

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 543 Regulation of Nursing
SPONSOR(S): Health Innovation Subcommittee; Pigman
TIED BILLS: IDEN./SIM. **BILLS:** SB 328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	11 Y, 0 N, As CS	Siples	Poche
2) Health Care Appropriations Subcommittee	15 Y, 0 N	Mielke	Pridgeon
3) Health & Human Services Committee			

SUMMARY ANALYSIS

To address a nursing shortage in Florida, legislation has been enacted over the past several years to ensure the availability of quality nursing education programs. CS/HB 543 continues to build on this legislation.

Current law requires a nursing education program to meet a certain graduate passage rate on the licensure examination. If the program fails to do so, it may be placed on probation for up to two years. CS/HB 543 authorizes the Board of Nursing (BON) to grant a one year extension to a nursing education program that is on probation for failure to meet the graduate passage rate if the program is progressing towards meeting the rate. However, the BON retains the authority to terminate a program after the two year probation period, or any extension thereof.

The bill requires any nursing education program that is on probation to notify its students and applicants of its status in writing. The notice must also provide information on the implications of the program's probationary status on the student or applicant and his or her employment and educational opportunities.

The bill removes a requirement that a nursing school must require a student who does not take the licensure examination within six months of graduation to enroll in and successfully complete a licensure examination preparatory course.

The bill also prohibits a nursing education program that was terminated or closed from reapplying for approval for 3 years. This also applies to a nursing education program that is terminated for failing to obtain the required accreditation by July 2019 or within 5 years after the date of enrollment of its first students. The bill authorizes the BON to adopt rules regarding the reapplication process for terminated or closed nursing education programs.

The bill authorizes the BON to perform an on-site evaluation of a nursing education program applicant to verify its compliance with application requirements.

The bill eliminates the annual reports required by the Office of Program Policy Analysis and Government Accountability (OPPAGA) on the status of nursing education programs, but retains the requirement that the Florida Center on Nursing issue the annual report and include an assessment of the progress towards accreditation for certain nursing programs.

Advanced Registered Nurse Practitioners (ARNPs) must complete 3 hours of continuing education related to the safe and efficient prescription of controlled substances. The bill broadens who may offer such continuing education to any entity approved by the Board of Nursing. The bill also deletes obsolete language related to the certification of ARNPs.

The bill authorizes the BON to adopt rules related to nursing curriculum, nursing program implementation, and reapplication procedures for terminated or closed programs.

The BON anticipates there may be a slight increase in on-site evaluations of nursing education program applicants. The BON expects these evaluations to be infrequent and current resources can absorb costs associated with these evaluations.

The bill provides an effective date of July 1, 2017, except as otherwise expressly provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0543d.HCA

DATE: 3/14/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Advance Registered Nurse Practitioners

Regulation of Advanced Registered Nurse Practitioners

Part I of ch. 464, F.S., governs the licensure and regulation of advanced registered nurse practitioners (ARNPs) in Florida. Nurses are licensed by the Department of Health (DOH) and are regulated by the Board of Nursing (BON).¹ There are 26,691 actively licensed ARNPs in Florida.²

In Florida, an ARNP is a licensed nurse who is certified in advanced or specialized nursing practice and may practice as a certified registered nurse anesthetist, a certified nurse midwife, or a nurse practitioner.³ Advanced or specialized nursing practice includes the performance of advanced-level nursing acts approved by the BON, which by virtue of postbasic specialized education, training, and experience are appropriately performed by an ARNP.⁴ In addition to advanced or specialized nursing practices, ARNPs are authorized to practice certain medical acts, as opposed to nursing acts, as authorized within the framework of an established supervisory physician's protocol.⁵

The BON establishes the eligibility criteria for an applicant to be certified as an ARNP and the applicable regulatory standards for ARNP nursing practices.⁶ To be certified as an ARNP, the applicant must be licensed as a registered nurse, have a master's degree in a clinical nursing specialty area with preparation in specialized practitioner skills, and submit proof that the applicant holds a current national advanced practice certification from a board-approved nursing specialty board.⁷ The nursing specialty board must:

- Attest to the competency of nurses in a clinical specialty area;
- Require nurses to take a written examination prior to certification;
- Require nurses to complete a formal program prior to eligibility for examination;
- Maintain program accreditation or a review mechanism that adheres to criteria which are substantially equivalent to requirements in Florida; and
- Identify standards or scope of practice statements appropriate for each nursing specialty.⁸

All ARNPs must carry malpractice insurance or demonstrate proof of financial responsibility.⁹ An applicant for certification is required to submit proof of coverage or financial responsibility within sixty days of certification and with each biennial renewal.¹⁰ An ARNP must have professional liability

¹ Pursuant to s. 464.004, F.S., the Board of Nursing is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve 4-year terms. The Board is comprised of three licensed practical nurses who have practiced for at least four years, seven members who are registered numbers who have practiced for at least 4 years; three Florida residents who have never been licensed as nurses, are not connected to the practice of nursing, and have no financial interest in any health care facility, agency, or insurer; and seven members who are registered nurses who have practiced at least four years. Among the seven members who are registered nurses, there must be at least one must be an ARNP, one nurse educator of an approved program, and one nurse executive.

