

Enhanced Nurse Licensure Update for ANA-NY Board of Directors
October 2022
Dr. Marilyn L. Dollinger, President ANA-NY

Legislation to adopt the Nurse Licensure Compact (NLC) was first proposed in New York State in 2013. ANA-NY supports the concept of the updated eNLC in the 2022 Legislative Agenda but has not yet decided to take a leadership role to pass this legislation. Many nurses in New York do not know about the NLC or understand the facts related to implementation of a multistate license. This summary is to initiate Board discussion to determine what information is needed to fully understand the implications of the eNLC; what educational outreach is needed for members; and consider if ANA-NY should make this a priority in future legislative sessions. The 2020 APRN Compact, a separate contract with the Interstate Commission, adopted in only two states, is not included in this discussion. The terms compact license and multistate license are used interchangeably.

Introduction

The Nurse Licensure Compact (NLC) was proposed by the National Council of State Boards of Nursing (NCSBN) in 1997 in response to a variety of calls for action including the 1995 PEW Commission report: *Reforming Health Care Workforce Regulation: Policy Considerations for the 21st Century* and the 1996 enactment of the *Telecommunications Act* by the U. S. Congress. The NCSBN Delegate Assembly endorsed a mutual recognition model and the NLC began in 2000 with Maryland, Texas, Utah, and Wisconsin passing the law. Between 2000-2015, 25 states adopted the NLC. In response to slowed adoption across the remaining states, the NCSBN introduced an updated Enhanced Nursing Licensure Compact (eNLC) which became effective July 20, 2017, when North Carolina (the 26th state) joined. The eNLC changes included adding uniform licensure requirements and disciplinary provisions. There are now 39 states that have joined the Compact (Oyeleve, 2019).

Uniform licensure requirements and Background checks: See https://www.ncsbn.org/public-files/NLC_ULRs.pdf

- The only requirement that is new for New York State RN or LPN applicants is having state and federal background checks done.

Disciplinary Provisions: <https://www.ncsbn.org/public-files/reciprocalactionprimer2.pdf> and https://www.ncsbn.org/public-files/eNotify_Flyer.pdf

- Fifty-seven states and territories already use Nursys to track actions on employee licensure and registration <https://www.nursys.com/EN/ENJurisdictions.aspx>

Bills in the New York State Legislature

The original NLC bill was introduced in 2013: A.7417 (*Tenney*) Military Spouse Act

Requires a workshop to investigate and report about licensing and the difficulties encountered by military spouses (Part A); authorizes the state to certify persons to teach who are not graduates of teacher education programs (Part B); **adopts the interstate nursing licensure compact (Part C)**; and authorizes licensing of military spouses with out-of-state licenses in equivalent occupations (Part D). <https://nyassembly.gov/leg/?bn=A07417&term=2013>

2021 version: *A.4841 (Miller)/S.3730 (Ortt)* Military Spouse Act

Same bill language as 2013. <https://nyassembly.gov/leg/?bn=A04841&term=2021>.

2022 new eNLC bills:

A.10559 (O'Donnell) July 2022

New bill to implement the **Interstate Medical Licensure Compact** and the **Nurse Licensure Compact** (Does NOT include APRN Compact)

https://nyassembly.gov/leg/?default_fld=%0D%0A&leg_video=&bn=A10559&term=2021&Summary=Y

S.9236 (Ortt)/A.10615 (Miller) July 2022

Adopts the **Nurse Licensure Compact** (Part A) and **APRN Compact** (Part B). Does NOT include Interstate Medical Licensure Compact

<https://nyassembly.gov/leg/?bn=A10615&term=2021>

Gov. Hochul supported both the NLC and Medical Compact in her 2022 State of the State speech. During the 2022 budget negotiations, the members of the legislature wanted to deal with NLC as a stand-alone bill rather than bundling it in the Gov.'s budget bill.

Based on an analysis of concerns from some current eNLC states, communication with leaders from other states who have not yet joined, information from the NCSBN eNLC website and the literature, the issues are summarized below.

Loss of Revenue: Nurses who have a multistate or compact license pay license and registration fees to their primary state of residence (PSOR) only. PSOR is defined as:

Primary state of residence does not pertain to owning property but rather it refers to your legal residency status. Proof of residence includes obtaining a driver's license, voting/registering to vote, or filing federal taxes with an address in that state. These legal documents should be issued by the same state. <https://www.ncsbn.org/public-files/faq.pdf>

- All states have the **option to issue both multistate licenses and single state licenses**. They can determine the fees for each including differential fees for the compact license. **All registration fees are paid to the state and not the NCSBN or the Interstate Commission** of Nurse License Compact Administrators (one member from each eNLC state member).
- Each state pays an annual fee to the Interstate Commission: \$6000 (Dec. 12, 2020, letter from NCSBN and Interstate Commission; Appendix A).
- Nurses who work in New York State with a multistate license from a compact state (different PSOR) can legally practice in New York and cannot legally be required to pay additional fees, do other registrations, or submit added qualifications.

Workforce data: To track how many nurses who have a PSOR in a different state and are practicing in New York state on a compact license would require reports from employers who hire nurses with compact licenses or comprehensive use of Nursys so licensure status can be tracked for all nurses in New York State.

- Historically, New York has not had a robust system for collecting nursing workforce data. A newly implemented system will require nurses to complete a survey before they can renew their registration every three years.
- Currently, New York cannot determine how many nurses, currently licensed in New York, reside in other states but work in New York State; or reside in other states, maintain a NYS license but do not practice in New York.
- Presumably, employers have this data based on home addresses for payroll.
- NCSBN and the Interstate Commission are collecting workforce data and determining how to measure the impact of the compact (Dec. 12, 2020, letter from NCSBN and Interstate Commission, Appendix A).

