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 BILL ANALYSIS

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House Bill 5493 (Substitute H-1 as passed by the House)
House Bill 5750 (Substitute H-1 as passed by the House)
Sponsor: Representative John Stakoe
House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 5-16-06

CONTENT

House Bill 5493 (H-1) would enact the Nurse Licensure Compact, which provides for a license to practice nursing issued by a nurse's primary state of residence to be recognized by each party state as authorizing a multistate licensure privilege to practice as a nurse in a party state. The bill would give notice of withdrawal from the Compact effective December 31, 2011, and repeal the act effective July 1, 2012.

House Bill 5750 (H-1) would amend the Public Health Code to include as a licensee an individual authorized to engage in the practice of nursing pursuant to a multistate licensure privilege recognized under the Compact; and to require the Department of Community Health to submit to the Legislature by December 31, 2010, a written report regarding the impact and effectiveness of the Compact.

The bills would take effect six months after they were enacted. House Bill 5493 (H-1) is tie-barred to House Bill 5750. The bills are described below in further detail.

House Bill 5493 (H-1)

Findings

The Compact specifies that the party states find that:

- The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws.
- Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public.
- The expanded mobility of nurses and the use of advanced communication technologies as part of the nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation.
- New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex.
- The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

Purposes

The Compact states that its general purposes are to do the following:

- Facilitate the states' responsibility to protect the public's health and safety.
- Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation.
- Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions.

- Promote compliance with the laws governing the practice of nursing in each jurisdiction.
- Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licensure.

Multistate Licensure Privilege

Under the Compact, a license to practice registered nursing issued by a home state (i.e., the party state that is the nurse's primary state of residence) to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in a party state. A license to practice licensed practical nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical nurse in a party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal, as well as all other applicable state laws.

(The compact defines "multistate licensure privilege" as current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical nurse in a party state. All party states have the authority, in accordance with existing state due process law, to take action against the nurse's privilege, such as revocation, suspension, probation, or any other action that affects a nurse's authorization to practice.

"Remote state" means a party state, other than the home state, where the patient is located at the time nursing care is provided, or, in the case of the practice of nursing not involving a patient, in a party state where the recipient of nursing practice is located.)

Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other action under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it promptly must notify the administrator of the coordinated licensure information system. The administrator

promptly must notify the home state of any such actions by remote states.

("Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to licensure laws, that is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.)

Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. The practice of nursing is not limited to patient care, but includes all nursing practice as defined by the state practice laws of the party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(Under the bill, a nurse who had been granted multistate licensing privileges by a party state would have to notify the Board of Nursing in Michigan, on a standard form provided by the Board, before commencing any nurse's practice in this State, of the identity and location of his or her prospective practice location, current address, and other contact information as requested. A nurse would have to maintain at all times a current address and contact information during practice in Michigan.)

The Compact provides that it does not affect additional requirements imposed by states for advanced practice registered nursing. A multistate licensure privilege to practice registered nursing granted by a party state, however, must be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

Individuals not residing in a party state will continue to be able to apply for nurse licensure as provided for under the laws of each party state. The license granted to these individuals, however, will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

Application for Licensure in Party State

Under the Compact, upon application for a license, the licensing board in a party state must ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

A nurse in a party state may hold licensure in only one party state at a time, issued by the home state. A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of the change. New licenses, however, will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

When a nurse changes primary state of residence by moving between two party states, and obtains a license from the new home state, the license from the former home state is no longer valid. When a nurse changes primary state of residence by moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the nonparty state's laws. When a nurse changes primary state of residence by moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

Adverse Actions

The Compact requires the licensing board of a remote state promptly to report to the administrator of the coordinated licensure information system any remote state actions, including the factual and legal basis for such action, if known. The licensing board of the remote state also promptly must report any significant current investigative information yet to result in a remote state action. The administrator of the system promptly must notify the home state of any such reports.

(The Compact defines "remote state action" as any administrative, civil, equitable, or criminal action permitted by a remote state's laws that are imposed on a nurse by the remote state's licensing board or other authority, including actions against an individual's multistate licensure privilege to practice in the remote state, and cease and desist and other injunctive or equitable orders issued by remote states or their licensing boards.)

The licensing board of a party state has the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It also has the authority to take appropriate action, and promptly must report the conclusions of the investigations to the system administrator. The administrator promptly must notify the new home state of any actions.

A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. Only the home state, however, has the power to impose adverse action against the license issued by the home state.

For the purpose of imposing adverse action, the licensing board of the home state must give the same priority and effect to reported conduct received from a remote state as it would if that conduct had occurred within the home state. In so doing, it must apply its own state laws to determine appropriate action.