² E-mail correspondence with the Department of Health on February 2, 2017 (on file with the staff of the Health Innovation Subcommittee). This number includes all active licenses, including out of state practitioners.

³ S. 464.003(3), F.S.

⁴ S. 464.003(2), F.S.

⁵ Id.

⁶ S. 464.012(2), F.S.

⁷ S. 464.012(1), F.S., and Rule 64B9-4.002, F.A.C.

⁸ Rule 64B9-4.002(3), F.A.C.

⁹ S. 456.048, F.S.

¹⁰ Rule 64B9-4.002(5), F.A.C.

coverage of at least \$100,000 per claim with a minimum annual aggregate of at least \$300,000, or an unexpired irrevocable letter of credit, which is payable to the ARNP as beneficiary, in the amount of at least \$100,000 per claim with a minimum aggregate availability of at least \$300,000.¹¹

ARNP Scope of Practice

Within the framework of the written protocol, an ARNP may:

- Prescribe, dispense, administer, or order any drug;¹²
- Initiate appropriate therapies for certain conditions;
- Perform additional functions as may be determined by board rule;
- Order diagnostic tests and physical and occupational therapy;
- Order any medication for administration to a patient in certain licensed health care facilities;
- Perform certain acts within his or her specialty; and
- Perform medical acts authorized within the framework of an established protocol.¹³

Continuing Education

All nurses are required to complete at least 30 hours of continuing education biennially as a condition of license or certificate renewal.¹⁴ As a part of these 30 hours, ARNPs must complete 3 hours of continuing education on the safe and effective prescription of controlled substances, offered by a statewide professional association of physicians in this state accredited to provide educational activities designated for the American Medical Association Physician's Recognition Award Category 1 credit, the American Nurses Credentialing Center, the American Association of Nurse Anesthetists, or the American Association of Nurse Practitioners.

Nursing Education Programs

To be licensed as a registered nurse (RN) or a practical nurse (LPN) in this state, an individual must, among other things, graduate from an accredited or a BON-approved nursing program or its equivalent.¹⁵ A registered nurse is authorized to practice professional nursing¹⁶ and an LPN is authorized to practice practical nursing.¹⁷

Nursing programs in Florida are offered by public school districts, Florida colleges, state universities, private institutions licensed by the Commission for Independent Education, private institutions that are members of the Independent Colleges and Universities of Florida (ICUF), and Pensacola Christian College, which is statutorily authorized by s. 1005.06(1)(e), F.S.¹⁸

¹¹ Id.

¹² Controlled substances may only be prescribed or dispensed if the ARNP has graduated from a program leading to a master's or doctoral degree in a clinical specialty area with training in specialized practitioner skills.

¹³ S.s 464.012(3),(4), and 464.003(2), F.S.

¹⁴ S. 464.013(3), F.S.

¹⁵ S. 464.008(1)(c), F.S.

¹⁶ The practice of professional nursing means the performance of those acts requiring substantial specialized knowledge, judgment, and nursing skills, including observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care; teaching and counseling of the ill, injured, or infirm; promotion of wellness, maintenance of health, prevention of illness in others; and the administration of medication and treatment as authorized or prescribed. A RN is responsible and accountable for making decisions that are based upon the individual's educational preparation and experience in nursing. (Ss. 464.003(20) and (22), F.S.)

¹⁷ The practice of practical nursing means the performance of selected acts in the care of the ill, injured, or infirm; the promotion of wellness, maintenance of health, and prevention of illness of others under the direction of a registered nurse, a licensed physician, or a licensed dentist. An LPN is responsible and accountable for making decisions that are based upon the individual's educational preparation and experience in nursing (Ss. 464.003(16) and (19), F.S.).

