

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 937 Approved Nursing Education Program Accountability

SPONSOR(S): Post-Secondary Education & Lifelong Learning Subcommittee, Stevenson

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1296

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Post-Secondary Education & Lifelong Learning Subcommittee	17 Y, 0 N, As CS	Guy	Kiner
2) Professions & Public Health Subcommittee			
3) Education & Employment Committee			

SUMMARY ANALYSIS

The Board of Nursing (BON) approves and regulates nursing programs operating in the state of Florida and may take action against approved programs whose graduates do not meet the minimum passing rate on the national nursing licensure exam. The BON may place programs on probation or terminate programs that do not improve over a certain amount of time. For approved nursing programs that are currently on probation or are subject to termination during the 2021 calendar year, the bill requires the BON to extend the programs' probation for an additional year or delay termination for one year, respectively. The bill requires the BON to grant the extension or delay at a regularly scheduled meeting on or before December 31, 2021. Only those programs whose graduates failed to achieve the required passing rate on the National Council on State Boards of Nursing Licensing Examination (NCLEX) during calendar year 2020 may receive the additional year.

The bill also requires approved programs on probation to offer a test remediation program to graduates that do not pass the NCLEX on the first attempt. The program must be offered at no cost to the graduate and be available for one calendar year following graduation.

The bill has an indeterminate fiscal impact.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Nursing Education Programs

Since 2009, the Legislature has passed a number of bills aimed at reforming nursing education by increasing nursing program accountability, prescribing probation and termination procedures and requiring accreditation for certain programs. Legislative action included setting a first-time test taker passage rate upon which a program's continued approval is dependent and requiring programs on probation to submit detailed remediation plans for achieving the graduate passage rate. This legislative activity is codified at s. 464.019, F.S., relating to approval of nursing education programs.

To be licensed as a registered nurse (RN) or a practical nurse (PN) in Florida, an individual must, among other things, graduate from an accredited or a Board of Nursing (BON)-approved nursing program or its equivalent.¹ A registered nurse is authorized to practice professional nursing² and an LPN is authorized to practice practical nursing.³

Nursing programs in Florida are offered by public school districts, Florida colleges, state universities, private institutions licensed by the Commission for Independent Education and private institutions that are members of the Independent Colleges and Universities of Florida (ICUF).

Board-Approved Nursing Education Programs

To be an approved program, an educational institution must apply to the Department of Health (DOH). An application to become an approved program must document compliance with program standards for faculty qualifications, clinical training requirements, written policies for faculty, signed agreements with clinical training sites in the curriculum plan, and curriculum and instruction requirements.⁴

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 noticed of the intent to deny, the applicant may request a hearing under the Administrative Procedure Act.⁵

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.⁶ No more than 50 percent of an approved program's clinical training may consist of clinical simulation.⁷

¹ Section 464.008(1)(c), F.S.

² Section 464.003(19), F.S. The practice of professional nursing means the performance of those acts requiring substantial specialized knowledge, judgment, and nursing skill based upon applied principles of psychological, biological, physical, and social sciences which shall include, but not be limited to: the observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care; health teaching and counseling of the ill, injured, or infirm; and the promotion of wellness, maintenance of health, and prevention of illness of others. An RN is also responsible for the administration of medications and treatments as prescribed or authorized by a duly licensed practitioner authorized by the laws of this state to prescribe such medications and treatments.

³ Section 464.003(18), F.S. The practice of practical nursing means the performance of selected acts, including the administration of treatments and medications, 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, a licensed osteopathic physician, a licensed podiatric physician, or a licensed dentist; and the teaching of general principles of health and wellness to the public and to students other than nursing students. A LPN is also responsible and accountable for making decisions that are based upon the individual's educational preparation and experience in nursing.

⁴ Section 464.019(1), F.S.

⁵ Section 464.019(2), F.S.

⁶ Section 464.019(1)(b), F.S.

⁷ Section 464.019(1)(c), F.S.