The home state may take adverse action based on the factual findings of the remote state, as long as each state follows its own procedures for imposing such adverse action.

The Compact specifies that nothing in it overrides a party state's decision that participation in an alternative program may be used in lieu of licensure action and that participation must remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from the other party state.

Additional Authority

Under the Compact, notwithstanding any other powers, party state nurse licensing boards have the authority to do the following:

- Recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against him or her, if otherwise permitted by state law.
- Issue cease and desist orders to limit or revoke a nurse's authority to practice in his or her state.
- Promulgate uniform rules and regulations (as described below).
- Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence.

Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses and/or the production of evidence from another party state must be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority must pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the evidence or witnesses are located.

Compact administrators have the authority to develop uniform rules to facilitate and coordinate implementation of the Compact. Within one year after its effective date, the rules must be adopted by the party states, under the authority invested under the Compact.

Coordinated Licensure Information System

The Compact requires all party states to participate in a cooperative effort to create a coordinated database of all licensed registered nurses and licensed practical nurses. The system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

Notwithstanding any other provision of law, all party states' licensing boards promptly must report to the system adverse actions,

actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials.

Current significant investigative information may be transmitted through the system only to party state licensing boards.

Notwithstanding any other provision of law, all party states' licensing boards contributing information to the system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

Any personally identifiable information obtained by a party state's licensing board from the system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

Any information contributed to the system that subsequently is required to be expunged by the laws of the contributing party state also must be expunged from the system.

The Compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, must formulate necessary and proper procedures for the identification, collection, and exchange of information under the Compact.

Compact Administration & Exchange of Information

The head of the nurse licensing board of each party state, or his or her designee, must be the administrator of the Compact for his or her state. The Compact administrator of each party state must furnish to the Compact administrator of each other party state any information and documents, including a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of the Compact.

Immunity

No party state, or the officers, employees, or agents of a party state's nurse licensing board who act in accordance with the provisions of the Compact are liable on account of any act or omission in good faith while engaged in the performance of their duties under the Compact. Good faith does not include willful misconduct, gross negligence, or recklessness.

Entry into Force, Withdrawal, & Amendment

The Compact becomes effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from the Compact by enacting a statute repealing it, but a withdrawal may not take effect until six months after the withdrawing state has given notice to the executive heads of all other party states.

No withdrawal affects the validity or applicability by the licensing boards of states remaining party to the Compact of any report of adverse action occurring before the withdrawal.

Nothing contained in the Compact may be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of the Compact.

The party states may amend the Compact. No amendment becomes effective and binding upon the party states unless and until it is enacted into the laws of all the party states.

Construction & Severability

The Compact must be liberally construed to effectuate its purposes. The Compact's provisions are severable and if any phrase, clause, sentence, or provision is declared to be contrary to the constitution of any party state or of the United States, or its applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of the Compact and its applicability to any government, agency, person, or circumstance will not be affected. If the Compact is held contrary to the constitution of any state party, it will remain in full force and effect as to the remaining party states and in full force in effect as to

the party state affected as to all severable matters.

In the event party states find a need for settling disputes arising under the Compact, the party states may submit the issues in dispute to an arbitration panel composed of an individual appointed by the Compact administrator in the home state, an individual appointed by the Compact administrator in the remote states involved, and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute. The decision of a majority of the arbitrators is final and binding.

House Bill 5750 (H-1)

Under Article 15 (Occupations) of the Public Health Code, "licensee", as used in a part that regulates a specific profession, means an individual to whom a license is issued under that part, and generally means each licensee regulated by the article. Under the bill, the term also would include an individual who was authorized to engage in the practice of nursing or the practice of nursing as a licensed practical nurse pursuant to a multistate licensure privilege recognized under the proposed Nurse Licensure Compact.

MCL 333.16106 & 333.17211 (H.B. 5750)

Legislative Analyst: Julie Koval

FISCAL IMPACT

House Bill 5493 (H-1)

State participation in the Nurse Licensure Compact would increase administrative cost for the Department of Community Health associated with providing licensure and disciplinary data from the Board of Nursing to the coordinated licensure information system. The Department also could see a moderate reduction in fee revenue if nurses licensed in other states were permitted to practice in Michigan. The Department currently charges a \$20 application processing fee and an annual \$20 renewal fee for a license to practice in Michigan.

Participation in the Compact could provide an economic benefit to health providers by expanding the pool of available nurses who can practice at health facilities and easing

the costs associated with recruiting new staff. This could provide moderate cost savings to State hospitals and health facilities affiliated with local units of government.

House Bill 5750 (H-1)

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: David Fosdick

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.