¹⁸ This section of law exempts schools from the Commission for 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; 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. Only two

A nursing education program is considered an accredited program if it is accredited by a specialized nursing accrediting agency that is nationally recognized by the United States Secretary of Education to accredit nursing education programs.¹⁹ A program that is approved by the BON that is not accredited is considered an approved program.²⁰ Chapter 464, F.S., recognizes and distinguishes between approved programs and accredited programs.

Approved Programs

Approval of Nursing Education Programs

An educational institution may apply to the DOH to become an approved nursing program. The DOH reviews the application for completeness. An application to become an approved program must document compliance with the following program standards: faculty qualifications, clinical training requirements, written policies for faculty, signed agreements with clinical training sites in the curriculum plan, and curriculum and instruction requirements.²¹

An application deemed complete by the DOH is forwarded to the BON for approval. Within 90 days of receipt of the application by the DOH, the BON must approve the application or notify the applicant of the intent to deny the application. If notified of the intent to deny, the applicant may request a hearing under chapter 120, F.S.²²

An approved program's curriculum must consist of at least 50 percent clinical training for an associate's degree RN program or at least 40 percent clinical training for a bachelor's degree RN program.²³ No more than 50 percent of an approved program's clinical training may consist of clinical simulation.²⁴

Approved programs must submit an annual report by November 1 of each year to the BON. The report must document application and enrollment, student retention rates, and accreditation status.²⁵ The BON must publish on its website for each program its:

- Accreditation status;
- Probationary status;
- Graduate passage rate on the National Council on State Boards of Nursing Licensing Examination (NCLEX) for the most recent two calendar years;
- Student retention rates;
- Annual report summary; and
- Application documentation.²⁶

If the nursing education program fails to submit its annual report, the director of the nursing education program must appear before the BON, at its next regularly scheduled meeting, to explain the reason for the delay. If the annual report is not submitted within six months of its due date, the BON must terminate the program.²⁷

institutions in Florida, Pensacola Christian College and Landmark Baptist College, are subject to this exemption. Landmark Baptist College does not offer a nursing program.

¹⁹ S. 464.003(1), F.S.

²⁰ Id.

²¹ S. 464.019(1), F.S.

²² S. 464.019(2), F.S.

²³ S. 464.019(1)(b), F.S.

²⁴ S. 464.019(1)(c), F.S.

²⁵ S. 464.019(3), F.S.

²⁶ S. 464.019(4), F.S.

²⁷ S. 464.019(5), F.S.

Accountability Requirements

An approved program may not have a graduate passage rate for first time takers who sit for the licensure examination within six months of graduation that is 10 percentage points or more below the national average for two consecutive years.²⁸ If a program fails to meet the required graduate passage rate, the program is placed on probation by the BON and the program must present a plan for remediation to the BON, which includes specific benchmarks for achieving the required graduate passage rate. If a program on probation does not achieve the required graduate passage rate for any one calendar year during the two calendar years it is on probation, the BON must terminate the program.²⁹ However, the BON is authorized to extend the probationary status for an additional year if the program demonstrates progress toward the graduate passage rate goal by meeting the majority of the benchmarks established in the remediation plan.³⁰

Accredited Programs

Because accredited programs have to meet stringent criteria to maintain program accreditation, many of the statutory requirements for approved programs are not applicable to accredited programs.³¹ However, an accredited program is subject to the accountability requirements. If an accredited program ceases to be accredited, it must, within 10 business days, provide written notice to the BON, its students and applicants, and its clinical training sites.

In 2014, legislation was enacted that required all nursing education programs that prepare students to be RNs to become accredited by July 1, 2019, or within 5 years after the enrollment of the program's first students.³²

Accredited programs' accreditation status and graduate NCLEX passage rates must be published on the BON website.³³

Reform of Nursing Education Programs

In 2009, the Legislature created a statutory framework for the approval of nursing education programs.³⁴ Prior to 2009, the BON had the authority to prescribe the process by rule. The new law:

- Established standards for faculty qualifications, clinical training and clinical simulation requirements, and curriculum and instruction requirements;
- Required all nursing education programs to submit an annual report to the BON, including information that the BON must publish on its website;
- Required the BON to place an approved nursing education program on probation if its graduate passage rate fell 10 percent or more below the national average passage rate on the NCLEX for two consecutive years;
- Required the BON to terminate a program if the approved nursing education program's graduates failed to achieve compliance within the next two consecutive years; and
- Required the Florida Center on Nursing and the Office of Program Policy Analysis and Government Accountability (OPPAGA) to monitor the implementation of the new approval process and to annually report to the Governor and the Legislature regarding the approval process, nursing program availability and quality, and the BON's compliance with the law.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ S. 464.019(9), F.S.

