

- SUBJECT:** Continuing the Texas Board of Nursing
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 10 ayes — Price, Sheffield, Arévalo, Burkett, Coleman, Cortez, Guerra, Klick, Oliverson, Zedler
- 0 nays
- 1 absent — Collier
- WITNESSES:** For — Jennifer Gentry and Mary Lee Pollard, Excelsior College; Kathryn Tart, Texas Deans and Directors of Professional Nursing Programs; Cindy Zolnerek, Texas Nurses Association; Pat Recek; Debora Simmons; (*Registered, but did not testify:* Wendy Wilson, Consortium of Certified Nurse-Midwives; Andrew Cates, Nursing Legislative Agenda Coalition; Carrie Kroll, Texas Hospital Association; Erin Cusack and Casey Haney, Texas Nurse Practitioners)
- Against — None
- On — Katherine Thomas, Texas Board of Nursing; Skylar Wilk, Texas Sunset Advisory Commission; (*Registered, but did not testify:* Kristin Benton, James (Dusty) Johnston, and Mark Majek, Texas Board of Nursing)
- BACKGROUND:** The Texas Board of Nursing was established to protect public health and safety by regulating nurses and nursing education programs in Texas. To achieve its mission, the board:
- issues licenses for vocational nurses (LVNs), registered nurses (RNs), and advanced practice registered nurses (APRNs);
 - approves and regulates pre-licensure nursing education programs;
 - enforces statute and board rules by investigating and resolving complaints against nurses; and

- offers a peer assistance program for nurses who are impaired.

Governing structure. The board is composed of 13 members: four public members, three LVNs, two RNs, one APRN, one member representing LVN education programs, one member representing bachelor's degree in nursing education programs, and one member representing associate's degree in nursing education programs.

Staffing. In fiscal 2015, 117 staff were employed by the board.

Funding. For fiscal 2015, the board received appropriations of about \$11.4 million. In fiscal 2016, the board collected more than \$17.7 million in fees, including \$7.3 million in license renewal fees.

The board would be discontinued on September 1, 2017, unless continued in statute.

DIGEST: CSHB 2950 would continue the Texas Board of Nursing (BON) until September 1, 2029.

Out-of-state nursing programs. The bill would require the board by rule to develop a pathway to initial licensure for graduates of out-of-state programs that were not substantially equivalent to Texas programs.

Out-of-state clinical competency assessment programs that graduated students who passed the National Council Licensure Examination (NCLEX) for Registered Nurses at a lower rate than the board's required passage rate for graduating students of approved in-state programs would have to take certain actions that corresponded to the number of consecutive years an out-of-state program's passage rate was below the board's required passage rate. Certain actions by these out-of-state programs would include submitting a self-study of their programs to the board, allowing the board to evaluate and make recommendations to improve the program through a desk review, and providing notice on their website that future students may need to meet additional requirements for initial licensure in Texas.

By May 31, 2018, the board would have to adopt rules on the bill's provisions related to out-of-state nursing programs. The bill's provisions would apply to out-of-state program passage rates that were available beginning in January 2018.

Sanctions. The bill would update definitions of unprofessional conduct and good professional character and would direct the BON to adopt rules ensuring license denials and disciplinary action were limited to the practice of nursing. The board would have to adopt rules to reflect these changes by March 1, 2018.

Nurse licensure compact. The bill would update the current Nurse Licensure Compact administered by the board, which allows nurses licensed by their home state to practice in other states participating in the compact without obtaining a separate license.

The new Nurse Licensure Compact would differ from the current compact in numerous ways, including by:

- requiring fingerprint or other biometric-based background checks for all new nurses obtaining a compact license;
- prohibiting nurses with felony convictions from obtaining a compact license;
- establishing the Interstate Commission of Nurse Licensure Compact Administrators and delineating membership, powers, and financing;
- requiring the commission to prescribe rules or bylaws governing its conduct as needed to carry out the purposes of the compact;
- directing each state to enforce the compact; and
- establishing dispute resolutions and state termination procedures.

The new Nurse Licensure Compact would take effect on the earlier date of when 26 states have enacted the compact or December 31, 2018. The bill would repeal certain provisions of the current Nurse Licensure Compact on December 31, 2018.

Prescription monitoring. The bill would require the board to periodically check the Texas State Board of Pharmacy's Prescription Monitoring Program (PMP) to determine whether an APRN was engaging in potentially harmful prescribing patterns. The board, in coordination with the Board of Pharmacy, would determine conduct that qualified as a potentially harmful prescribing pattern or practice. At a minimum, the board would have to consider the number of times an APRN prescribed opioids, benzodiazepines, barbiturates, or carisoprodol, and patterns of prescribing combinations of those drugs and other dangerous combinations of drugs identified by the board.

The bill also would require an APRN authorized to prescribe drugs to review a patient's prescription history in the PMP before prescribing opioids, benzodiazepines, barbiturates, or carisoprodol. This provision would apply to a prescription issued on or after September 1, 2018.

Peer assistance program. The board could require in a declaratory order that a person begin participation in the Texas Peer Assistance Program for Nurses upon receipt of an initial nursing license. The bill would require the board by rule to develop a process for determining whether a person needed to continue participating in a peer assistance program. The BON would have to create and use customized requirements for the program that corresponded to individual nurses' needs and diagnoses.

Board training. The bill would revise training requirements for board members. The executive director of the board would be required to create and distribute annually copies of the board's training manual to each board member.

Repealed provisions. The bill would repeal the board's authority to develop pilot programs and its required submission of an annual report to the governor containing board proceedings.

Effective date. The bill would take effect September 1, 2017.

SUPPORTERS
SAY:

CSHB 2950 would protect and promote the welfare of Texans by ensuring that each person holding a nursing license in Texas was competent to practice safely.

Out-of-state nursing programs. The lack of long-term clinical experience and the below-average National Council Licensure Examination (NCLEX) exam passage rates suggest graduates from some out-of-state nursing programs may not be as prepared to enter the nursing profession as nursing students who graduate from in-state programs that require traditional clinical learning experiences. Requiring out-of-state programs to take certain actions if they failed to meet exam passage rates as determined by the Texas Board of Nursing would ensure only qualified nurses received nursing licenses to practice in Texas.

Sanctions. The board sometimes reprimands nurses for conduct unrelated to their profession, often resulting in more severe sanctions than may be deemed necessary. A narrow and objective application of the board's criminal guidelines would ensure no disciplinary action was taken against a nurse whose conduct was not relevant to the practice of nursing.

Nurse Licensure Compact. Adopting the new Nurse Licensure Compact would increase nurses' mobility within the profession and improve consumer access to health care. Combining the compact with growing telehealth capabilities and distance education would help address nursing shortages, especially in rural areas.

Prescription monitoring. The board lacks clear statutory authority and legislative direction to proactively monitor licensees' prescribing patterns and investigate nurses who may engage in improper prescribing. Proactive monitoring would help curb prescription drug abuse.

Peer assistance program. The current structure of the Texas Peer Assistance Program for Nurses does not adequately meet the needs of nurses with substance abuse disorders and mental health issues. Removing stringent program length requirements would enable nurses to remain in the program for as long as necessary, depending on the severity of their

disorder or previous treatment.

**OPPONENTS
SAY:**

Rather than requiring the Texas Board of Nursing to update its code of conduct rules, CSHB 2950 should transfer the board's authority to enforce disciplinary actions to the State Office of Administrative Hearings. This would minimize conflicts of interest, allow a neutral party to assess the merits of a nurse's unprofessional conduct as it pertains to the practice of nursing in disciplinary proceedings, and help to prevent application of conduct rules beyond that.

NOTES:

A companion bill, SB 305 by Hinojosa, was referred to the Senate Committee on Health and Human Services on March 6.