Legislative Analysis

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NURSE LICENSURE COMPACT

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House Bill 4042 as introduced
Sponsor: Rep. Mary Whiteford
Committee: Health Policy
Complete to 4-11-19

SUMMARY:

House Bill 4042 would add section 16190 to the Public Health Code to enter Michigan into the Nurse Licensure Compact (NLC). In short, the compact would allow nurses to obtain multistate licensure to practice nursing in states that are parties to the compact without having to obtain licensure in each individual state.

The bill would also amend the Code to authorize a nurse who holds a multistate license to practice registered nursing or practical/vocational nursing in Michigan under the NLC.

A detailed description of the NLC follows.

Article 1 – Findings and Purpose. This article contains the finding that expanded mobility of nurses and the growing prevalence of technology (e.g., telemedicine) in the delivery of health care are complicated by a current system that requires duplicate licensure for nurses practicing in multiple states. The NLC's stated purpose includes providing guidelines for multistate nurse licensure that would enhance the portability of a nursing license and ensure the safety of patients without requiring compliance with each individual state's nurse licensure laws.

Article 2 – Definitions. This article defines 15 terms that pertain to the execution of the duties outlined in the NLC. Notably, the article defines ***multistate license*** as a license to practice as a registered nurse (RN) or licensed practical/vocational nurse (LPN/VN) issued by a home state's licensing board that authorizes the nurse to practice in all party states under a ***multistate licensure privilege***, which is the legal authorization associated with a multistate license allowing the practice of nursing in a remote state.

Article 3 – General Provisions and Jurisdiction. Multistate licenses issued by a party state would be recognized as valid in each party state. This article also outlines eligibility requirements for an RN or LPN/VN to receive a multistate license under the NLC, including rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators (described further in ***Article 7***, below).

If a state took action against a nurse's multistate licensure privilege, the state would have to notify the administrator of the ***coordinated licensure information system***, which is the integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws; it would be administered by a nonprofit organization composed of and controlled by licensing boards. (See ***Article 6***,

below.) Furthermore, the practice of nursing in a party state under a multistate licensure privilege would subject a nurse to the jurisdiction of the licensing board, the courts, and the laws, including practice laws, of the party state in which the patient is located at the time of service.

Individuals not residing in a party state could apply for a ***single-state license***, which is a license issued by a party state that authorizes practice only within the issuing state and does not include multistate licensure privilege. If a nurse already had a multistate license from the nurse's home state on the effective date of the NLC, the nurse could retain and renew the multistate license issued by his or her then-current home state if he or she met all of the requirements to obtain a multistate license under this article. A nurse could not retain or renew his or her multistate license if he or she could not satisfy the requirements of this article due to a disqualifying event that occurred after the effective date of the NLC.

Article 4 – Applications for Licensure in a Party State. This article describes the application process for a multistate license in a party state. A nurse could obtain a multistate license only from the nurse's home state. If a nurse moved from one party state to another, the license issued by the previous home state would be deactivated and the nurse would have to apply for licensure in the new home state. If a nurse moved from a party state to a non-party state, the multistate license would convert to a single-state license only valid in the former home state.

Article 5 – Additional Authorities Invested in Party State Licensing Boards. This article describes the authority that licensing boards in party states would have in regard to taking adverse action against a nurse's multistate licensing privilege or other disciplinary actions. Licensing boards could take adverse action against a nurse's multistate licensure privilege to practice within that party state; however, only a home state could take action against a nurse's license issued by the home state. A home state would have to give priority to reported conduct received from a remote state as if the conduct had occurred in the home state, including applying home state laws to determine appropriate action. If adverse action were taken by a home state against a nurse's multistate license, the nurse's multistate license privilege would be deactivated until all encumbrances had been removed. The NLC would not override a party state's decision to use participation in an alternative program in lieu of adverse action, and the nurse's multistate licensure privilege would be deactivated for the duration of the alternative program.

Article 6 – Coordinated Licensure Information System and Exchange of Information. The coordinated licensure information system would include information on the licensure and disciplinary history of each nurse, to assist in the coordination of nurse licensure and enforcement efforts. The commission, in consultation with the system administrator, would formulate procedures for the identification, collection, and exchange of information under the NLC. Additionally, this article covers what information licensing boards would have to report to the coordinated licensure information system. States could designate what information could not be shared with non-party states or disclosed to other entities or individuals without the permission of the contributing state.

Article 7 – Establishment of the Interstate Commission of Nurse Licensure Compact Administrators. This article describes the Interstate Commission of Nurse Licensure Compact Administrators, which would serve the party states. Each party state would be limited to one NLC administrator, who would be the head of the state licensing board or a designee. Any actions related to removal, suspension, or vacation in regard to an administrator would follow the laws of the concerned party state. This article also details powers of the administrators, compensation and meetings, contracts, and the creation of bylaws.

Judicial proceedings by or against the commission would have to be brought solely in competent jurisdiction where the principal office of the commission is located. The commission could waive venue and jurisdictional defenses to the extent it adopted or consented to participate in alternative dispute resolution proceedings. This article also describes the types of litigation or other judicial actions that could occur.

The commission would have to pay the reasonable expenses of its establishment, organization, and ongoing activities. The commission could levy and collect an annual assessment from each party state to cover operational costs, activities, and staff in its approved annual budget. The aggregate annual assessment amount would be allocated based upon a formula to be determined by the commission.