³² Chapter 2014-92, Laws of Fla.

³³ Supra, note 26.

³⁴ Chapter 2009-168, Laws of Fla.

In 2010, the Legislature made additional changes to the nursing education program approval process to address implementation issues.³⁵ These changes included:

- Requiring the BON to approve or deny a nursing education program application within 90 days after receipt of a complete application;
- Specifying that a program may be removed from probation if its graduates attain the required passage rate after one calendar year during the probation period;
- Making the passage rate requirement adopted in 2009 prospective so that it would apply beginning with the 2010 calendar year; and
- Clarifying that the graduate passage rate must be 10 percentage points or more below the national average passage rate on the NCLEX for two consecutive years, rather than 10 percent below the national average passage rate.

In 2014, the Legislature made additional revisions to the requirements for nursing education programs.³⁶ These revisions included:

- Authorizing the BON to adopt rules for documenting nursing education program accreditation;
- Requiring all nursing education programs that prepare students as RNs to be accredited by a nationally recognized accreditation agency by July 2019, or within 5 years of the date of enrollment of the program's first students;
- Requiring the Florida Center for Nursing and OPPAGA to submit the annual report to the Governor and the Legislature until January 2020;
- Limiting the graduate passage rate requirement to only those students who take the licensure examination for the first time within six months of graduation;
- Requiring an approved program to require any graduate who does not take the licensure examination within six months of graduation to enroll in and successfully complete a licensure examination preparatory course;
- Requiring programs on probation to develop and submit a remediation plan for attaining the required graduate passage rate, including benchmarks; and
- Authorizing the BON to extend a nursing education program's probationary status for one additional year if the program shows adequate progress towards the achieving the graduate passage rate by meeting a majority of the benchmarks established in the remediation plan.

Current Status of Nursing Education Programs

Since 2009, the BON has approved 303 new nursing programs, increasing the total number of nursing education programs to 350.³⁷ However, in the last year, this number has trended down. There were 369 nursing programs in 2015. Overall, there has been a 105 percent increase in the number of nursing education programs since 2009. Of the nursing education programs in this state, 93 are accredited.³⁸

In 2015, 128 nursing education programs (or 42 percent) had graduate passage rates that were 10 percent or below the national average rate.³⁹ The majority of these programs were associate degree programs; however, 27 percent were practical nursing programs and 10 percent were Bachelor of Science in nursing programs. Of the 128 programs that failed to meet the graduate passage rate:

- 14 were placed on probation;

³⁵ Chapter 2010-37, Laws of Fla.

³⁶ Chapter 2014-92, Laws of Fla.

³⁷ OPPAGA, *Review of Florida's Nursing Education Programs, 2016*, Report No. 17-03 (January 2017), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1703rpt.pdf> (last visited February 15, 2017). The total number takes into account new approvals, terminations, and closures of nursing education programs that have occurred since 2009.

³⁸ Id. 40 bachelor's degree programs, 43 associate degree programs, and 10 practical nursing programs are accredited.

³⁹ OPPAGA, *Approximately 42% of Nursing Programs Had a Licensure Exam Passage Rate 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 February 18, 2017).

- 11 were terminated by the BON;
- 11 were exempt from being placed on probation because they were accredited;
- 55 were not on probation, but were at risk of being placed on probation if their graduate passage rate continues to be 10 percent or more below the national average in 2016; and
- 37 closed.⁴⁰

According to OPPAGA, the majority of the nursing programs that failed to meet the graduate passage rate requirement were relatively new and unaccredited.⁴¹

In 2016, there were 42 programs on probation for failing to meet the graduate exam passage rate and 50 nursing education programs closed.⁴² Of those 50 closed programs, 37 programs closed voluntarily and 13 programs were terminated by the BON; 22 of these programs were on probation immediately prior to their termination or closure.

Effect of Proposed Changes

Advanced Registered Nurse Practitioners

The bill deletes an obsolete provision of law that permitted a nurse to be certified as an ARNP if he or she completed a formal postbasic educational program of at least one academic year, the primary purpose of which is to prepare a nurse for advanced or specialized practice. Currently, to obtain certification as an ARNP in this state, an applicant must have a master's degree in a nursing clinical specialty area and hold a current national advanced practice certification from a board-approved nursing specialty board.⁴³ Due to the current graduate education and certification standards, the option to obtain certification as an ARNP by completing an additional postbasic educational program of at least one academic year is no longer in use.⁴⁴

The bill eliminates the requirement that specific entities offer the continuing education course on safe and effective prescription of controlled substances and requires such courses to be approved by the BON. As a result, ARNPs will likely have more opportunities to satisfy this continuing education requirement as more BON-approved entities provide the course.

