

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Higher Education Committee

BILL: SB 2530

INTRODUCER: Senator Alexander

SUBJECT: Nursing Education Programs

DATE: March 25, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bell	Wilson	HR	Favorable
2.	Harkey	Matthews	HE	Favorable
3.			GO	
4.			HA	
5.				
6.				

I. Summary:

The bill modifies the Florida Board of Nursing (BON) nursing education program¹ approval and regulatory process, that was substantially restructured by the Legislature in 2009. The bill provides that a nursing education program that is *accredited* by one of the two specialized accrediting agencies that are recognized by the United States Secretary of Education to accredit nursing education programs is not subject to regulation by the BON, as long as the program maintains its accredited status.

The bill makes other changes to:

- Clarify that the BON must approve or deny a nursing education program application within 90 days after the receipt of a *complete* application;
- Provide that the graduate passage rate on the National Council Licensure Examination (NCLEX), which must be achieved by approved programs, is no lower than 10 percentage points less than the national average passing rate;
- Clarify that the requirements for NCLEX graduate passage rates, as adopted by the Legislature last year for approved programs, should only be applied prospectively beginning with the 2010 calendar year;
- Eliminate probation as a penalty if an approved program fails to submit an annual report; and
- Authorize a nursing education program director to receive information on the NCLEX exam date and pass/fail scores for the program's graduates included in the program's graduate passage rate.

¹ ch. 2009-168, L.O.F.

This bill substantially amends ss. 456.014, 464.003, 464.008, 464.015, 464.019, 464.022, 458.348, 459.025, 464.012, and 960.28, F.S.

II. Present Situation:

The Nurse Practice Act

Part I, of ch. 464, F.S., provides for the regulation of the practice of nursing in Florida by the Board of Nursing (BON) within the Department of Health (DOH), Division of Medical Quality Assurance. The BON's authority includes: rule adoption, disciplinary action for nurses who violate regulations, and approval and monitoring of nursing education programs. The BON is comprised of 13 members appointed by the Governor and confirmed by the Senate.² Seven members must be registered nurses (RNs) and three members must be licensed practical nurses (LPNs). The remaining three members must be Florida residents who have never been licensed as a nurse and who are in no way connected to the practice of nursing or to any health care facility, agency, or insurer. The BON meets six times a year and is staffed with 43 full-time positions.³

Nursing Education Program Approval

Nursing education programs must be approved by the BON. Applications to establish new programs are evaluated by staff in the BON's education unit. Under the Nurse Practice 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.⁴ As of October 2009, there were 181 nursing education programs operating in Florida, including: 98 programs that offer an LPN certificate, 58 programs that offer an associate degree in nursing, and 25 programs that offer a bachelor's degree in nursing.⁵ Individuals seeking licensure as an RN or LPN in Florida must have graduated from an *approved program* or its equivalent, as determined by the BON, and pass the NCLEX developed by the National Council of State Boards of Nursing (NCSBN) and administered by the DOH.⁶

Prior to July 1, 2009, the BON had broad authority to establish the requirements for nursing education program approval and regulation in Florida, under s. 464.019, F.S. (2008). The BON had the authority to adopt rules to ensure that approved nursing education 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.

² Section 464.004, F.S.

³ Office of Program Policy Analysis and 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, January 2010. Found at: <<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1014rpt.pdf>> (Last visited on March 16, 2010).

⁴ Section 464.003(8), F.S.

⁵ Office of Program Policy Analysis and 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, January 2010. Found at: <<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1014rpt.pdf>> (Last visited on March 16, 2010).

⁶ Section 464.008, F.S.

In 2009, the Legislature repealed the BON's nursing education program approval and regulation rulemaking authority and specified the nursing education program approval and regulatory process in law.⁷ The BON is now prohibited 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. The BON has no discretionary rulemaking authority to implement s. 464.019, F.S., but is directed to adopt a rule to specify the format of program applications and summary descriptions of program compliance. The BON was also directed to repeal all nurse education approval and regulation rules on July 1, 2009, that were inconsistent with the new law.

