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FP 2023-297, Plc 1600 Nurse Agencies
Summary of Comments on Initial Proposal with OPLC Responses
February 20, 2024

Background

The Executive Director of the Office of Professional Licensure and Certification (OPLC) is proposing to adopt rules to implement, for the first time, RSA 326-M as enacted by 2023, 242 (eff. 10-07-23), relative to the registration of nurse agencies. The proposed rules are explained in more detail in the rulemaking notice published in the *NH Rulemaking Register* on January 4, 2024.

No members of the public attended the public hearing held on January 30, 2024. Written comments were received from the state's Long Term Care Ombudsman (LTC Ombudsman) and from AMN Healthcare. Written comments also were received from OLS/Administrative Rules. All comments and responses thereto follow the description of changes made on the OPLC's own initiative.

The OPLC made the following revisions on its own initiative:

Plc 1602.04 (definition of "executive director"): deleted "office of professional licensure and certification" and the parentheses around "OPLC", as the acronym is identified in Plc 1601.01(a).

Plc 1602.11 (definition of "plan of correction"): deleted based on deletion of language where the term was used from later sections (*see* Plc 1605.4011, Plc 1605.4412, below)

Plc 1603.02 (applying for initial registration): in (b)(1), changed the date of the form to reflect the revised form being adopted with the amendments to Plc 300, in accordance with information received from Director Morrell.

Plc 1603.03 (information required for initial registration application): in (a), added "as a range and as an average" to the "estimated number of licensed medical personnel", since it is unlikely to be a single number and can reasonably be expected to fluctuate.

Plc 1605.03 (application for registration renewal): changed the date of the form per comment re: Plc 1603.02, added cross-reference to new Plc 1605.04 re: information required, updated cross-reference at end of paragraph.

Plc 1605.04 (new re: information required for registration renewal): added section to require information to be submitted on the estimated number of licensed medical personnel the applicant expects to have available for assignments to clients as a range and as an average, since the numbers could be substantially different from those provided with the initial registration.

Plc 1605.04 - Plc 1605.11: renumbered as Plc 1605.05 - Plc 1605.12 to reflect addition of new Plc 1605.04 and updated internal cross-references to reflect new section numbers.

Plc 1605.4011 (reinstatement after expiration): replaced all text with a cross-reference to Plc 312, which will be effective prior to this chapter taking effect.

Plc 1605.4412 (reinstatement after suspension or revocation): replaced all text with a cross-reference to Plc 312.

Plc 1607.01 (rules of practice and procedure): revised and restructured to add a cross-reference to Plc 310 for complaints, investigations, and conduct of disciplinary hearings.

Plc 1607.02 (procedures for registration suspension or revocation): revised heading to apply more broadly to disciplinary and non-disciplinary remedial proceedings and imposing license conditions, and replaced all text with a cross-reference to Plc 311.

Plc 1607.03 through Plc 1607.05: deleted Plc 1607.03 and Plc 1607.04 based on revisions to Plc 1607.02; renumbered Plc 1607.05 as Plc 1607.03.

Public Comments – all on Plc 1600 generally

LTC Ombudsman

Comments: *We recommend the addition of a clause that would require nurse agencies to disclose the results of background checks, including license-related settlement agreements or findings and criminal records, in advance of the placement of an individual at a health care facility.*

“Health care facilities are required under federal and state law to protect the health and safety of the residents in their care. This includes taking measures to prevent abuse, neglect, and exploitation. The full disclosure suggested in this addition to the bill will allow providers to make informed choices on staff in their facilities. Without this information health care facilities could have individuals working in their building they might not select under their own recruitment process.”

Response: The OPLC researched the material available on-line relative to the legislative history of the bill that established RSA 326-M, and could find no mention of any discussion of this issue. Since there is no support in the legislative history or in the statute that was enacted for requiring nurse agencies to disclose any criminal history information to facilities that contract with the agency for services, the OPLC is not willing to add such a requirement to the rules. The OPLC notes, however, that nothing in RSA 326-M or proposed Plc 1600 operates to prevent a health care facility from including this kind of disclosure as a contract requirement when contracting with a nurse agency for services. No change to the rules has been made in response to this comment.