State of licensure defined by patient location:

Lawful practice requires that a **nurse be licensed or have the privilege to practice (PTP) in the state where the patient is located at the time care is directed or service is provided.** This pertains to in-person or telehealth practice. <https://www.ncsbn.org/public-files/2018employer.pdf>

A nurse licensed in a compact state must meet the uniform licensure requirements in the primary state of residence (home state). When practicing on a **privilege in a remote state, the nurse is accountable for complying with the nurse practice act of that state.** <https://www.ncsbn.org/public-files/2018employer.pdf>

- Nurses who are hired in health care facilities in remote (compact) states need to be oriented to specific Nurse Practice Act requirements and Agency policies during employee orientation.

Discipline: This is the most discussed issue for states who have not joined the compact.

It's the responsibility of the nurse to notify the employer of any action taken by the BON against his or her license. Under most circumstances, **when a license is disciplined, multistate privileges are removed, restricting the nurses' practice to the home state.** Employers may register their nursing workforce in e-Notify at nursys.com at no cost. Employers will receive e-notifications of disciplinary action taken on any license the nurse holds in the U.S. <https://www.ncsbn.org/public-files/2018employer.pdf>

Privilege to Practice: Current, official authority from a remote state permitting the practice of nursing as either an RN or an LPN/VN in such party state. **All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege, such as: revocation, suspension, probation or any other action which affects a nurse's authorization to practice.** <https://www.ncsbn.org/public-files/2018employer.pdf>

When a licensing board party state is in possession of current significant investigative information that justifies more than a minor infraction or indicates an immediate threat to the public health and safety, the licensing board party state must promptly report this information into Nursys (NLC, Article VI (c)). In addition, a licensing board party state must produce all investigative documents and information requested by another party state (NLC, Article VI (i)). **Any information contributed to Nursys that is required to be expunged by laws of the party**

state contributing that information shall also be expunged from Nursys. (NLC, Article VI (g))
<https://www.ncsbn.org/public-files/reciprocalactionprimer2.pdf>

All party states shall be authorized and in accordance with existing state law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension, probation or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions (NLC, Article III (d)). Party states should promptly notify Nursys of any adverse action taken (NLC, Article III (d)). **The Compact grants only home states the power to take adverse action against a nurse's multistate license issued by the home state** (NLC, Article V (a)(1)(i)). **Home states shall give the same priority and effect to reported conduct received from a party state as it would if such conduct had occurred within the home state** (NLC, Article V (a)(1)(ii)). In so doing, **the home state shall apply its own state laws to determine appropriate action** (NLC, Article V (a)(1)). Home states may also take adverse action based on factual findings of the party state, provided that the home state licensing board follows its own procedures for taking such adverse action (NLC, Article V (a)(7)).

<https://www.ncsbn.org/public-files/reciprocalactionprimer2.pdf>

- All malpractice is adjudicated in the **state where the patient resides**.
- Some states assert that the state where the nurse is located should determine the state of jurisdiction for disciplinary actions.
- Discipline may be pursued in any party state (member of the compact).
- Different states may have different criteria for disciplinary action and different penalties.
- Nurses who change their state of primary residence (PSOR) are responsible for applying to the new PSOR for licensure as soon as they make this change. They must surrender their license for the previous PSOR or risk disciplinary action from the new BON where they now live.
- All nurses in the compact have the privilege to practice (PTP) in compact states, but they **only have one license**: from their PSOR. Only the home state (PSOR) can remove the individual state license.

Emerging Issue: The reversal of *Roe v. Wade* and new legislation in a variety of states that authorizes criminal prosecution of providers who provide abortion services to residents of that state, even if the services are provided in a state where the services are legal, has resulted in concern. The compact language states that nurses are subject to actions by any/all compact states even if the care was provided in a different state. This has not been tested yet in the courts.

References

- Oyeleve, O. (2019). The Nursing Licensure Compact and its disciplinary provisions: What nurses should know. *OJIN*
<https://ojin.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Vol-24-2019/No2-May-2019/Articles-Previous-Topics/What-Nurses-Should-Know.html?css=print>
- Donaho, B., Mudge, C., & Price, C. A. (1997). The Pew Commission Report: Nursing's challenge to address it. *ANNA Journal*, 24(5), 507-515.
- 1996 Telecommunications Law. Public Law 104-104 <https://www.govinfo.gov/content/pkg/PLAW-104publ104/pdf/PLAW-104publ104.pdf>
- NCSBN Uniform Licensure Requirements. https://www.ncsbn.org/public-files/NLC_ULRs.pdf
- NCSBN Sharing Information Related to Investigations and Reciprocal Actions.
<https://www.ncsbn.org/public-files/reciprocalactionprimer2.pdf>
- Nursys e-Notify Flyer. https://www.ncsbn.org/public-files/eNotify_Flyer.pdf
- Nursys e-Notify Boards of Nursing. <https://www.nursys.com/EN/ENJurisdictions.aspx>
- Military Spouse Act. A.7417 <https://nyassembly.gov/leg/?bn=A07417&term=2013>
- Military Spouse Act. A.4841 <https://nyassembly.gov/leg/?bn=A04841&term=2021>
- A.10559 https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A10559&term=2021&Summary=Y
- A.10615 <https://nyassembly.gov/leg/?bn=A10615&term=2021>
- NCSBN FAQs. <https://www.ncsbn.org/public-files/faq.pdf>
- NCSBN Employer Fact Sheet <https://www.ncsbn.org/public-files/2018employer.pdf>
- Primer: NLC Sharing of Information Related to Investigations and Reciprocal Actions
<https://www.ncsbn.org/public-files/reciprocalactionprimer2.pdf>