

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1337

Nursing

**SPONSOR(S):** Grimsley

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2530

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	State Universities & Private Colleges Policy Committee	12 Y, 0 N, As CS	White	Tilton
2)	Health Care Regulation Policy Committee			
3)	Full Appropriations Council on Education & Economic Development			
4)	Education Policy Council			
5)				

**SUMMARY ANALYSIS**

To address the state’s lack of nursing education program capacity, the 2009 Legislature took action to expedite and streamline the nursing education program approval and regulatory processes in Florida with the passage of House Bill 1209 (2009). This legislation repealed the Florida Board of Nursing’s (BON’s) authority to prescribe the nursing education program approval and regulation processes by rule and, instead, set forth these processes in statute.

Committee Substitute for House Bill 1337 builds upon the 2009 legislation by further streamlining these processes. Under the bill, a nursing education program that is accredited by one of the two specialized accrediting agencies that are nationally recognized by the United States Secretary of Education to accredit nursing education programs is no longer subject to BON regulation for as long as the program maintains its accreditation. The BON approval process for non-accredited programs, as adopted in last year’s bill, is largely retained, but implementation issues identified by the Office of Program Policy and Government Accountability, Florida Center for Nursing, and stakeholders are addressed. The bill’s changes include:

- Clarifying that the BON must approve or deny a nursing education program application within 90 days after receipt of a *complete* application.
- Providing that faculty education requirements for a nursing program may be documented by an official transcript or a written statement from an educational institution verifying that it conferred a degree.
- Providing that the graduate passage rate on the National Council Licensure Examination (NCLEX), which must be achieved by approved programs, is 10 percentage points, rather than 10 percent below, the national average passage rate.
- Clarifying that the requirements for NCLEX graduate passage rates, as adopted in last year’s legislation for approved programs, should only be applied prospectively beginning with the 2010 calendar year.
- Specifying that approved programs placed on probation for inadequate NCLEX graduate passage rates shall be removed from probation after attaining the required passage rate for one calendar year.
- Eliminating probation as a penalty for an approved program’s failure to submit an annual report and, instead, requiring the program’s director to appear before the BON to explain the delay.
- Authorizing nursing program directors to receive information on the NCLEX exam date and pass/fail score for program graduates included in the program’s graduate passage rate.

The bill does not appear to have a fiscal impact. Please see “Fiscal Analysis & Economic Impact Statement.”

The bill takes effect July 1, 2010.

## 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.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

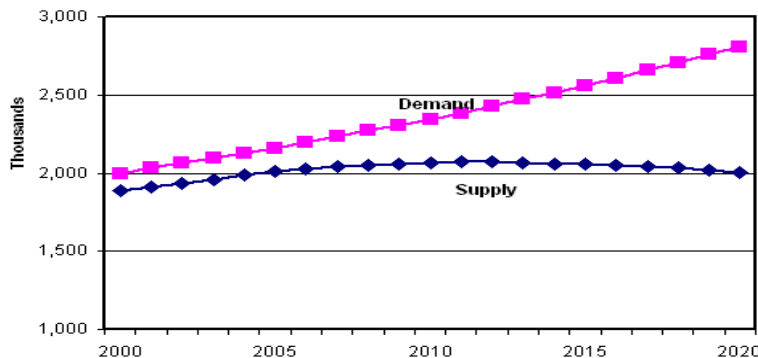
#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### National Nursing Shortage

In 2007, the National Center for Health Workforce Analysis at Health Resource and Service Administration projected a growing shortage of Registered Nurses (RNs) over the next 15 years, with a 12% shortage by 2010 and a 20% shortage by 2015.<sup>1</sup>

*National Supply and Demand Projections for FTE RNs, 2000 to 2020*



Since 2007, the economic recession has forced many nurses to return to the workforce and, as a result, the current demand for RNs has decreased somewhat. A national nursing shortage, however, remains on the horizon. According to a study published in the June 2009 edition of *Health Matters*, a peer-reviewed health policy journal, the shortage is projected to grow to 260,000 RNs by 2025. The primary cause is the aging nursing workforce.<sup>2</sup> By 2014, nearly 40% of the nation's RN population will be between the ages of 55 to 64 years and expected to retire from active nursing practice.<sup>3</sup>

<sup>1</sup>U.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](http://bhpr.hrsa.gov/healthworkforce/nursingshortage/tech_report/default.htm) (last viewed March 6, 2010).

<sup>2</sup>Buerhaus, P., Auerbach, D., & Staiger, D., (2009), *The Recent Surge In Nurse Employment: Causes And Implications*, *Health Matters*, 28, no. 4 (2009): w657-w668. Available online at: <http://content.healthaffairs.org/cgi/content/abstract/hlthaff.28.4.w657> (last viewed March 6, 2010).

<sup>3</sup> See *supra* note 1.

## Florida Nursing Shortage

As of June 30, 2009, there were 62,254 active in-state licensed practical nurses (LPNs), 178,214 active in-state licensed RNs, and 11,829 active in-state licensed advanced registered nurse practitioners.<sup>4</sup>

According to reports prepared by the Florida Center for Nursing (FCN), there is a current shortage of RNs and LPNs in Florida, and this shortage is expected to grow significantly in the long-term. As of June 30, 2009, demand for RNs in Florida exceeded supply by 6,807 RNs and demand for LPNs exceeded supply by 1,417 LPNs.<sup>5</sup> The FCN has projected that by 2020 the shortage of RNs will increase to 52,209 and the shortage of LPNs will increase to 7,018.<sup>6,7</sup>

There is, however, no shortage of potential nurses in Florida. While Florida nursing programs produced 7,671 new RN graduates and 4,047 new LPN graduates in academic year 2008-2009, these programs also turned away 10,876 qualified RN program applicants and 2,755 qualified LPN program applicants in that same year because the programs were at capacity.<sup>8</sup>

To address the lack of nursing education program capacity, the 2009 Legislature took action to expedite and streamline the nursing education program approval and regulatory processes in Florida with the passage of House Bill 1209.<sup>9</sup> As discussed in the section below, this legislation repealed the Florida Board of Nursing's (BON's) broad authority to prescribe the nursing education program approval and regulation processes by rule and, instead, set forth these processes in statute.