AMN Healthcare

Comment 1: Technology-based Solutions or Platforms: *Currently the definition of Nurse Agency as proposed in Plc 1602.09 includes “...employs, assigns, or refers such personnel through the use of apps or other technology-based solutions or platforms.” Not all technology-based solutions or platforms have full credentialing services requested by the healthcare facility (“client”). Many clients utilize the platforms to determine and manage their own requirement determinations. It would be challenging for a platform operator to enforce specific credentialing items such as reference checks, educational requirements, background checks, training, etc. if the client is purchasing and requesting a platform with no operator managed credentialing requirements.*

Recommendation: *Agency requirements to be adjusted to reflect the uniqueness of web-based platforms (i.e. Vendor Management Systems) and/or create a separate type of license/registration with separate specialized standards.*

Response 1: Plc 1602.09 simply restates the definition of “nurse agency” established in statute, specifically RSA 326-M:1, I. If a health care facility wishes to have nursing staff from a nurse agency that provides full credentialing services, then the facility is obligated to determine whether such services are provided by the nurse agencies it is considering. No change to the rules has been made in response to this comment.

Comment 2: Advanced Practice Nurses Clarification: *Currently there is no definition of “Nurse” and no expressed exclusion of Advanced Practice Nurses. The lack of clarity could inadvertently create confusion and cause inclusion of this specific discipline unnecessarily.*

Recommendation: *Explicit exclusion of advance practice nurses from the Nurse Agency scope ideally through proposed rules, an addition of a “nurse definition” or through a state published FAQ.*

Response 2: The OPLC does not believe this is relevant to the registration of nurse agencies. If any of the nursing personnel placed by the agency are nurses or licensed nursing assistants, the agency must register. No change to the rules has been made in response to this comment.

Comment 3: Independent Contractor Clarification: Currently there is no expressed exclusion of independent contractors in the proposed rules. The lack of clarity could inadvertently create confusion and cause inclusion of independent contractors (advanced practice nurses) unnecessarily.

Recommendation: Explicit exclusion of independent contractors (1099) personnel from the Nurse Agency scope ideally through amended rules, through addition “nurse definition” or through a published state FAQ.

Response 3: The OPLC does not believe this is relevant to the registration of nurse agencies. If any of the nursing personnel placed by the agency are employees of the agency, the agency must register. No change to the rules has been made in response to this comment.

Comment 4: Currently there is no definition of “time period” in these proposed rules in reference to “Nurse agencies must not commit the services of a single nurse or licensed nursing assistant to more than one health care facility for the same time period or shift and cancel a commitment to a facility, or compel that facility to bid again for services already promised it.” AMN requests clarity as there are situations where per diem clinician will work at different facilities during the same week yet not overlapping directly.

Recommendation: Add definition of “time period”.

Response 4: A definition of “same time period or shift” is included in the FP.

Comment 5: There is no definition of “temporary” in these proposed rules. The lack of definition may inadvertently include inclusion of agencies who utilize 24-month long contracts and are considered “longer-term” and not “temporary”. The state of Illinois defines temporary through “long-term” and “regular term” contracts where a regular term contract is any contract under 24-months or more and a “long-term contract” as any contract over 24-months. Iowa and Louisiana are other states that have exceptions for longer term contract agencies. International nursing through the exception cut of being all contracts at 24-months or longer. These specifications are vital to International Nurse staffing and recruiting. International nurse recruitment is vastly more than domestic nurse recruitment. All immigration and licensure requirements pertaining to International Nurse recruitment are financially supported by the staffing agencies and employers that bring Healthcare Professionals to the United States. The process and investment can last several years.

Recommendation: Add definition of “temporary” and exclude contracts of 24 or more months from that definition to help support International Nursing recruitment process.

Response 5: A definition of “temporary” is included in the FP.

Comment 6: Currently there is no mention of or definition for “direct care” in the proposed rules. Many Nurse Agency regulations limit the requirements to professionals that have “direct care” with patients.