Nursing Education Programs

For a nursing education program applicant, the bill authorizes the Board of Nursing (BON) to perform an onsite inspection of the nursing education program to document the applicant's compliance with program requirements.

The bill amends the accountability requirements for nursing schools by:

- Including all first-time test takers in the calculation of the graduate passage rate, rather than limiting it to only those that are within six months of graduation;
- Eliminating a requirement that an approved program require a graduate who does not take the licensure examination within six months of graduate to complete a licensure examination preparatory course;
- Clarifying that the BON has the authority to extend a nursing education program's probationary status for another calendar year if, during the two calendar years following its placement on probationary status, it fails to achieve the required passage rate but has demonstrated progress toward meeting the graduate passage rate goal;

⁴⁰ Id.

⁴¹ Id.

⁴² Supra, FN 37.

⁴³ The bills provides that the proposed provision is effective after the Nurse Licensure Compact takes effect on December 31, 2018, or upon enactment of the Nurse Licensure Compact into law by 28 states, whichever occurs first.

⁴⁴ DOH, *Agency Legislative Bill Analysis for HB 543*, dated January 15, 2017, (on file with the Health Innovation Subcommittee).

- Clarifying that the BON retains the authority to terminate a nursing education program if it declines to grant an extension of probationary status or if the program fails to achieve the required graduation passage rate at the end of any such extension.
- Authorizing the BON to terminate a program if the program director fails to appear before the BON to explain the reason for the delay in submitting the required annual report, or if the program fails to submit an annual report within six months after it is due; and
- Requiring a nursing education program, whether accredited or non-accredited, that is on probationary status to disclose the program's status, in a written format, to students and applicants. The written notification must include an explanation of the implication of the program's probationary status on employment and educational opportunities, as well as the prospects for a student wishing to matriculate to university.

The bill exempts accredited schools from the requirement to appear before the BON if they fail to timely submit the annual report.

The bill prohibits a nursing education program that is terminated or closed from seeking program approval under its original name or a new name for at least 3 years after the program is closed or terminated.

If a nursing education program fails to meet the accreditation requirements, the program must be terminated and may not apply for reapproval under its original name or a new program name for at least 3 years after the program is termination.

The BON is authorized to adopt rules related to the nursing curriculum and nursing program implementation plans, which may include a description of the various types and uses of simulation technology and limitations on its use. The bill also authorizes the BON to adopt rules related to program termination or closure under this section and the procedure for the subsequent approval of a program that was terminated or closed.

The bill eliminates the annual reports due to the Governor and the Legislature by OPPAGA related to nursing education programs; however, the Florida Center on Nursing must continue to provide such reports until January 2020. Additionally, the Florida Center for Nursing must include in its annual report an assessment of the compliance of nursing programs that are required to be accredited.

The bill provides an effective date of July 1, 2017, except as otherwise expressly provided in the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 464.012, F.S., relating to certification of advanced registered nurse practitioners; fees; controlled substance prescribing.

Section 2: Amends s. 464.012, F.S., relating to certification of advanced registered nurse practitioners; fees; controlled substance prescribing.

Section 3: Amends s. 464.013, F.S., relating to renewal of license or certificate.

Section 4: Amends s. 464.019, F.S., relating to approval of nursing education programs.

Section 5: Provides an effective date of July, 1, 2017, except as otherwise expressly provided in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DOH may experience a recurring increase in workload associated with conducting optional on-site evaluations of nursing education program applicants. The Board of Nursing anticipates on-site evaluations of applicants to be infrequent and current resources can absorb costs associated with these evaluations.⁴⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Nursing students that do not take the licensure exam within six months of graduation may realize cost savings by no longer being subject to a mandatory licensure examination preparatory course.

A nursing education program that is terminated or closed may incur costs or experience economic losses due to the 3-year waiting period imposed by the bill before it may reapply for approval.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the BON, within the Department of Health, to adopt rules related to nursing curriculum and nursing program implementation plans, the closure and termination of nursing programs, and the subsequent approval of a nursing program that has been closed or terminated.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁴⁵ Email from Joe Baker, Board of Nursing Executive Director, on file with Health Care Appropriations Subcommittee staff (3/7/17).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 22, 2017, the Health Innovation Subcommittee adopted an amendment that restored the authority of the BON to exclude the test score of certain students who transfer from a terminated nursing education program to an approved or accredited nursing education program from the calculation of the graduate passage rate of the program receiving the transferring students.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.