### Nursing Education Program Approval and Regulation by the Florida Board of Nursing

*Background:* Part I, chapter 464, F.S., entitled the "Nurse Practice Act," (Act), provides for the regulation of the practice of nursing in Florida by the BON, which is established within the Department of Health (Department). The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate who serve four year terms. Seven members must be RNs and three members must be LPNs. The remaining three members must be Florida residents who have never been licensed as nurses and who are in no way connected to the practice of nursing or to any health care facility, agency, or insurer.<sup>10</sup> The BON meets six times per year and is staffed with 43 full-time positions.<sup>11</sup>

Under the Act, an "approved program" means a nursing program conducted in a school, college, or university which is approved under s. 464.019, F.S., for the education of nurses.<sup>12</sup> Currently, there are 181 nursing education programs approved to operate in Florida. Of this number, 98 programs offer a LPN certificate, 58 programs offer an associate degree in nursing, and 25 programs offer a bachelor's degree in nursing.<sup>13</sup> The Act requires individuals who seek licensure as a RN or LPN in Florida to, in relevant part, have graduated from an "approved program" or its equivalent, as determined by the BON, and to pass the Department's licensure exam.<sup>14</sup> The exam utilized is the National Council Licensure Examination (NCLEX), developed by the National Council of State Boards of Nursing (NCSBN).

<sup>4</sup> Florida Department of Health, Division of Medical Quality Assurance, Annual Report: July 1, 2008-June 30, 2009.

<sup>5</sup> Florida Center for Nursing, *Workforce Demand in Nursing-Intensive Healthcare Settings, 2009 Vacancies and 2011 Growth Projections*, p. 8 (January 2010). Available at: <http://www.flcenterfornursing.org/workforce/researchreports.cfm> (last viewed March 6, 2010).

<sup>6</sup> Florida Center for Nursing, *Forecasting Supply, Demand, and Shortage of RNs and LPNs in Florida, 2007-2020*, p. 5 (July 2008). Available at: <http://www.flcenterfornursing.org/workforce/researchreports.cfm> (last viewed March 6, 2010).

<sup>7</sup> The projections were based on 2007 survey data. In a January 2010, report, the FCN noted that although the nationally economy has changed dramatically since the 2007 survey, the nursing shortage in Florida remains a critical issue. According to the FCN, "The nursing shortage, though perhaps temporarily eased by the increase in recession-related nursing employment, continues to be a looming problem for Florida. Drivers of the nursing shortage remain the same: older nurses who have returned to work will eventually retire, and an aging population will demand more healthcare. Once the recession eases, we will see the nursing shortage re-emerge. The Bureau of Labor Statistics (BLS) projects that demand for RNs will increase more than any other type of worker through 2016, with more than 587,000 new RN positions projected during this time in the United States. Hence, we expect long-term demand for nurses to increase in response to population trends." *Workforce Demand in Nursing-Intensive Healthcare Settings, 2009 Vacancies and 2011 Growth Projections*, *supra* note 5, at 4.

<sup>8</sup> Florida Center for Nursing, *Florida Nursing Education Capacity and Nursing Faculty Supply/Demand 2007-2009 Trends*, pp. 8-9 (January 2010). Available at: <http://www.flcenterfornursing.org/nurseeducation/data.cfm> (last viewed March 6, 2010).

<sup>9</sup> Chapter 2009-158, L.O.F.

<sup>10</sup> Section 464.004, F.S.

<sup>11</sup> Office of Program Policy Analysis & Government Accountability, *Since Implementing Statutory Changes, the State Board of Nursing Has Approved More Nursing Programs; the Legislature Should Address Implementation Issues*, Report No. 10-14 at p. 2 (January 2010). Available at: <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-14> (last viewed March 6, 2010).

<sup>12</sup> Section 464.003(8), F.S.

<sup>13</sup> See *supra* note 11.

<sup>14</sup> Section 464.008, F.S.

Prior to July 1, 2009, the BON had extensive authority to establish the requirements applicable to nursing education program approval and regulation in Florida under s. 464.019, F.S. (2008). This section required the BON to adopt rules necessary to ensure that approved nursing programs graduated nurses capable of competent practice, including rules that addressed: program approval and oversight; site visits; requirements for educational objectives, faculty, curriculum, administrative procedures, and clinical training; and procedures for program probation, suspension, and termination.

During the 2009 Regular Session, the Legislature repealed the BON's rulemaking authority and, instead, prescribed the nursing education program approval and regulatory process in statute.<sup>15</sup> This legislation specifically prohibited the BON from imposing any condition or requirement on an institution submitting a program application, an approved program, or a program on probationary status, except as expressly provided in s. 464.019, F.S. It further stated that the BON has no rulemaking authority to implement the section, except that the BON must adopt a rule that prescribes the format for submitting program applications and summary descriptions of program compliance, and it expressly directed the BON to repeal all rules in existence on July 1, 2009, that were inconsistent with the subsection.<sup>16</sup>

*Existing Nursing Education Programs:* Under the 2009 legislation, Florida nursing education programs in existence on June 30, 2009, were made subject to a "grandfathering clause" set forth in s. 464.019(2), F.S. This clause provides that a program approved by the BON as of June 30, 2009, notwithstanding whether that approval was full or provisional or whether the program was on probation, became an "approved program" on July 1, 2009, except for a program on probation due to inadequate graduate passage rates on the NCLEX. A program on such probation remains on probation until it achieves an average graduate passage rate for its first-time test takers on the NCLEX that is no more than 10 percent below the national average passage rate for first-time, U.S. educated test takers. This average graduate passage rate must be achieved by July 1, 2011, and, if not, the program must be terminated.<sup>17</sup> As of June 30, 2009, six practical nursing programs and one professional associate degree nursing program were on probation for inadequate student performance on the NCLEX.<sup>18</sup>

