



SENATE BILL 302: Update ACH Svc & Care Plan/Bd of Nursing.

2019-2020 General Assembly

Committee:
Introduced by:
Analysis of: S.L. 2019-180

Date: January 8, 2020
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OVERVIEW: *S.L. 2019-180 alters the requirements of the initial resident assessment conducted by adult care homes and allows the use of the Medicaid personal care services (PCS) assessment to satisfy the required resident assessment of physical functioning for activities of daily living (ADLs); amends the assisted living administrator qualifications; and amends the Nursing Practice Act by making a number of changes, many of which are technical and conforming or make the licensing process more efficient.*

The changes to the Nursing Practice Act became effective October 1, 2019, and apply to licenses granted or renewed on or after that date and actions taken by the Board of Nursing on or after that date, the remainder of the act became effective July 26, 2019.

BILL ANALYSIS:

PART I. AUTHORIZE ADULT CARE HOMES TO USE SERVICE PLANS COMPLETED FOR MEDICAID PERSONAL CARE SERVICES ASSESSMENT FOR ACTIVITIES OF DAILY LIVING PORTION OF SERVICE PLANS OR CARE PLANS AND AMEND ASSISTED LIVING ADMINISTRATOR QUALIFICATIONS

Section 1 requires that the initial resident assessment conducted by adult care homes be on an assessment instrument approved in accordance with rules adopted by the Medical Care Commission; would require the assessment used to develop service plans and care plans be conducted within 30 days of admission; and would allow adult care homes to use the Medicaid Personal Care Services (PCS) assessment in place of conducting a separate assessment of a resident's physical functioning for activities of daily living (ADLs) no later than 35 days after admission. (Adult care homes would still be required to conduct an assessment of a resident's physical functioning for ADLs within 30 days of admission if a Medicaid PCS assessment has not been developed within 35 days of admission.)

Section 2 requires the Department of Health and Human Services to certify that an assisted living administrator applicant does not have a substantiated finding of neglect, abuse, misappropriation of property, diversion of drugs, or fraud listed on the Health Care Personnel Registry; and would allow an applicant with a high school diploma and two years of coursework at an accredited college or university, *or*, 60 months of supervisory experience, to qualify for certification under the assisted living administrator certification. Qualification under a combination of education and experience as approved by the Department remains unchanged.

PART II. NORTH CAROLINA BOARD OF NURSING CHANGES

Section 3 includes a definition for "licensee" which is a term that has been used in the Article, but was not previously included in the definition section of the Article.

Section 4 makes the following changes to the Board of Nursing (BON):

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- Changes the term "current, unencumbered" to "active, unencumbered" as it applies to licenses registered nurse members and licensed practical nurse members must have to serve on the Board. An "active, unencumbered license" is the same terminology used in G.S. 90-171.95B(c)(5) for the Nurse Licensure Compact (S.L. 2017-140).
- Provides that a public member, whether appointed by the Governor or General Assembly under G.S. 90-171.21(b), is prohibited from being a licensed nurse or licensed health care professional; being employed by a health care institution, health care insurer, or health care professional school; and from having an immediate family who is currently, or was previously, employed as a licensed nurse.
- Provides that daily compensation allowance for Board members is limited to \$200 for time spent in the performance and discharge of duties as a member (previously G.S. 93B-5 limited it to \$100).

Section 5 amends the BON powers and duties as follows:

- Allows the BON to determine whether an applicant or licensee is mentally and physically capable of practicing nursing with reasonable skill and safety and permits the BON to require a physical or mental health examination.
- Clarifies the BON can administer appropriate disciplinary action against all regulated parties found in violation of the Nursing Practice Act or rules adopted by the BON.
- Makes a conforming change to specify the BON can withdraw approval of a nursing program (which is authority already provided in G.S. 90-171.39 and G.S. 90-171.40).
- Clarifies the BON may establish programs monitoring (rather than aiding in) the treatment, recovery, and safe practice of nurses with substance use disorders, mental health disorders, or physical conditions that impact the delivery of safe care.
- Clarifies the BON may enter into agreements (rather than establish programs) to aid in the remediation of nurses who experience practice deficiencies.
- Clarifies that the BON may order or subpoena the production of records or documents for matters before the Board.

Section 6 removes language pertaining to the implementation of a computer adaptive licensure examination, which according to the BON is no longer needed since the system is in place.