Recommendation: Add definition of “direct care” to rules or clarify through a state published FAQ.

Response 6: The term “direct care” is not used in RSA 326-M, and does not appear to be relevant to whether a nurse agency is required to register. No change to the rules has been made in response to this comment.

Comment 7: Primary Source License Verification: Primary Source Verification license/registration systems have been adopted by numerous states. Online primary verification systems allow for increased compliance visibility for the public, healthcare facilities and other Nurse Agencies that utilize supplier agency partners. A primary source guards against potential licensure fraud.

Recommendation: Develop and implement an online state license/registration verification website that would allow any user to verify the status of a Nurse Agency’s license or registration.

Response 7: New Hampshire already has an on-line system that allows for this kind of verification, available at <https://forms.nh.gov/licenseverification/>. No change to the rules has been made in response to this comment.

OLS Comments

Plc 1601.02 re: applicability

Comment: *“**Edit/Unclear:** This date [January 1, 2024] will need to be updated to the date the rule is adopted. Otherwise it would violate Part 1, Art. 23 of the NH Constitution.”* (Bold in original.)

Response: The rule has been revised to add a citation of RSA 326-M as paragraph (a), which establishes the date, and to delete the date from the language in the IP, which is now paragraph (b).

Plc 1603.02 re: applying for initial registration

Comment 1: *“**Edit/Unclear.** Specify or define who the licensing bureau is [in (b) intro].”* (Bold in original.)

Response 1: “Licensing bureau” is defined at Plc 1602.08.

Comment 2: [re: (b)(1)] *“**Edit:** If the form is “tailored”, then that makes it different from the form adopted in March 2023. Therefore, the date will need to be updated to when the rule is approved by JLCAR. If the OPLC instead creates an “addendum” and makes no changes to the form, then this date will remain the same and the addendum title and date will need to be put into the rule text.”* (Bold in original.)

Response 2: The OPLC has determined that any additions to the “universal” application forms for a specific profession will be called a “[Profession] Supplement”. The rule has been revised to reflect this.

Plc 1603.07 re: review of initial applications

Comment: [(c) is] *“**Unclear.** Not seeing anywhere else, so needs to specify “within 60 days” or say “in compliance with RSA 541-A:29.”* (Bold in original.)

Response: Language has been added as a new paragraph (b) intro and (1), and paragraph (c) has been moved and renumbered as (b)(2), to address this.

Plc 1605.03 re: renewal applications

Comment: [re: (a)] *“**Edit:** If the form is “tailored”, then that makes it different from the form adopted in March 2023. Therefore, the date will need to be updated to when the rule is approved by JLCAR. If the OPLC instead creates an “addendum” and makes no changes to the form, then this date will remain the same and the addendum title and date will need to be put into the rule text.”* (Bold in original.)

Response: Revisions similar to those made for initial applications have been made here.

Plc 1605.07 re: review of initial applications

Comment: [(c) is] *“**Unclear.** Not seeing anywhere else, so this needs to specify “within 60 days” or say “in compliance with RSA 541-A:29.”* (Bold in original.)

Response: A reference to RSA 541-A:29, II has been inserted in (a).

Plc 1605.11 (FP 1605.12) re: reinstatement of suspended or revoked registration

Comment: *“**Edit/Unclear.** Plc 1605.10(b) & (c) are for a renewal or initial application. Does not seem like there is “an application for reinstatement”. Consider, “Submit an application as specified in Plc 1605.10(b) or (c) in order to reinstate the license, as applicable;.”* (Bold in original.)

Response: This language has been removed from the rule per the OPLC’s changes described on pages 1-2.

Plc 1607.01 re: rules of practice and procedure

Comment: [re: (b)] *“**Unclear/Legis. Intent.** In order to ensure all the requirements in RSA 541-A:30-a are included, change (b) to just say “Adjudicatory proceedings.”* (Bold in original.)

Response: This has been addressed in the OPLC’s changes to this section described on pages 1-2.

Edits: Plc 1605.01 intro; Plc 1605.11 heading.