Article 8 – Rulemaking. The commission could promulgate rules that would have the same force and effect as provisions of the NLC. The commission would have to file a notice of proposed rulemaking at least 60 days before the meeting at which the rule will be considered for a vote and would have to allow public comment on the proposed rule before the rule could be adopted. However, the commission could adopt an emergency rule without prior notice as long as the regular rulemaking process was followed within 90 days after the emergency rule's effective date.

Article 9 – Oversight, Dispute Resolution, and Enforcement. Each party state would have to enforce the NLC and take all action necessary and appropriate to effectuate its purpose and intent. The commission would be entitled to receive service of process in any proceeding that may affect it and would have standing to intervene in such a proceeding. Failure to provide service of process in such a proceeding would render a judgment or order void as to the commission, the NLC, or promulgated rules.

If the commission determined that a party state had defaulted in its obligation or responsibilities related to the NLC, the commission would provide written notice to the defaulting state and other states of the nature of the default and the proposed means of correcting it, or another action to be taken by the commission, and provide remedial training and specific technical assistance relating to the default. If the defaulting state did not rectify the default, the state's membership in the NLC, including all privileges and benefits, could be terminated by a majority vote of the administrators. Termination would be imposed only after all other means of securing compliance had been exhausted. Notice of termination or suspension would have to be given to the defaulting state's governor, the executive officer of its licensing board, and each party state. The defaulting state could

appeal the commission's action by petitioning the U.S. district court for the District of Columbia or the federal district where the commission has its principal offices.

Upon request, the commission would attempt to resolve disputes related to the NLC among party states and between party and non-party states. If the commission were unable to resolve a dispute among party states, the party states could bring the dispute to an arbitration panel made up of individuals appointed by the compact administrator in each of the affected states and an individual mutually agreed upon by the compact administrators of the party states involved in the dispute. The commission could initiate legal action in federal district court to enforce compliance with the NLC, its rules, and its bylaws. The commission could also pursue any other remedies afforded under federal or state law.

Article 10 – Effective Date, Withdrawal, and Amendment. This article states that the NLC would become effective on the date that it is enacted by at least 26 states or on December 31, 2018, whichever is earlier.[1] States participating in a prior nurse licensure compact superseded by the NLC would be withdrawn from the previous compact within six months of enactment of the NLC. Each party state of the NLC would still recognize a nurse's multistate licensure privilege to practice in that state under a prior compact until the state was withdrawn from the prior compact.[2]

Nothing in the NLC would invalidate or prevent any other nurse licensure agreement or other cooperative arrangements between a party state and a non-party state that were made in accordance with the provisions of the NLC.

A state could withdraw from the NLC by repealing its enabling statute. The withdrawal would not take effect until six months after the repeal. Withdrawal or termination of a state's membership would not affect the continuing requirement of that state's licensing board to report adverse actions and significant investigations occurring before the withdrawal or termination.

Party states could amend the NLC, but the amendment would not be effective until enacted into the laws of all party states.

Article 11 – Construction and Severability. This article declares that the NLC should be liberally construed to effectuate its purposes. The article also states that the provisions of the NLC are severable and that, if any provision were found to be contrary to the constitution of any party state or of the United States or otherwise held to be invalid, the remaining provisions, or if relevant the NLC's applicability to other party states, would not be affected by that invalidity.

House Bill 4042 would take effect 90 days after enactment.

Proposed MCL 333.16190 et al.

[1] According to the National Council of State Boards of Nursing, the NLC had 29 party states in January of 2018. See https://www.ncsbn.org/listofmemberstatesanddates111618.pdf

[2] The current NLC updated and superseded an earlier compact.

FISCAL IMPACT:

House Bill 4042 would have a significant fiscal impact on the Department of Licensing and Regulatory Affairs (LARA), due to costs that would be incurred for the state's participation in the nurse licensure compact. The department would experience indeterminate cost increases associated with activities including administration of the multistate licensure program in Michigan and investigation of complaints against multistate licensed nurses who obtained licensure in another state but committed a violation during practice in Michigan. It is unclear whether such investigation costs could be recovered. Additionally, the process for reviewing licensure applications would necessarily include additional examination to determine if an applicant possesses a multi-state license issued in another state. LARA currently projects that an additional FTE would be required to process licensure applications, to conduct complaint investigations on multistate licensees, and to monitor repayment of investigative costs. Total costs associated with this position are estimated to total approximately $115,000. The department also anticipates that enforcement costs for the Attorney General and the Michigan Administrative Hearing System would increase by approximately $250,000 annually at the program's inception.

The department would also experience indeterminate IT cost increases for interfacing with the coordinated licensure information system (including submission of uniform data sets). LARA indicated that additional IT costs would also likely arise from changes to the current licensing and regulatory platform (MiPLUS) that would be necessary to accommodate both single-state and multistate licensure processes.

Party states under the compact are liable for payment of an annual levy, which supports the activities of the Interstate Commission of Nurse Licensure Compact Administrators. The formula for determining each member state's liability is set by the commission, and LARA indicated that this fee is presently $6,000 per state.

The bill would have an indeterminate fiscal impact on the state and on local court funding units. The magnitude of incurred costs would depend on the volume of increased subpoenas from other states and how that increase affected court caseloads and related administrative costs.

The bill would not have a fiscal impact on any local units of government.

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