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.⁸ 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.⁹

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.¹⁰

Accountability Requirements

An approved program may not have a graduate passage rate for first-time takers who sit for the National Council on State Boards of Nursing Licensing Examination (NCLEX) that is 10 percentage points or more below the national average for two consecutive years.¹¹ 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.¹²

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.¹³ 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.¹⁴

Programs subject to probation or termination by the BON may request a hearing under the Administrative Procedures Act.¹⁵ A program on probation must disclose its status to students and applicants.¹⁶

A terminated or closed program must wait three years before seeking program approval under the original name or a new name.¹⁷

Accredited Nursing Education Programs

To qualify as an accredited program, a nursing education program must be accredited by a specialized nursing accrediting agency that is nationally recognized by the United States Secretary of Education to accredit nursing education programs.¹⁸ Because accredited programs have to meet stringent criteria to maintain program accreditation, many of the statutory requirements for approved programs are not

⁸ Section 464.019(3), F.S.

⁹ Section 464.019(4), F.S.

¹⁰ Section 464.019(5), F.S.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section. 464.019(5), F.S.

¹⁶ *Id.*

¹⁷ Section 464.019(7)(d), F.S.

¹⁸ Section 464.003(1), F.S.

applicable to accredited programs.¹⁹ 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, applicants, and its clinical training sites.

All nursing education programs that prepare students to be RNs must become accredited by July 1, 2019, or within 5 years after the enrollment of the program's first students.²⁰

Accredited programs' accreditation status and graduate NCLEX passage rates must be published on the BON website.²¹

Current Status of Nursing Education Programs

The BON currently regulates 445 nursing prelicensure education programs which includes approved and accredited programs. Of these, 147 are accredited. For calendar year 2020, there were 88 nursing education programs that had a graduate passing rate 10 percentage points or more below the national average rate for comparable program type. As of December 31, 2020, there were 26 programs on probation for failing to meet the required graduate exam passage rate. The majority of these programs were practical nursing programs (54 percent); however 12 percent were Bachelor of Science nursing programs.²²

In 2020, a total of 19 nursing education programs closed. Of those closed programs, 13 programs closed voluntarily and 6 programs were terminated by the BON; 10 of these programs were on probation immediately prior to their termination or closure.²³

At its February 2021 meeting, citing legislation anticipated to be filed for the 2021 Session, the BON withheld adverse action on a number of programs either subject to probation or termination. A total of 10 RN programs and 10 PN programs are awaiting administrative action. These include 4 RN programs and 1 PN program that are subject to termination. Additionally, there are a total of 24 programs that are pending probation that will be considered at the June meeting.

Effect of Proposed Changes

For approved nursing programs that are currently on probation or are subject to termination during the 2021 calendar year, the bill requires the BON to extend the programs' probation for an additional year or delay termination for one year, respectively. The bill requires the BON to grant the extension or delay at a regularly scheduled meeting on or before December 31, 2021.

The bill limits qualifying programs to those whose graduates failed to achieve the required graduate passing rate on the NCLEX during calendar year 2020.

The bill requires approved programs on probation to offer a test remediation program to graduates that do not pass the NCLEX on the first attempt. The program must be offered at no cost to the graduate and be available for one calendar year following graduation.

B. SECTION DIRECTORY:

Section 1: Amends s. 464.019, F.S.; requiring the Board of Nursing to extend an approved program's probationary status under certain circumstances; requiring an approved program on probationary status to offer a remediation program designed to assist a student in passing a specified examination at no additional cost to the student.

¹⁹ Section 464.019(9), F.S.

²⁰ Section 464.019(11), F.S.

²¹ Section 464.019(4), F.S.

²² Email, Florida Department of Health, Board of Nursing (March 31, 2021).

²³ Waiting on DOH information.

Section 2: Provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

There may be some cost to an approved program on probation that would be required to offer a test remediation program to graduates who do not pass the NCLEX. However, the cost is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2021, the Post-Secondary Education & Lifelong Learning Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from HB 937 by removing:

- The definition of “average graduate passage rate” that the bill defines as all of an approved nursing programs test takers who pass the NCLEX over a 2 year period.

- Certain data publication requirements relating to approved nursing programs' average graduate passing rates.
- The threshold average graduate passage rate required for an approved nursing program to avoid being placed on probation.
- Approved nursing program reporting requirements.
- The retroactivity clause that applies the bill's hold harmless protection for programs on probation or subject to termination.

The bill analysis is drafted to the committee substitute adopted by the Post-Secondary Education & Lifelong Learning Subcommittee.