Grandfathering Existing Nursing Education Programs

Under the 2009 legislation, all nursing education programs 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 approved programs on July 1, 2009, except for a program on probation due to inadequate graduate passage rates on the NCLEX.⁸ All nursing education programs on such probation will remain on probation until the program achieves an average graduate passage rate for its first-time test takers on the NCLEX that is no more than 10 percent (percentage points) below the national average passage rate for first-time, U.S. educated test takers. A program on probation has until July 1, 2011, to improve its NCLEX scores or the program will be terminated.⁹ As of June 30, 2009, seven nursing education programs were on probation for inadequate student performance on the NCLEX.¹⁰

Nursing Education Program Approval Process

The 2009 Legislature modified the nursing education approval process. On or after July 1, 2009, an educational institution applying for approval of a practical or professional nursing education program is required to document that:¹¹

- For a *practical* nursing program 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 in nursing. For a *professional* nursing program, the 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 for students in clinical training consistent with specified standards in law.¹²

⁷ See ch. 2009-168, L.O.F.

⁸ Section 464.019(2), F.S.

⁹ Section 464.019(2) and (5)(a), F.S.

¹⁰ Florida Center for Nursing, Report of Findings and Recommendations Ch. 2009-168, Laws of Florida, FL Board of Nursing Education Program Approval and Oversight, January 2010. Found at: <http://www.flcenterfornursing.org/files/Report_of_Findings_BON_2010.pdf> (Last visited on March 16, 2010).

¹¹ Section 464.019(1), F.S.

¹² Section 464.019(1)(f), F.S.

- The curriculum plan documents the required clinical experience and theoretical instruction specified in law.¹³

The BON is required to approve a nursing education program application, within 90 days of the receipt of the application, if the program documents the required standards outlined above. If the BON receives a prelicensure nursing education program application that is incomplete or does not document the required standards, the BON is directed to take the following actions:

- For an incomplete application, the BON must notify the educational institution of any errors or omissions within 30 days after receipt of the application and follow the procedures specified in s. 120.60, F.S. Once a program submits a modified nursing education program application that corrects each error and omission identified by the BON, the BON has 90 days to approve the program after receipt of the corrected application.¹⁴
- If the program application does not document compliance with the requirements in law, the BON must, within 90 days after receipt of the application, provide the educational institution with a notice of intent to deny that includes reasons for the denial.¹⁵

If the BON does not act on an application within the timeframes summarized above, the application is deemed approved and the program becomes an approved program under s. 464.019, F.S.

Regulation of Approved Programs

Educational institutions with approved nursing education programs, including programs on probation, are required to submit a report to the BON by November 1 of each year to maintain their approved status. If a program fails to submit its annual report on time, the BON must place the program on probation. If the required annual report is not submitted within six months following its due date, the BON must terminate the program.¹⁶

The annual report must include an affidavit certifying continued compliance with the nursing education program requirements in law¹⁷ and provide a summary description of that compliance. The annual report must also include data from the previous academic year on 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.¹⁸

In addition, 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 (percentage points) 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. The program will remain on probationary status until it

¹³ Section 464.019(1)(g) and (h), F.S.

¹⁴ Section 464.019(3), F.S.

¹⁵ The educational institution may request a hearing on the notice of intent to deny the program application pursuant to ch. 120, F.S.

¹⁶ Section 464.019(5)(b), F.S.

¹⁷ Section 464.019(1), F.S.

¹⁸ Section 464.019(2)(b) and (c), F.S.

achieves the required passage rate. The program will be terminated by the BON if it does not achieve compliance within two calendar years.¹⁹ A program on probation must disclose this status in writing to its students and applicants.²⁰

Board of Nursing Website

In 2009, the Legislature required the BON to publish specified information about Florida nursing programs on its website, by December 31, 2009, including:

- 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;
- The national average passage rate for the NCLEX; and
- 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.²¹

Implementation Monitoring

The 2009 legislation²² established a 6-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. The Florida Center for Nursing (FCN) and the Office of Program Policy Analysis and Government Accountability (OPPAGA) were required 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, 2010.²³ In addition, the Joint Administrative Procedures Committee (JAPC) monitored the BON's new nursing education program approval and education rulemaking requirements.

The OPPAGA report, *Since Implementing Statutory Changes, the State Board of Nursing Has Approved More Nursing Programs; the Legislature Should Address Implementation Issues*, was released in January 2010. The report found that new nursing education applications submitted to the BON have more than doubled, compared to the previous year. Since July 1, 2009, the BON considered 25 new applications for nursing programs, compared to 10 new applications in all of 2008. The BON has approved 20 new nursing programs during this timeframe, compared to nine new programs approved in 2008.

In addition, the OPPAGA report identified the following six issues associated with the BON's implementation of the revised nursing education program approval and regulatory processes:

¹⁹ Section 464.019(5)(a), F.S.

²⁰ Section 464.019(5)(c), F.S.

²¹ Section 464.019(4), F.S.

²² See ch. 2009-168, L.O.F..

²³ Section 464.019(8), F.S.

1. The program application timeframe is inconsistent with the timeframe established in the Administrative Procedure Act.
2. The BON's application for new nursing programs is not yet finalized and includes requirements beyond those in statute.
3. The BON's method for placing programs on probation is not finalized.
4. The BON's instructions for the 2009 Annual Report and Workforce Survey did not specify which items programs must complete to comply with the statute.
5. The BON's interactive website does not include all required elements.
6. The BON's process for communication with nursing education programs needs improvement.

The FCN and JAPC also identified many of the same concerns.^{24, 25}

The FCN and OPPAGA are required to continue to study the implementation of ch. 2009-198, L.O.F., for the next five years and to submit a report to the Governor and presiding officers of the Legislature on January 30, 2011, and annually thereafter through January 30, 2015.²⁶ For this study, 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 directed to evaluate the BON's implementation of the program application approval process and program probation and termination processes.

III. Effect of Proposed Changes:

Definitions

The bill amends s. 464.003, F.S., to put the definitions in alphabetical order, amend some existing definitions, and add definitions for the Nurse Practice Act.

The bill substantively modifies the current definitions of *approved program*, *clinical preceptor*, and *probationary status*.

- An *approved program* means a program for the prelicensure education of professional or practical nurses that is conducted in the state at an educational institution and that is approved under s. 464.019, F.S. The term includes such a program placed on probationary status.
- A *clinical preceptor* means an RN or LPN who is employed by a clinical training facility to serve as a role model and clinical resource person for a specified period to students enrolled in an approved program. Current law only authorizes an RN to be a clinical preceptor.
- A *probationary status* means the status of an approved program that is placed on probation pursuant to s. 464.019, F.S.

²⁴ Florida Center for Nursing, Report of Findings and Recommendations Ch. 2009-168, Laws of Florida, FL Board of Nursing Education Program Approval and Oversight, January 2010. Found at: http://www.flcenterfornursing.org/files/Report_of_Findings_BON_2010.pdf (Last visited on March 16, 2010).

²⁵ Joint Administrative Procedures Committee, Meeting Packet, Monday, February 15, 2010. Found at: http://www.leg.state.fl.us/data/committees/Senate/meeting_packets/japc.pdf (Last visited on March 16, 2010).

²⁶ Section 464.019(9), F.S.

The bill adds the following definitions to s. 464.003, F.S.

- *Accredited program* means 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 national accrediting agency recognized by the United States Department of Education for the agency's specialization in nursing education. The National League for Nursing Accrediting Commission (NLNAC) and the Commission on Collegiate Nursing Education (CCNE) are the two specialized accrediting agencies currently recognized by the Secretary of the Department of Education.²⁷
- *Educational institution* means a school, college, or university.
- *Graduate passage rate* means 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* means the graduate passage rate required for an approved program pursuant to s. 464.019(6)(a)1., F.S. This subparagraph clarifies that the required passage rate is no lower than 10 percentage points, rather than 10 percent as in current law, below the national average passage rate on the NCLEX for United States educated, first-time test takers. The bill also specifies that the applicable national average passage rate is based on the type of program, i.e., a professional nursing associate degree, a professional nursing bachelor's degree, and a practical nursing certificate.

Licensure

The bill amends s. 464.008(1)(c), F.S., relating to the RN and LPN licensure requirements. Current law specifies that an individual must have graduated from an *approved program or its equivalent* as one of the requirements for RN and LPN licensure. The bill adds the following programs and conditions, as acceptable education requirements for RN and LPN licensure:

- Graduation on or after July 1, 2009, from an accredited program; and
- Graduation before July 1, 2009, from a prelicensure nursing education program whose graduates at that time were eligible for examination.

The bill authorizes graduates of prelicensure nursing education programs, as defined in section 3 of the bill, to use the terms Graduate Nurse and Graduate Practical Nurse and the abbreviations G.N. and G.P.N., respectively, pending the results of the first licensure examination for which they are eligible.

Statute Reorganization

The bill amends s. 464.019, F.S., to modify the approval of nursing education programs and reorganize the section. The bill reorders and renumbers subsections (1) through (9) to provide the following structure: (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.

²⁷ U.S. Department of Education, Specialized Accrediting Agencies, Healthcare. Found at: <http://www2.ed.gov/admins/finaid/accred/accreditation_pg8.html#health> (Last visited on March 16, 2010).

Accredited Nursing Education Programs

The bill creates s. 464.019(10), F.S., to provide that an *accredited program* is no longer subject to regulation by the BON as long as the program maintains its accreditation. However, under s. 464.019(8), F.S., an accredited program that closes is required to notify the BON of its arrangements for storage of permanent records. The BON is specifically prohibited in s. 464.019(9), F.S., from imposing any condition or requirement on an accredited program except as expressly authorized in s. 464.019, F.S. Subsection 464.019(11), F.S., specifies that accredited programs and approved programs are required to respond to any data requests from the FCN and the OPPAGA.

If an accredited program loses its accreditation status, it may apply to the BON to become an approved program.

Approved Nursing Education Programs

The bill substantially retains the BON approval process for non-accredited programs as established by the 2009 Legislature, but makes modifications to address implementation issues identified by the OPPAGA and other stakeholders.

Program Applications

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

- Require a program application and a fee to be submitted for each prelicensure nursing education program that will be offered at a main campus, branch campus, or other instructional site. This codifies current practice.
- Amend the faculty education requirements that must be documented in a program application. The bill provides that the program director and 50 percent of the faculty members for an:
 - 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
 - LPN program must have a bachelor's or higher degree in nursing.
- Specify that the education degree requirements for the program director and 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. Under s. 464.019(2), F.S., when the DOH receives a program application, it must review the application and determine if the application is complete. If the program application is incomplete, the DOH must notify the applicant of any errors or omissions within 30 days after receiving the application. The bill provides that a program application is deemed complete upon:

- The day of initial application, if the DOH does not notify the educational institution of any errors or omissions within the 30-day window; or
- The date the DOH receives a revised application that corrects each error and omission.

The bill maintains current law that requires the BON to approve or deny a completed program application within 90 days after receipt.

BON Regulation of Approved Programs

The bill maintains the probationary status of a program that was on probation for failing to meet the BON required graduate passage rates on June 30, 2009, under s. 464.019(3), F.S., but clarifies that such program is an approved program. The program will remain on probation until it achieves the required graduate passage rate for either 2009 or 2010 or the program will be terminated by the BON, if it fails to meet the required passage rates.

For other approved programs, the bill maintains the current law that requires the BON to monitor the programs' NCLEX graduate passage rates and the annual report requirements. In s. 464.019(6)(a), F.S., the bill modifies the graduate passage rates requirements to:

- Specify that the required NCLEX passage rate for an approved program shall be no lower than 10 percentage points, rather than 10 percent, below the national average passage rate for the applicable program type;
- Clarify that the new requirements for graduate passage rates apply to graduate passage rates beginning the 2010 calendar year; and
- Clarify that a program placed on probation for having had two consecutive calendar years of inadequate graduate passage rates will be removed from probation when the program achieves the required passage rate for one calendar year.

The bill maintains current law that requires the BON to terminate an approved program that does not achieve the required graduate passage rate within two calendar years.

Nursing programs at Florida colleges, state universities and private institutions licensed by the Commission for Independent Education would be still subject to the program approval procedures of those respective education sectors.

Approved Nursing Education Program Annual Report

Section 464.019(4), F.S., in the bill, clarifies that the approved nursing education program annual report consists of an affidavit certifying continued compliance with s. 464.019(1)(a) – (g), F.S., a summary description of that compliance, and to the extent available, documentation of:

- The number of student applications received, qualified applicants, applicants accepted, accepted applicants who enroll in the program, students enrolled in the program, and program graduates;
- The program's retention rates for students tracked from program entry to graduation; and
- The program accreditation status, including identification of the accrediting agency, if the program is accredited by an agency other than NLNAC or CCNE.

In s. 464.019(9), F.S., the bill authorizes the BON to adopt a rule prescribing the format for the annual report. This is an expansion of current law that only authorizes the BON's annual report rule making authority to prescribe the format for the summary descriptions of program compliance, which is only one component of the required annual report.

Section 464.019(6)(b), F.S., removes the BON's authority to place an approved program on probation for failing to submit the required annual report. If a program does not submit its annual report on time (November 1st), the program director must appear before the BON to explain the delay. The bill maintains current law that requires the BON to terminate a program that does not submit its annual report within six months after the due date.

BON Website

In s. 464.019(5), F.S., the bill adds information that the BON must publish on its website to include: a list of each accredited program and the program's graduate passage rates for the two most recent calendar years. The bill directs the DOH to locate this information through the national accrediting agencies recognized by the United States Department of Education for their specialization in nursing education and the contract testing service of the NCSBN.

The bill modifies the information the BON is currently required to post on its website to require the BON to publish approved program graduate passage rates and national average passage rates on the NCLEX, for two rather than one calendar year and specifies that the national average passage rate must be published for each individual program type.

Disclosure of Graduate Passage Rate Data

Under s. 464.019(7), F.S., the bill authorizes the program director of an approved or accredited program to request the DOH to disclose the following information related to each of the program graduates 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 request the information in writing and is required to maintain the confidentiality of the information in the same manner as DOH employees.

The bill amends s. 456.014, F.S., to authorize the DOH to release certain confidential information relating to an applicant for nurse licensure to the program director of an approved program or accredited nurse education program. The information that may be released relates to program graduates included in the calculation of the program's graduate passage rate and includes the name, examination date, and determination of whether each graduate passed or failed the NCLEX.

The bill amends ss. 464.022, 458.348, 459.025, 464.012, and 960.28, F.S., to make conforming and technical cross reference corrections to current law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOH has indicated that it will incur a cost of \$78,795 to modify the existing BON website to include the additional information required in the bill.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOH has indicated that SB 2530 does not provide adequate time to implement the new BON website modifications. According to the DOH, the BON website could be modified, developed, tested, and deployed in six months or by January 1, 2011.²⁹

The DOH has indicated that in order to implement the provision in Section 5. of the bill, which provides nursing program directors access to certain confidential information including the name, examination date, and pass/fall outcome of the NCLEX, upon written request, the NCLEX test takers would be required to waive the confidentiality of their examinations scores under s. 456.017(2), F.S.³⁰

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁸ Department of Health, SB 2530 Bill Analysis, Economic Statement and Fiscal Note, March 9, 2010, on file with the Senate Health Regulation Committee.

²⁹ Department of Health, SB 2530 Bill Analysis, Economic Statement and Fiscal Note, March 9, 2010, on file with the Senate Health Regulation Committee.

³⁰ Department of Health, SB 2530 Bill Analysis, Economic Statement and Fiscal Note, March 9, 2010, on file with the Senate Health Regulation Committee.