Section 7 does all of the following:

- Clarifies the BON's disciplinary authority to include probation; implementing limitations and conditions; accepting voluntary surrender of a license; publicly reprimanding; issuing public letters of concern; requiring completion of treatment programs or remedial or educational training; denying or refusing to issue a license; denying or refusing to issue a license renewal; issuing a fine; suspending a license; and revoking a license.
- Adds items to the list of prohibited activities for which the BON can take action. The additional prohibited acts include: engaging in unprofessional or unethical conduct, or conduct that does not conform to nursing practice standards even if a patient is not injured; acts of dishonesty, injustice, or immorality in the course of practice; having had a license or privilege to practice nursing denied, revoked, suspended, restricted, or acted against by any jurisdiction; failure to respond to the Boards' inquiries in a reasonable manner or time regarding a matter affecting the license to practice nursing.
- Provides that the BON retains jurisdiction over an expired, inactive, or voluntarily surrendered license.
- Provides that the Board of Nursing, members of the Board, and staff are not liable in any civil or criminal proceeding for exercising the powers and duties authorized by law, provided the person was acting in good faith.

Section 8 allows witness testimony to be received by telephone or videoconferencing at a hearing.

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Section 9 adds three new sections to Article 9A pertaining to the right to appeal a disciplinary action, public records, and the service of notices.

G.S. 90-171.37B provides that a licensee may appeal any public disciplinary action within 30 days. The appeal may be made in superior court in the county where the licensee resides or where the Board is located. Within 30 days of receiving the notice of appeal, the Board must prepare and file the record, the Board's decision, and a licensee's notice of appeal with the clerk of superior court where the licensee appealed the Board's decision.

G.S. 90-171.37C provides that records, papers, investigative information and other documents gathered or received as a result of a licensing complaint, appeal, assessment, potential impairment matter, or disciplinary matter are not public records. Those materials are privileged, confidential, and are not subject to subpoena or release to anyone other than the Board or its employees.

The Board must provide the licensee or applicant information that the Board intends to offer into evidence unless good cause is shown for delay. The Board is not required to produce evidence subject to attorney-client privilege or information that the Board will not offer into evidence and is related to advice of the Board's staff.

Any licensee's notice of statement of charges, notice of hearing, and related information shall be a public record.

The BON may report information indicating a crime may have been committed to the appropriate law enforcement agency or district attorney. The BON must cooperate with criminal investigations, and the information it provides will be confidential.

Licensees must self-report to the Board any of the following within 30 days of arrest or indictment:

- Any felony arrest or indictment.
- Any arrest for driving while impaired or driving under the influence.
- Any arrest or indictment for the possession, use, or sale of any controlled substance.

The BON is permitted to release confidential information concerning denial, annulment, suspension, or revocation of a license to any other health care licensing board or authorized Department of Health and Human Services personnel.

The BON must withhold the identity of a patient or information that would tend to identify the patient unless the patient or the patient's representative consents to public disclosure.

G.S. 90-171.37D pertains to the service of notices. Any notice may be served personally by an employee of the Board; by an officer authorized to serve process; by registered mail, return receipt requested at the licensee or applicant's last known address.

Section 10 requires the BON to designate people to survey proposed nursing programs, but not clinical facilities.

Section 11 increases from 8 to 10 years the frequency with which the BON must review all nursing programs in the State. It clarifies that the BON has the responsibility to evaluate and take appropriate action, including withdrawing approval from a nursing program that fails to correct deficiencies within a reasonable time.

Section 12 clarifies the BON has the authority to promulgate rules to enforce the provisions *G.S. 90-171.43* which requires a license to practice as registered nurse, license practical nurse, or to use the "nurse" title.

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Section 13 adds a new section to allow the BON to waive requirements of the Article to allow emergency health services to the public when the Governor declares a state of emergency, or a county or municipality enacts ordinances under the following authority:

- Power of municipalities and counties to enact ordinances to deal with state of emergency under the NC Emergency Management Act (G.S. 166A-19.31).
- General ordinance-making power for cities and towns (G.S. 160A-174).
- General ordinance-making power for counties (G.S. 153A-121).
- A terrorist incident using nuclear, biological, or chemical agents (Chapter 130A, Article 22).

Section 14 makes amendments that conform to changes in Section 7.

Section 15 makes a change to the criminal record checks of applicants for licensure to conform to changes in Section 7.

EFFECTIVE DATE: The changes to the Nursing Practice Act became effective October 1, 2019, and apply to licenses granted or renewed on or after that date and actions taken by the Board of Nursing on or after that date, the remainder of the act became effective July 26, 2019.