*New Program Approval:* For an educational institution applying for approval of a prelicensure practical or professional nursing education program on or after July 1, 2009, the 2009 legislation amended s. 464.019(1), F.S., to require each program application to document that:

- At least 50 percent of the faculty and the program director are registered nurses in Florida who have, at a minimum, a bachelor's degree for a *practical* nursing program. For a *professional* nursing program, such faculty and program director must also have a master's degree in nursing or a related field.
- At least 50 percent of the curriculum consists of clinical training for a practical nursing program, professional associate's degree program, and professional diploma nursing program. For a bachelor's degree professional nursing program, at least 40 percent of the curriculum must consist of clinical training.
- No more than 25 percent of the program's clinical training consists of clinical simulation.
- The program has a signed agreement with each entity included in the curriculum plan as clinical training sites and community-based clinical experience sites.
- The program has written policies for direct supervision by faculty or clinical preceptors<sup>19</sup> for students in clinical training consistent with specified standards.
- The curriculum plan documents clinical experience and theoretical instruction in specified subjects.

Within 90 days after receipt of a program application, s. 464.019(1), F.S., requires the BON to approve the application if it documents compliance with the standards above. If the program application is incomplete or does not document compliance, the BON is required to do the following:

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<sup>15</sup> Ch. 2009-168, L.O.F.

<sup>16</sup> Section 464.019(7), F.S.

<sup>17</sup> Ch. 2009-168, s. 2, L.O.F., *codified at* s. 464.019(2) and (5)(a), F.S.

<sup>18</sup> Florida Center for Nursing, *Report of Findings and Recommendations – Ch. 2009-168, L.O.F., Florida Board of Nursing Education Program Approval & Oversight*, p. 2 (January 2010). Available at: <http://www.flcenterfornursing.org/nurseeducation/data.cfm> (last viewed March 6, 2010).

<sup>19</sup> The term "clinical preceptor" is defined to mean, "a registered nurse employed by a clinical training facility who serves as a role model and clinical resource person for a specified period to an individual enrolled in an approved program." Section 464.003(10), F.S.

- For an incomplete application, the BON must notify the educational institution of any errors or omissions within 30 days after receipt and follow the procedures specified in s. 120.60, F.S., of the Administrative Procedure Act (APA). This section provides that an application is deemed complete upon receipt of an application that has corrected each identified error or omission and that the completed application must be approved or denied within 90 days after its receipt.<sup>20</sup>
- For an application that does not document compliance, the BON must, within 90 days after receipt of the application, provide the educational institution with a notice of intent to deny that sets forth written reasons for the denial. The institution may request a hearing on such a notice pursuant to ch. 120, F.S., the APA.<sup>21</sup>

If the BON does not act on an application within the timeframes specified above, the application is deemed approved and the program becomes an approved program under s. 464.019, F.S.<sup>22</sup>

*BON Regulation of Approved Programs:* In order to continue as an approved program, s. 464.019, F.S., as amended by the 2009 legislation, sets forth two requirements. First, all approved programs, including programs on probation, must submit a report to the BON by November 1 of each year. The annual report must include an affidavit certifying continued compliance with the requirements that must be documented in a new program application and provide a summary description of that compliance. The report must also document for the previous academic year: the number of student applications, qualified applicants, students accepted, and program graduates; the program's graduate passage rate on the NCLEX; the program's retention rates for students tracked from program entry to graduation; and the program's accreditation status, including identification of the accrediting body.<sup>23</sup> If a program fails to timely submit its annual report, the BON must place the program on probation. If the report is not submitted within six months following its due date, the BON must terminate the program.<sup>24</sup>

Second, the BON is required to place an approved program on probation if the program's average graduate passage for first-time test takers on the NCLEX falls 10 percent or more below the national average passage rate for first-time NCLEX test takers educated in the United States, as annually published by the contract testing service of the NCSBN, for two consecutive years.<sup>25</sup> The program must remain on probationary status until it achieves compliance with the required passage rate and must be terminated by the BON if it does not achieve compliance within two calendar years.<sup>26</sup>

A program placed on probation must disclose this status in writing to its students and applicants.<sup>27</sup>

*Data on Nursing Education Programs:* In order to provide prospective students with greater access to information about nursing programs in Florida, the 2009 legislation requires the BON to have published the following information about Florida nursing programs on its website by December 31, 2009:

- The program application for each program approved on or after July 1, 2009.
- The summary description required to be submitted by each program in its annual report.
- A comprehensive list of nursing programs in the state.
- The accreditation status of each program, including identification of the accrediting body.
- Each program's approval or probationary status.
- Each program's graduate passage rate for the NCLEX.

<sup>20</sup> Section 120.60(1), F.S.

<sup>21</sup> Section 464.019(1) and (3), F.S.

<sup>22</sup> Section 464.019(1), F.S.

<sup>23</sup> Section 464.019(2)(b) and (c), F.S.

<sup>24</sup> Section 464.019(5)(b), F.S.

<sup>25</sup> Currently, s. 456.014, F.S., provides that all information required by the Department of any applicant for licensure is a public record with the exception of specified information that includes medical information, school transcripts, examination questions, answers, and grades. This information is confidential and exempt from s. 119.07(1), F.S., and may not be discussed with or made accessible to anyone except members of the relevant board, the department, and staff thereof. The Department has interpreted this section of law to mean that the NCLEX pass/fail results of an applicant for RN or LPN licensure may not be disclosed to the nursing education program from which the student graduated. Department of Health Bill Analysis for HB 1337, p. 2, March 4, 2010. Nursing education program stakeholders have expressed concerns that the non-disclosure of such data results in the program being unable to confirm whether the graduate passage rates are accurate.

