standards. For example, the BON currently requires that 50% or more of the faculty hold a baccalaureate degree in nursing plus a master's or doctoral degree in nursing or a related field. However, in August 2009, the rule will change, to require that that 60% or more of the faculty must meet that degree standard.²² Similarly, the rules include faculty-to-student ratios requirements. The BON currently allows a 1:12 faculty-to-student ratio in clinical settings, and a 1:18 ratio near the end of RN programs.²³

The BON requires programs to submit curriculum plans, course outlines and contractual agreements with the facilities and agencies used for clinical instruction, and to adopt education objectives "in keeping with currently accepted social, educational and nursing standards".²⁴ Any changes to the number of credits in each course, the sequence, number or content of courses must be approved by the BON before implementation.²⁵ Any increases in the number of students per year must be approved by the BON. Any "significant" change in the number of students per class, the number of classes, or the start date for classes requires BON approval, and the program must demonstrate that the clinical facilities and the faculty will not be adversely affected by the change.²⁶

Nursing boards in 43 other states have authority to set standards for the nursing programs in their jurisdiction. In the remaining six states, the state board of nursing has either limited or no authority to set standards for nursing programs.²⁷ In Florida, the vast majority of licensed health care professions have no board involvement in education opportunity or curricula. For other health care professions Florida relies on education program accreditation and professional licensure and examination processes to ensure quality. For example, Florida law does not require the Boards of Medicine,

Section 1005.06(1)(e), F.S. Only two institutions in Florida, Pensacola Christian College and Landmark Baptist College, are subject to this exemption. Landmark Baptist College does not offer a nursing program.

¹⁶ See *supra* note 15.

¹⁷ United States Department of Education, *Specialized Accrediting Agencies*. Available at: http://www.ed.gov/admins/finaid/accred/accreditation_pg8.html#health (last viewed March 15, 2009).

¹⁸ 64B9-2.001(1), F.A.C.

¹⁹ 64B9-2.001 - 64B9-2.015, F.A.C.

²⁰ 64B9-2.002, F.A.C.

²¹ 64B9-2.007, F.A.C.

²² 64B9-2.005, F.A.C.

²³ 64B9-2.015, F.A.C.

²⁴ 64B9-2.002, 64B9-2.002, F.A.C.

²⁵ 64B9-2.006, F.A.C.

²⁶ 64B9-2.007, F.A.C.

²⁷ Office of Program Policy Analysis & Governmental Accountability, *Florida Nurse Practice Act and Board of Nursing Rules Create No Unreasonable Barriers to Producing New Nurses*, Report No. 07-4 (January 2007). Available at: <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=07-04> (Last viewed March 12, 2009).

Osteopathic Medicine, Chiropractic Medicine, Podiatric Medicine, Dentistry, Pharmacy, Speech-Language Pathology and Audiology, or Physical Therapy Practice to approve education programs. Licensure for those professions requires graduation from schools accredited by certain types of national accrediting organizations, or approval by national professional associations.²⁸

Effect of Proposed Changes

The bill amends s. 464.008, F.S., to eliminate the requirement that nurses graduate from “approved programs” or their equivalent, and to remove the requirement that nursing programs be approved by the BON in order to operate. Instead, the bill requires nurses to graduate from an “eligible program” and relies on accreditation and standards in the education system, rather than the professional licensure system, to ensure quality. Examination requirements are not changed by the bill.

The bill defines an “eligible program” as a nursing program offered by: a school district, community college or state university; an entity licensed by the Commission for Independent Education; or an institution in this state with a nursing program accredited by a national accrediting organization recognized by the USDOE.

The bill repeals s. 464.019, F.S., to remove the authority of the BON to promulgate rules related to nursing education programs. The bill also deletes the definition of “approved program” and makes several conforming changes:

- The educator member of the BON must now be from an “eligible program,” rather than an “approved program”.
- Use of the titles Graduate Nurse or Graduate Practical Nurse is now limited to graduates of an “eligible program,” rather than an “approved program”.
- The practice of nursing under the direct supervision of a registered professional nurse pending the result of a first licensure exam is now limited to graduates of “eligible programs,” rather than “approved programs”. According to the Department, it currently requests graduation lists from nursing programs to confirm graduation, and would no longer be able to make those requests under this bill.²⁹

B. SECTION DIRECTORY:

Section 1: Amends s. 464.003, F.S., relating to definitions; provides a definition of “eligible program”.

Section 2: Amends s. 464.004, F.S., relating to the BON; makes conforming changes to require the educator member of the BON to be from an approved program.

Section 3: Amends s. 464.008, F.S., relating to licensure by examination; deletes requirement of graduation from an approved program or its equivalent; imposes requirement of graduation from eligible program.

Section 4: Amends s. 464.015, F.S., relating to titles and abbreviations; makes conforming changes.

Section 5: Amends s. 464.022, F.S., relating to exceptions; makes conforming changes.

Section 6: Repeals s. 464.019, F.S., relating to the BON’s rule-making authority.

Section 7: Provides an effective date of July 1, 2009.

²⁸ Sections 458.311(1)(f)1.a., 459.0055(1)(k), 460.406(1)(c), 461.006(1)(c), 465.007(1)(b)1., 466.066(2)(a), 468.1135, and 486.031(3)(a), F.S. However, the Board of Optometry and the Council of Licensed Midwifery must approve education programs. Sections 463.006(1)(b)2., 467.011(3), F.S.

²⁹ Department of Health Bill Analysis, HB 1209, March 12, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Although the Department of Health will lose revenue related to nursing program application fees, there should be a cost savings to the Medical Quality Assurance Trust Fund due to the elimination of one position and a decrease in BON oversight and travel, which is currently being conducted as part of approving nursing programs.

2. Expenditures:

As discussed in the "Revenues" section above, the Department of Health should have a reduction in expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in increasing the number of private institutions offering nursing programs in Florida.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax sharing with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill repeals rule-making authority and oversight functions of the BON.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES