

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 328

INTRODUCER: Health Policy Committee and Senators Grimsley and Perry

SUBJECT: Regulation of Nursing

DATE: April 24, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------------|----------------|-----------|--------------------|
| 1. | Rossitto-Van Winkle | Stovall | HP | Fav/CS |
| 2. | Bouck | Graf | ED | Favorable |
| 3. | Rossitto-Van Winkle | Phelps | RC | Pre-meeting |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 328 removes an obsolete pathway for certification as an advanced registered nurse practitioner and modifies provisions pertaining to the approval of nursing education programs.

The bill authorizes the Board of Nursing (BON) to conduct an on-site evaluation of applicants for nursing education programs, and modifies the program approval process as follows:

- Applies the minimum graduate passage rate standard to all first-time test takers;
- Removes the requirement that a graduate who does not take the licensure examination within 6 months of graduation must complete an examination preparatory course;
- Clarifies when programs in probationary status must be terminated;
- Requires an accredited and non-accredited program to disclose its probationary status and the implication of the probationary status to students;
- Prohibits a terminated or closed program from seeking approval for a certain time;
- Requires the termination of a program that fails to meet accreditation requirements;
- Closes a loophole for terminated programs to reapply for program approval within 3 years using an institutional name change or creating a new institution with the same ownership;
- Authorizes the BON to adopt rules relating to nursing curriculum, including rules relating to the use and limitations of simulation technology; and
- Removes the responsibility of the Office of Program Policy Analysis and Government Accountability from preparing certain reports and performing certain tasks, and places responsibility for those tasks and reports on Florida Center for Nursing.

The bill takes effect July 1, 2017, except as expressly provided otherwise.

II. Present Situation:

Part I of ch. 464, F.S., the Nurse Practice Act, governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH)¹ and are regulated by the Board of Nursing (BON).² Currently a nurse desiring to practice nursing in the state of Florida must obtain a Florida license by examination or endorsement.

Applicants for licensure by examination as a registered nurse (RN) or licensed practical nurse (LPN), among other requirements, must:

- Graduate from an approved program or its equivalent, as determined by the BON;³
- Submit an application to the DOH;
- Pay a fee;
- Submit information for a criminal background check;⁴ and
- Pass the National Council Licensure Examination (NCLEX).⁵

Licensure by endorsement requirements include submitting an application and fee, passing a criminal background screening, and:

- Holding a valid license to practice professional or practical nursing in another state or territory of the United States that when issued the licensure requirements met or exceeded those in Florida at that time;
- Meeting the requirements for licensure in Florida and having successfully completed an examination in another state that is substantially equivalent to the examination in Florida; or
- Having actively practiced nursing in another state or jurisdiction, or territory of the United States for two of the preceding 3 years without having his or her license acted against by the licensing authority of any jurisdiction.⁶

In 2016, the Legislature created s. 464.0095, F.S., the Nurse Licensure Compact (NLC), which adopts the revised NLC in its entirety into state law. It is effective on December 31, 2018, or upon enactment of the revised NLC into law by 26 states, whichever occurs first. When effective, this legislation will allow licensed practical and professional nurses to practice in all member states by maintaining a single license in the nurse's primary state of residence. To date, 14 states, including Florida, have adopted the revised NLC.⁷

¹ Section 464.008, F.S.

² The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve 4-year terms. All members must be residents of the state. Seven members must be registered nurses who are representative of the diverse areas of practice within the nursing profession. Three members must be licensed practical nurses and three members must be laypersons. At least one member of the board must be 60 years of age or older. *See* Section 464.004, F.S.

³ Section 464.008(1)(c), F.S.

⁴ Section 464.008(1), F.S.

⁵ Section 464.008(2), F.S.

⁶ Section 464.009, F.S.

⁷ The National Council of State Boards of Nursing administers the NLC. They refer to it as the enhanced NLC. *See* <https://www.nursecompact.com/> (last visited on March 24, 2017).

Advanced Registered Nurse Certification

Any nurse desiring to obtain Florida certification as an advanced registered nurse practitioner must submit to the DOH proof that he or she holds a current Florida professional nursing license as a RN and meets at least one of the following additional requirements:

- Satisfactory completion of a formal post-basic educational program of at least one academic year, the primary purpose of which is to prepare nurses for advanced or specialized practice;
- Certification by an appropriate specialty board such as a registered nurse anesthetist, psychiatric nurse, or nurse midwife; or
- Graduation from a nursing education program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills.⁸

According to the DOH, all recent applicants across the country are graduates of programs for the preparation of nurse practitioners, or are graduates of master's degree programs in a clinical nursing specialty, who meet specific educational requirements for certification. Accordingly, the first pathway to certification is now obsolete.⁹

Nursing Education Program Approval and Accreditation

Florida law requires an institution desiring to offer a prelicensure nursing education program to submit an application to the DOH and pay a program review fee for each campus or instructional site. In addition to identifying information about the program, the application must indicate the name of the accrediting agency if the institution is accredited.

The application must document compliance with the following program standards: faculty qualifications; clinical training and clinical simulation requirements, including a requirement that no more than 50 percent of the program's clinical training consist of clinical simulation; faculty-to-student supervision ratios; and curriculum and instruction requirements.¹⁰ Currently the DOH is not authorized to conduct an on-site evaluation to document the applicant's compliance with the required program standards.

Once the DOH determines an application is complete, it forwards the application to the BON, which has 90 days to approve the application or to provide the applicant with notice of its intent to deny and the reasons for the denial. An applicant may request a hearing under ch. 120, F.S., on a notice of intent to deny.¹¹

Nursing programs currently offered in Florida include: public school districts, community colleges, state universities, private institutions licensed by the Commission for Independent Education (CIE), private institutions that are members of the Independent Colleges and

⁸ Section 464.012(1), F.S.

⁹ Department of Health, *Senate Bill 328 Analysis* (January 11, 2017) p. 2, (on file with the Senate Committee on Health Policy).

¹⁰ Section 464.019(1), F.S.

¹¹ Section 464.019(2), F.S. If the BON does not act on a program application within the 90-day review period, the program application is deemed approved. *Id.*

Universities of Florida, and Pensacola Christian College, which is statutorily authorized to offer a bachelor of science in nursing degree by s. 1005.06(1)(e), F.S.¹²

Chapter 464, F.S., recognizes and distinguishes between nursing education programs that are approved by the BON and programs that are approved and accredited.¹³

An “accredited program” is accredited by a specialized nursing accrediting agency that is nationally recognized by the United States Secretary of Education to accredit nursing education programs.¹⁴ The specialized nursing accrediting agencies currently recognized by the United States Department of Education include: the Commission on Collegiate Nursing Education and the Accreditation Commission for Education in Nursing.¹⁵

A BON approved nursing education program¹⁶ is required to submit an annual report to the BON which includes an affidavit certifying compliance with the program standards, and documentation for the previous academic year that sets forth data related to the number of students who applied, were accepted, enrolled, and graduated; retention rates; and accreditation status.¹⁷

The BON posts the following information on its website:

- A list of all accredited programs and graduation rates for the most recent 2 years;
- A list of all approved programs that are not accredited;
- All documentation submitted in a program’s application;
- A summary of the program’s compliance with program standards;
- A program’s accreditation status, probationary status, graduate passage rates for the most recent 2 years, and retention rates.¹⁸

¹² Office of Program Policy Analysis and Government Accountability, *Florida’s Nursing Education Programs Continued to Expand in 2013, While Licensure Exams Passage Rates of New Programs Declined*, Report No. 14-03, 2 (Jan. 2014), available at <http://floridasnursing.gov/forms/oppaga-report-2014.pdf>. (last visited March 24, 2017). OPPAGA notes that “[n]ursing education programs in Florida that hold specialized nursing accreditation by the National League for Nursing Accrediting Commission (NLNAC) or by the Collegiate Commission on Nursing Education (CCNE) are not regulated by the Florida Board of Nursing.” *Id.* Section 1005.06(1)(e), F.S., exempts schools from the CIE’s licensure requirements if the institution had been so exempted in 2001 under s. 246.085(1)(b), F.S. (2001), and maintains the following qualifying criteria: the institution 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; the institution was exempt under that category prior to July 1, 1982, and the institution does not enroll any students who receive state or federal financial aid. 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.

¹³ The program application and approval process, the annual report requirement, the data submission requirements and the pass rate requirements are not applicable to accredited programs.

¹⁴ Section 464.003(1), F.S.

¹⁵ United States Department of Education, *Accreditation in the United States: Specialized Accrediting Agencies*, https://www2.ed.gov/admins/finaid/accred/accreditation_pg7.html (last visited March 24, 2017).

¹⁶ Section 464.003(4), F.S., defines an “approved program” as “a program for the pre-licensure education of professional or practical nurses that is conducted in the state at an educational institution and that is approved under s. 464.019, F.S. The term includes such a program placed on probationary status.”

¹⁷ Section 464.019(3), F.S.

¹⁸ Section 464.019(4), F.S.

Approved programs must have a graduate passage rate not lower than ten percent below the national average for two consecutive years. Programs are placed on probation for low performance with NCLEX scores for two consecutive years and are subject to termination. The program director is required to present a plan for remediation to the BON that includes specific benchmarks to identify progress toward a graduate passage rate goal. The program must remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any one calendar year. If the program does not achieve the required passage rate in any one calendar year after a program has been placed on probationary status, the BON is authorized to terminate the program or may extend the probation for one additional year.¹⁹ Fifteen schools are currently on probation. Of these, five are LPN and 10 are RN programs. Of the RN programs, nine are associate degree programs.²⁰

An approved program which has been placed on probation must disclose its probationary status in writing to the program's students and applicants.²¹

If an accredited program ceases to be accredited, the educational institution conducting the program must provide written notice to that effect to the BON, the program's students and applicants, and each entity providing clinical training sites or experiences. It may then apply to be an approved program.²²

An approved program graduate who does not take the licensure examination within 6 months after graduation must enroll in, and successfully complete, a licensure examination preparatory course pursuant to s. 464.008, F.S.

To improve program quality, the 2014 Legislature revised Florida law to require nursing education programs that prepare students for the practice of professional nursing (RNs) to become accredited within 5 years of certain triggering dates. A program approved before July 1, 2014, is required to become accredited by July 1, 2019. If a program was approved but had not enrolled students before July 1, 2014, then the program must become accredited within 5 years of enrolling the first students. A program approved after June 30, 2014, has 5 years after enrolling the program's first students to become accredited.²³

The BON does not have rulemaking authority for the approval of nursing education programs, except as to the format for submitting applications and the format for the required annual report.²⁴

The Florida Center for Nursing (FCN) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) are tasked with studying the nursing education approval process, and submitting reports to the Governor, the President of the Senate, and Speaker of the House of Representatives, annually through January 30, 2020. The report is to be based on data

¹⁹ Section. 464.019(5)(a)3., F.S.

²⁰ *Supra*, note 22.

²¹ Section 464.019(5)(c), F.S.

²² Section 464.019(9)(b), F.S.

²³ Section 464.019(11), F.S. Pensacola Christian College is exempt from this certification requirement due to its status under s. 1005.06(1)(e), F.S.

²⁴ Section 464.019(8), F.S.

received from programs from the previous academic year to determine whether the program approval process is increasing the availability of nursing education programs and producing quality nurses.²⁵ If the FNC does not receive funding for any legislative fiscal year, the education policy arm of OPPAGA must perform the duties assigned to the FCN.²⁶ The FCN did not receive funding in the fiscal year 2016-2017 from the Florida Legislature, and must rely on grants, donations, and savings to complete the tasks and reports on the nursing workforce and improving the Florida nursing environment in Florida.²⁷

The 2015 data indicates that approximately 42 percent of nursing programs had licensure examination passage rates that were ten percent or more below the national average. This a 36 percent increase over 2014. Most of the nursing programs below the required passage rate were created since 2009 and are unaccredited.²⁸ As of December 2016, 93 of the 350 nursing education programs in Florida were accredited by the BON.²⁹

III. Effect of Proposed Changes:

Sections 1 and 2 amend s. 464.012, F.S., to delete an obsolete pathway that permitted a registered nurse to be certified as an advanced registered nurse practitioner if he or she completed a formal postbasic education program of at least one academic year. This is no longer sufficient for current graduate education and certification standards. This pathway is also deleted from chapter laws which passed last year, but which do not go into effect until the Nurse Licensure Compact goes into effect on December 31, 2018, or when 26 states have adopted the compact.