<sup>26</sup> Section 464.019(5)(a), F.S.

<sup>27</sup> Section 464.019(5)(c), F.S.

- The national average passage rate for the NCLEX.
- Each program's student retention rates tracked from program entry to graduation.

The website must allow interactive searches and comparisons of specific nursing programs and must be updated at least quarterly.

*Implementation Monitoring and Study:* The 2009 legislation established a six-year monitoring process to evaluate the effectiveness of the changes made by the legislation in achieving quality nursing programs with a higher production of quality nursing graduates. To this end, the legislation required the Florida Center for Nursing (FCN) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) to monitor the administration of the new nursing program approval process during its first year of implementation and to report their findings to the Governor and presiding officers of the Legislature by February 1, 2010.<sup>28</sup> These reports were submitted in January 2010 and are discussed below in the section entitled, "Implementation Monitoring."

The legislation also created s. 464.019(9), to require the FCN and OPPAGA to jointly study the bill's five-year implementation and to submit a report to the Governor and presiding officers of the Legislature on January 30, 2011, and annually thereafter through January 30, 2015. For this report, the OPPAGA is required to evaluate: the number of nursing education programs and student slots available; the number of applications submitted, qualified applicants, students accepted, and program graduates; program retention rates; graduate passage rates on the NCLEX; and the number of graduates who become employed in Florida as RNs or LPNs. The FCN is required to evaluate the BON's implementation of the program application approval process and program probation and termination processes.<sup>29</sup>

### **Nursing Education Program State Regulation, Licensure, and Programmatic Accreditation**

As discussed above there are currently 181 nursing education programs approved under s. 464.019, F.S., to operate in Florida. These programs are offered by: state-regulated public school districts, Florida colleges, and state universities; private institutions that must be licensed and regulated by the state Commission for Independent Education (CIE);<sup>30</sup> and private institutions that are not under the CIE pursuant to s. 1005.06(1)(c) and (e), F.S.<sup>31,32</sup>

Some of Florida's nursing education programs are also accredited by specialized accrediting agencies that are nationally recognized by the United States (US) Secretary of Education to accredit nursing programs.<sup>33</sup> Accreditation is a private, nongovernmental review of the quality of educational programs. Approved programs in Florida are not required to be accredited.

The Secretary recognizes two agencies that provide specialized accreditation for prelicensure nursing education programs, the National League for Nursing Accreditation Commission (NLNAC) and the Commission on Collegiate Nursing Education (CCNE).<sup>34</sup> With regard to prelicensure nursing education programs, the NLNAC accredits certificate LPN programs and diploma, associate degree, and bachelor degree RN programs and the CCNE accredits bachelor degree RN programs.

<sup>28</sup> Section 464.019(8), F.S.

<sup>29</sup> Section 464.019(9), F.S.

<sup>30</sup> Chapter 1005, F.S., establishes the CIE to regulate independent postsecondary educational institutions, which are defined as, "any postsecondary educational institution that operates in this state or makes application to operate in this state, and is not provided, operated, and supported by the State of Florida, its political subdivisions, or the Federal Government." Section 1005.02(11), F.S.

<sup>31</sup> Section 1005.06(1)(c), F.S., exempts a school from the CIE's licensure requirements if the institution: is under the jurisdiction of the Department of Education, eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program and is a nonprofit independent college or university located and chartered in this state and accredited by the Commission on Colleges of the Southern Association of Colleges and Schools to grant baccalaureate degrees. Twenty-eight institutions in Florida are subject to this exemption.

<sup>32</sup> Section 1005.06(1)(e), F.S., exempts a school from the CIE's licensure requirements if the institution: had been 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 accredited by an agency recognized by the USDOE; and the institution does not enroll any students who receive state or federal financial aid. 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.

<sup>33</sup> See *supra* note 18 at p. 3.

<sup>34</sup> United States Department of Education, *Specialized Accrediting Agencies*. Available at: [http://www.ed.gov/admins/finaid/accred/accreditation\\_pg8.html#health](http://www.ed.gov/admins/finaid/accred/accreditation_pg8.html#health) (last viewed March 6, 2010).

Both accrediting agencies have extensive standards for the programs they accredit in order to ensure the quality of the education offered. These standards specify requirements that accredited programs must meet in areas that include the following: program administrator and faculty education qualifications; curriculum content and clinical experience requirements, which provide for periodic review of such content and experience to ensure rigor and currency; expectations for the use of best teaching practices; demonstration of sufficient fiscal, physical facility, and academic support services for the program; review of individual and aggregate student outcome data and graduate passage rates on the NCLEX; and review of student, alumni, and employer satisfaction.<sup>35,36</sup>

According to NLNAC, initial and continuing accreditation is granted when the nursing program demonstrates compliance with all NLNAC Accreditation Standards. Initial accreditation is for a period of five years and continuing accreditation is for a period of eight years.<sup>37</sup> The NLNAC requires accredited programs to file annual reports containing specified data that is reviewed to determine whether the program is continuing to comply with accreditation standards. Additionally, site visits are conducted for the initial and continuing accreditation determinations.<sup>38</sup> The NLNAC may place conditions on a program's accreditation if it finds that a program is in non-compliance with one or two of the accrediting standards and may place an accredited program on warning status if it is in non-compliance with three or more standards. In both cases, the NLNAC requires the accredited program within a specified period of time to report on its efforts to attain compliance and the NLNAC conducts a follow-up site visit. If the program fails to achieve compliance with the standards, the NLNAC will deny continuing accreditation. Achievement of compliance for a LPN program must occur within 18 months and for a RN program must occur within two years.<sup>39</sup> A program may appeal the NLNAC's denial of initial or continuing accreditation status within 30 days of receipt of notice of denial. The appeal process must be completed within 90 days.<sup>40</sup>

Similarly, initial and reaffirmed accreditation by the CCNE is granted to programs that demonstrate compliance with CCNE's standards. Initial accreditation may be for a period up to five years. Thereafter, the accreditation may be reaffirmed for a period up to 10 years. The CCNE requires accredited programs to file annual reports containing specified data that are reviewed to determine whether the program is continuing to comply with accreditation standards. Additionally, site visits are conducted for the initial and reaffirmed accreditation determinations.<sup>41</sup> Accreditation will be withdrawn by the CCNE when a program pursuing reaffirmed accreditation fails to demonstrate its ability to meet the accreditation standards or if the program fails to submit reports or payment of fees as requested by the CCNE. A program may challenge an adverse action by the CCNE with regard to its accreditation by filing a notice of appeal within 10 business days of the adverse action. If the program fails to file a notice of appeal within 10 business days, the CCNE's decision becomes final.<sup>42</sup>

Of the 181 nursing education programs approved in Florida, data from the FCN indicates that: eight of the 98 LPN programs (8.2%) are accredited by the NLNAC; 31 of the 58 associate degree RN programs (53.4%) are accredited by the NLNAC or CCNE; and 22 of the 25 bachelor degree RN programs (88%) are accredited by the NLNAC or CCNE.<sup>43</sup>

### **Implementation Monitoring**

As discussed above, the 2009 legislation required the FCN and OPPAGA to monitor the administration of the new nursing program approval process during its first year of implementation and to report their findings by February 1, 2010. Additionally, staff of the Joint Administrative Procedures Committee (JAPC) monitored the BON's implementation of the legislation's requirements relating to rulemaking.

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<sup>35</sup> National League for Nursing Accrediting Commission, Inc., *Accreditation Manual*, pp. 76-98, (2008). Available at: <http://www.nlnac.org/manuals/Manual2008.htm> (last viewed March 7, 2010).

<sup>36</sup> Commission on Collegiate Nursing Education, *Standards for Accreditation of Baccalaureate and Graduate Degree Nursing Programs*, pp. 7-18 (April 2009). Available at: <http://www.aacn.nche.edu/accreditation/PubsBaccGrad.htm> (last viewed March 7, 2010).

<sup>37</sup> See *supra* note 35 at p. 32.

<sup>38</sup> See *supra* note 35 at p. 12, 61-62.

<sup>39</sup> See *supra* note 35 at pp. 32-34.

<sup>40</sup> See *supra* note 35 at pp. 42-44.

<sup>41</sup> See *supra* note 36 at pp. 7-8 & 17.

<sup>42</sup> See *supra* note 36 at pp. 13-14 & 21-24.

<sup>43</sup> See *supra* note 18 at p. 3

With regard to the new legislation's impact on increasing nursing education program capacity, the OPPAGA indicated in its report that:

New program applications submitted to the board have more than doubled in the six months since Ch. 2009-168, Florida Statutes, [sic] became effective compared to the previous year. As shown by Exhibit 3, since the new law went into effect, the board has considered 25 new applications for nursing programs, compared to 10 new applications considered in all of 2008. The board has approved 20 new nursing programs during this timeframe, compared to 9 new programs approved in 2008. In addition, the board has received seven new applications that will be considered at its February meeting.<sup>44</sup>

The OPPAGA and FCN also identified a number of issues related to implementation. These included:

- *Program Application Timeframe:* The OPPAGA and FCN found that the program application timeframe implemented by the BON is inconsistent with the timeframe established in the Administrative Procedure Act.<sup>45</sup> The BON begins the 90-day time frame for approval or denial of a program application on the day the application is received notwithstanding whether the application is complete or incomplete. Section 464.019(3), F.S., however, with regard to incomplete applications, directs the BON to notify the educational institution of any errors or omissions within 30 days after receipt of the application and to follow the procedures specified in s. 120.60, F.S., of the Administrative Procedure Act (APA), which specifies that the 90-day time frame for approval or denial of an application does not begin until the application is complete. The OPPAGA stated:

As a result of this practice and the timing of board meetings, [department] staff must quickly review applications and notify programs to appear at the next board meeting, even when applications are incomplete. Since the board meets every other month, a program may only have one opportunity during the 90-day period to have their application go before the board; if all required documents are not yet filed the application will be denied unless the program waives the timeframe. If the applicant is denied, programs must submit a new application and begin the process anew.<sup>46</sup>

The FCN and OPPAGA both recommended that the Legislature clarify the timeframe the BON should follow when it considers applications for nursing programs to ensure that the BON's practice is consistent with s. 120.60, F.S.<sup>47</sup>

- *Program Application:* The OPPAGA found, and the FCN concurred in the finding, that the BON's application for new nursing programs is not yet finalized.<sup>48</sup> The OPPAGA also indicated that the application includes requirements beyond those specified in statute, such as curriculum vitae of faculty members, course descriptions, approval dates by the Department of Education, and nursing program length. The OPPAGA recommended that the BON finalize and publish a program application consistent with statute.<sup>49</sup> This issue, as discussed below, is currently being addressed by the JAPC and will be discussed by the BON at its March 12, 2010 teleconference.
- *Probation:* The OPPAGA found that the BON's method for placing programs on probation is not yet finalized. According to OPPAGA, the BON determined at its October meeting to use graduate passage rates beginning in January 2009 for purposes of determining whether a program has had two consecutive years of inadequate passage rates. OPPAGA indicated that stakeholders expressed concern that this decision resulted in utilizing data that predated the July 1, 2009 effective date of the law, i.e., retroactive application of the law.<sup>50</sup>

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<sup>44</sup> See *supra* note 11 at pp. 4-5.

<sup>45</sup> See *supra* note 11 at p. 5 and note 18 at p. 1.

<sup>46</sup> *Id.*

<sup>47</sup> See *supra* note 11 at p. 10 and note 18 at pp. 2 & 4.

<sup>48</sup> See *supra* note 11 at pp. 6-7 and note 18 at p. 1.

<sup>49</sup> See *supra* note 11 at pp. 6-7.

<sup>50</sup> See *supra* note 11 at pp. 7-8.



Additionally, OPPAGA found that the BON has not yet determined how programs will be placed on probation for failure to submit an annual report and affidavit or determined how programs will be removed from probationary status. The OPPAGA stated, “Statutory language states that programs shall remain on probation until they achieve compliance with the examination score requirement or submit their annual report. However, statutes do not specify the number of quarters that programs must maintain compliant scores before being removed from probation and the board has not yet addressed this issue.”<sup>51</sup>

The OPPAGA recommended that the Legislature, “delineate the criteria and timeframe the board should use to place nursing education programs on probation and remove programs from probation.”<sup>52</sup>

- *Annual report:* The OPPAGA found that the BON’s instructions for the 2009 Annual Report and Workforce Survey did not specify which items programs had to complete in order to comply with the statute. According to OPPAGA, the BON worked with the FCN to include the data elements required to be submitted to the BON by approved programs under s. 464.019(3)(c), F.S., in the FCN’s annual electronic workforce survey. The instructions for the survey notified programs that they would be placed on probation if they failed to submit completed surveys by November 1, 2009. The survey, however, included items that were not required s. 464.019(3)(c), F.S., such as data on student demographics, changes to programs, and faculty information, which are used by the FCN to complete research reports. The OPPAGA indicated that the BON’s survey instructions did not clearly indicate that these data were not statutorily mandated, creating the impression that programs could be placed on probation if they failed to include these additional data elements in their responses. The OPPAGA recommended that the BON clarify future directions for submitting the report.<sup>53</sup>
- *BON Website:* The OPPAGA found, and the FCN concurred with the finding, that the BON’s interactive website does not include all elements required by law.<sup>54</sup> OPPAGA indicated that the 2009 legislation required the BON to create an interactive website that enables the public to compare nursing programs using data points such as the program’s approval status, retention, and examination scores; however, the website does not provide the accreditation status for all programs or retention rates for any programs. Additionally, the website does not allow users to readily compare all required data elements across programs.<sup>55</sup>

The JAPC also monitored the BON’s implementation of the 2009 legislation’s rulemaking requirements. Since the bill took effect, JAPC staff notified BON legal counsel in writing of numerous concerns with the lack of rulemaking, but these issues were not addressed by the BON. As a result, JAPC staff presented a report on the BON’s inaction at the committee’s meeting held February 15, 2010. Two of the issues presented to the JAPC member related to s. 464.019(7), F.S., which directs BON to:

- Prescribe by rule the format for submitting program applications for new nursing programs. JAPC staff indicated that the BON has been using an “Application for New Nursing Program” without adopting it as a rule. JAPC staff also indicated that the application requires information that is not authorized by statute, and imposes a timeframe for granting or denying applications that is inconsistent with the APA.
- Prescribe by rule the format for submitting summary descriptions of program compliance for the annual report. JAPC staff indicated that the BON has not adopted this rule. According to JAPC staff, an “Affidavit” on the Board’s website includes a section entitled “Summary Description.” This affidavit is included in an annual report to be completed by programs, which appears to require information not authorized by statute.<sup>56</sup>

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<sup>51</sup> *Id.*

<sup>52</sup> See *supra* note 11 at p. 10.

<sup>53</sup> See *supra* note 11 at pp. 8, 10, & 14.

<sup>54</sup> See *supra* note 11 at p. 9 and note 18 at p. 1.

<sup>55</sup> See *supra* note 11 at pp. 9, 14, & 17.

<sup>56</sup> Joint Administrative Procedures Committee, Meeting Packet for February 15, 2010. Available at: [http://www.leg.state.fl.us/cgi-bin/View\\_Page.pl?File=index\\_css.html&Directory=committees/joint/Japc/&Tab=committees](http://www.leg.state.fl.us/cgi-bin/View_Page.pl?File=index_css.html&Directory=committees/joint/Japc/&Tab=committees) (last viewed March 7, 2010).

Since the JAPC hearing, the BON has noticed a teleconference meeting for March 12, 2010, which indicates that the BON will discuss the nursing education program application.<sup>57</sup>

### **Effect of Proposed Changes**

The bill builds upon the 2009 legislation's streamlining of the nursing education program regulation process by providing that a nursing education program that is accredited by one of the two specialized accrediting agencies that are nationally recognized by the US Secretary of Education to accredit nursing education programs is no longer subject to BON regulation for as long as the program maintains its accreditation. The BON approval process for non-accredited programs, as adopted in last year's bill, is retained, but implementation issues identified by the OPPAGA, FCN, and stakeholders are clarified. The following details the bill's proposed changes.

#### **Nurse Practice Act**

*Definition Section:* The bill makes technical amendments to s. 464.003, F.S., which sets forth definitions for the Act, to alphabetize section. It also amends existing definitions for two terms as follows:

- The definition for "approved program" is clarified to mean, "a program for the prelicensure education of practical or professional nurses that is conducted in the state at an educational institution and that is approved under s. 464.019." The definition also provides that, "the term includes a program placed on probationary status" so that the terms "approved program" and "program on probationary status" do not have to be separately and repeatedly stated throughout s. 464.019, F.S.
- The definition for "clinical preceptor" is amended to also authorize a LPN to act as a clinical preceptor. Current law only authorizes RNs to act as clinical preceptors. The bill also amends s. 464.019(1)(e), F.S., to specify that a clinical preceptor who supervises students in a professional nursing program must be a RN and that a clinical preceptor who supervises students in a practical nursing program must be a LPN.

The bill adds definitions for the following four new terms:

- "Accredited program" is defined to mean, "a program for the prelicensure education of professional or practical nurses that is conducted in the United States at an educational institution, whether in this state, another state, or the District of Columbia, and that is accredited by a specialized accrediting agency that is nationally recognized by the United States Secretary of Education to accredit nursing education programs." The NLNAC and CCNE are the only such accrediting agencies currently recognized by the Secretary.
- "Educational institution" is defined to mean, "a school, college, or university."
- "Graduate passage rate" is defined to mean, "the percentage of a program's graduates who, as first-time test takers, pass the National Council of State Boards of Nursing Licensing Examination during a calendar year, as calculated by the contract testing service of the National Council of State Boards of Nursing."
- "Required passage rate" is defined to mean, "the graduate passage rate required for an approved program pursuant to s. 464.019(6)(a)1., F.S." This subparagraph provides that the required passage rate is 10 percentage points, rather than 10 percent as in current law, below the national average passage rate on the NCLEX for U.S. educated, first-time test takers. It further specifies that the applicable national average passage rate is based on the type of program, i.e., an associate degree, a bachelor's degree, or a diploma professional nursing program or a practical nursing program.

*Reorganization of s. 464.019, F.S.:* The bill amends s. 464.019, F.S. to better organize the section by reordering and renumbering the existing subsections (1) through (9) to achieve the following order: (1) Program Applications; (2) Program Approval; (3) Status of Certain Programs; (4) Annual Report; (5) Internet Website; (6) Accountability; (7) Disclosure of Graduate Passage Rate Data; (8) Program Closure; (9) Rulemaking; (10) Applicability; and (11) Implementation Study.

<sup>57</sup> Florida Administrative Weekly, Board of Nursing Telephone Conference Meeting Notice for March 12, 2010, published February 26, 2010.

## Accredited Programs

The bill amends s. 464.019(10), F.S., to provide that “accredited programs” conducted in this state are no longer subject to regulation by the BON for as long as the program maintains its accreditation. The only requirements an accredited program must comply with are those requiring a program that closes to notify the BON in writing of its arrangements for storage of permanent records and a program to respond to FCN and OPPAGA data requests.<sup>58</sup> The BON is specifically prohibited in s. 464.019(9), F.S., (formerly s. 464.019(7), F.S.) from imposing any condition or requirement on an accredited program except as expressly authorized in s. 464.019, F.S.

If an accredited program conducted in this state ceases to be accredited, it may apply to the BON to become an approved program.<sup>59</sup>

Due to the bill’s recognition of accredited programs, the bill amends s. 464.008(1)(c), F.S., which sets forth the requirements an individual must meet to be eligible for licensure as a RN or LPN. Currently, this law specifies, in relevant part, that an individual must have graduated from an approved program, or its equivalent as determined by the BON. The bill retains these provisions, but adds that graduates of an accredited program on or after July 1, 2009, are also eligible, and further clarifies that persons who graduated from a prelicensure nursing education program before July 1, 2009, remain eligible for licensure if the program’s graduates were eligible to sit for the exam at the time they graduated.<sup>60</sup>

## Approved Programs

The bill substantially retains the BON approval process for non-accredited programs as established by the 2009 legislation, but makes changes, as described below, to address implementation issues identified by the OPPAGA, FCN, and stakeholders.

*Program Applications:* The bill amends s. 464.019(1), F.S., to:

- Reflect current practice that requires a program application and fee to be submitted for each prelicensure nursing education program to be offered at a main campus, branch campus, or other instructional site.
- Amend the faculty educational requirements that must be documented in a program application. Current law requires the program director and 50% of the faculty to have “a minimum” of a bachelor’s degree in nursing; however, some individuals may have a master’s or higher degree in nursing, but not a bachelor’s degree in nursing. Accordingly, the bill provides that the program director and 50% of the faculty members for a : (a) RN program must have a master’s or higher degree in nursing or a bachelor’s degree in nursing and a master’s or higher degree in a field related to nursing; and (b) LPN program must have a bachelor’s or higher degree in nursing.
- The bill adds a provision stating that the educational degree requirements for the program director or faculty may be documented by an official transcript or written statement by the educational institution verifying that it conferred the degree.

The bill also clarifies the timeframe for review of a program application. It specifies in s. 464.019(2), F.S. (formerly s. 464.019(3), F.S.) that the Department upon receiving an application and fee must review the application to determine if it is complete. If it is incomplete, the Department must notify the applicant in writing of any errors or omissions within 30 days. The bill further provides that an application is deemed complete upon the: (a) original date of receipt if the Department does not notify

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<sup>58</sup> Section 464.019(8) and (11), F.S.

<sup>59</sup> Section 464.019(10), F.S.

<sup>60</sup> Prior to the July 1, 2009, effective date of ch. 2009-158, L.O.F., the BON recognized certain nursing education program graduates of Excelsior College (formerly Regents College) in New York as eligible for Florida RN licensure pursuant to a 1994 settlement agreement between the BON and the college. See *Regents College v. Florida Board of Nursing*, 2<sup>nd</sup> Judicial Circuit in Leon Co., Case No. 94-4314, Stipulation and Agreed Upon Order (1994). Subsequent to the 2009 legislation, the BON indicated that it would no longer automatically recognize these graduates as eligible for licensure; instead, the BON now individually determines whether each graduate is eligible by conducting a review of the individual’s professional medical experience and education. Currently, there are almost 1,200 Florida residents enrolled in the college’s nursing program. See Letter from Excelsior College dated November 4, 2009. Excelsior’s nursing program is accredited by the NLNAC. Thus, under the bill, graduates of the college or any other CCNE or NLNAC accredited program located in the U.S. will be eligible for licensure, if the graduate meets other eligibility requirements specified in current law.

the applicant of any errors or omissions within the 30-day period; or (b) date the Department receives a revised application that corrects each error and omission. As in current law, the BON must approve or deny a completed application within 90 days after receipt.

*Annual Report:* The bill amends s. 464.019(4), F.S. (formerly s. 464.019(2)(c), F.S.), to clarify that the annual report consists of an affidavit certifying continued compliance with paragraphs (1)(a) through (g), a summary description of that compliance, and other specified data. The bill amends the data requirements to specify that such data must be submitted to the “extent applicable” in order to recognize that newly approved programs may not yet have data available for submission. It also adds new data requirements. Under the bill, approved programs must also document the: (a) number of accepted applicants who enroll in program and the total number of students enrolled in program; and (b) program’s accrediting agency, if it is accredited by an agency other than the NLNAC or CCNE.

In s. 464.019(9), F.S. (formerly s. 464.019(7), F.S.), the bill directs the BON to adopt a rule prescribing the format for the annual report. Current law only authorizes the BON to prescribe the format for the summary descriptions of program compliance.

*Internet Website:* The bill adds a requirement in s. 464.019(5), F.S. (formerly s. 464.019(4), F.S.) that the BON must publish on its website a list of each accredited program and the program’s graduate passage rates for the two most recent calendar years. The accredited programs are not required to provide the BON with this data; rather, the Department is required to determine this information through the following sources: (a) the specialized accrediting agencies that are nationally recognized by the United States Secretary of Education to accredit nursing education programs; and (b) the contract testing service of the NCSBN.

The bill also makes technical conforming changes to s. 464.019(5)(b) & (c), F.S. (formerly s. 464.019(4)(a)-(h), F.S.), which relates to the data the BON must publish on its website for approved programs. The only substantive changes made by the bill are that: (a) approved program graduate passage rates and national average passage rates on the NCLEX must be published for two, rather than one, calendar years; and (b) the national average passage rate must be published for each individual program type.

*BON Regulation of Approved Programs:* For a program that was on probation on June 30, 2009, F.S., because it did not meet the BON’s requirement for graduate passage rates, the bill clarifies s. 464.019(3), F.S. (formerly s. 464.019(2), F.S.) to provide that such program is an approved program, but that it shall remain on probation until it achieves the required passage rate for either the 2009 or 2010 calendar year. As in current law, the program must be terminated by the BON if it does not timely achieve the required passage rate. This provision will no longer apply to an accredited program as of the bill’s July 1, 2010 effective date. See s. 464.019(10), F.S.

For other approved programs, the bill continues, as in current law, to require the BON to monitor the programs’ compliance with NCLEX graduate passage rate and annual report requirements. Regarding the requirements for graduate passage rates, the only substantive changes made by the bill in s. 464.019(6)(a), F.S. (formerly s. 464.019(5), F.S.), are that:

- The bill provides that the required passage rate on the NCLEX for an approved program shall be 10 percentage points, rather than 10 percent, below the national average passage rate for the applicable program type.
- The bill clarifies that the requirements for graduate passage rates, which should have only been applied prospectively by the BON under the 2009 legislation, apply to graduate passage rates beginning with the 2010 calendar year.
- The bill clarifies that a program placed on probation for having had two consecutive calendar years of inadequate graduate passage rates must be removed from probation when the program achieves the required passage rate for one calendar year.

As in current law, the approved program must be terminated by the BON if it does not achieve the required passage rate within two calendar years.

Regarding the annual report requirements, the only substantive change made by the bill to s. 464.019(6)(b), F.S. (formerly s. 464.019(5)(b), F.S.), is that probation is eliminated as a penalty for an approved program's failure to timely submit the annual report. Instead, the bill requires the program director to appear before the BON to explain the delay. As in current law, the program must be terminated by the BON if it does not submit the report within six months after its due date.

#### Disclosure of Graduate Passage Rate Data

The bill amends s. 456.014, F.S., to provide that certain information relating to an applicant for licensure may be provided by the Department to a program director of an approved program or accredited program pursuant to s. 464.019(7), F.S. Subsection (7) states that a program director may make a written request to the Department for the disclosure of the following information relating to each program graduate included in the program's graduate passage rate: the graduate's name, the date the graduate took the NCLEX, and the determination of whether the graduate passed or failed the NCLEX. The program director must maintain the confidentiality of the information in the same manner as Department employees.

#### Conforming Changes and Effective Date

The bill amends ss. 464.015 and 464.033, F.S., to make conforming changes for the bill's recognition of accredited programs. The bill amends ss. 458.348, 459.025, 464.012, and 960.28, F.S., to conform cross-references to changes made by the bill. The bill provides an effective date of July 1, 2010.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 456.014, F.S., relating to public inspection of information required by applicants for licensure by the Department.

**Section 2:** Amends s. 464.003, F.S., relating to definitions for the Nurse Practice Act.

**Section 3:** Amends s. 464.008, F.S., relating to licensure by examination.

**Section 4:** Amends s. 464.015, F.S., relating to titles and abbreviations for nurses.

**Section 5:** Amends s. 464.019, F.S., relating to approval of nursing education programs.

**Section 6:** Amends s. 464.022, F.S., relating to the practice of nursing pending NCLEX results.

**Sections 7-10:** Amending ss. 458.348, 459.025, 464.012, and 960.28, F.S., conforming cross-references to changes made by the bill.

**Section 11:** Providing an effective date of July 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The Department and BON should incur a savings as a result of the bill's provisions that no longer require the Department or BON to regulate accredited programs.

##### 2. Expenditures:

The Department indicates it will incur costs of \$78,795 because it will have to modify its existing list of approved schools on its website to accommodate the bill's requirement that it list accredited programs. The DOH was required to establish this website by the 2009 legislation and to provide specified data on all approved programs, including approved programs that are accredited.

Accordingly, this bill does not appear to create a fiscal impact, given that these requirements currently exist. Further, as indicated above, the Department should incur a savings a result of the bill's provisions that no longer require the Department or BON to regulate accredited programs.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**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 provides that the BON shall adopt a rule that prescribes the format for the annual reports required under s. 464.019, F.S.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 10, 2010, the State Universities & Private Colleges Policy Committee adopted four amendments to HB 1337 and reported the bill favorably as a Committee Substitute (CS). These amendments technically clarified: (a) the definition of "accredited program" so that it reflects the terminology used by the federal Department of Education; and (b) that the bill applies to any prelicensure nursing program regardless of the credential awarded. This analysis is drafted to the CS.