Section 3 amends s. 464.019, F.S., to revise provisions relating to nursing education programs, including:

- Authorizing the Board of Nursing (BON) to conduct on site-evaluations of nursing education program applicants, if necessary, to confirm compliance with the requirements s. 464.019(1), F.S.
- Requiring approved programs to demonstrate a licensure exam passage rate of no more than 10 percent below the average pass rate for all United States educated, first time exam takers of the National Council Licensure Examination (NCLEX). Currently the measure is calculated for first-time test takers who take the exam within 6 months after graduation from the program.
- Repealing the requirement that a graduate who does not take the licensure examination within six months after graduation must complete an examination preparatory course.

²⁵ Section 464.019(10), F.S.

²⁶ Id.

²⁷ Florida Center for Nursing, *About Us*, available at <https://www.flcenterfornursing.org/Donations/HowyourdonationshelptheFCN.aspx>, (last visited March 24, 2017).

²⁸ Office of Program Policy Analysis and Government Accountability, *Approximately 42% of Nursing Programs Had Licensure Passage Rates Below the Required Legislative Standard in 2015*, Report No. 16-05, (July, 2016), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1605rpt.pdf> (last visited March 24, 2017).

²⁹ Office of Program Policy Analysis and Government Accountability, *Review of Florida's Nursing Education Programs, 2016*, Report No. 17-03 (Jan. 2017), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1703rpt.pdf>, (last visited March 24, 2017).

- Clarifying that the BON shall terminate a program, whether accredited or non-accredited, which has been placed on probationary status for failing to achieve the examination passage rate if it is not granted a 1-year extension or fails to achieve the required passage rate.
- Imposing the sanction of program termination if a program fails to submit the annual report within 6 months after it is due or if a program director for an approved program fails to appear before the board to explain the reason for failing to submit the annual report timely.
- Requiring an accredited or non-accredited program which has been placed on probationary status to disclose in its notification of that status an explanation of the implications on the students and applicants.
- Providing for termination of a nursing education program that fails to become accredited within the required timeframes.
- Prohibiting a program that is terminated or closed from seeking subsequent program approval under its original name, a new program or institutional name, or a new institution with the same ownership, for a minimum of 3 years after the date of termination or closing.
- Providing additional rulemaking authority for the BON to adopt rules related to nursing curriculum, including rules relating to the uses and limitations of simulation technology.
- Extending certain accountability provisions, that previously only applied to approved programs, to accredited programs. This includes the standard that the passage rate for first-time test takers may not be more than 10 percentage points lower than the average passage rate for graduates of comparable degree programs on the NCLEX; and the implications if the passage rate is below that standard. The second provision relates to the contents of the notification to various parties when a nursing education program has been placed on probationary status. The third provision authorizes excluding the test scores of students who transfer more than 12 credits from a terminated program to an approved or accredited program when calculating the passage rate of the receiving program.

This section of the bill also removes the Office of Program Policy Analysis and Government Accountability as a partner with the Florida Center for Nursing (FCN) to study and annually report to the Governor, President of the Senate and the Speaker of the House of Representatives on the previous year's availability of nursing education programs and the production of quality nurses through January 2020. In addition to existing report requirements, the FCN is to complete an assessment of the status of each program's progress in the accreditation process.

Section 4 provides an effective date of July 1, 2017, except as expressly provided otherwise.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Center for Nursing may require governmental funding to perform the implementation study tasks.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 464.012, 464.019 and Chapters 2016-139, 2016-224, and 2016-231, Laws of Florida.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on March 14, 2017:

The CS:

- Removes from the bill language changing the approving entity for advanced registered nurse practitioner continuing education on the safe and effective prescription of controlled substances to the Board of Nursing (BON);
- Removes the requirement that nursing education programs placed on probation disclose to students and applicants the specific implications of the school's probationary status on an applicant's employment and educational opportunities; but retains the programs requirement to disclose the implications of the probation on the students and applicants;

- Closes a loophole for terminated programs to reapply for program approval within 3 years using an institutional name change or creating a new institution with the same ownership;
- Removes BON rulemaking authority for program implementation, termination and closure, and the procedure to seek subsequent approval; and
- Provides for removing the test scores of students transferring more than 12 hours from a closed program when calculating passage rates.

B. Amendments:

None.