

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 Committee on Health Policy

BILL: CS/SB 1296

INTRODUCER: Health Policy Committee and Senator Brodeur

SUBJECT: Nursing Programs

DATE: March 31, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van-Winkle	Brown	HP	Fav/CS
2.	_____	_____	ED	_____
3.	_____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1296 redefines how Florida measures and evaluates approved nursing education and training programs to determine whether the programs' graduates are meeting national performance standards to satisfy the state's increasing demands for safe nursing services for the public's health, safety, and welfare. The bill:

- Amends terminology to expand the number and time frame over which a nursing education and training program's graduate passage rates of the Nursing Council Licensure Examination (NCLEX) are measured, from the percentage of first-time test takers in a calendar year passing the NCLEX, to:
 - The program's average graduate passage rate of test takers passing the NCLEX during the two most recent calendar years, including those retaking the NCLEX but excluding those who fail more than three consecutive times; or
 - The program's passage rate as calculated by the contract testing service of the National Council of State Boards of Nursing if the average passage rate is 80 percent or greater on the NCLEX for the prior calendar year;
- Defines "test takers" to include graduates who take the NCLEX within one year after graduation and do not fail the NCLEX more than three consecutive times;
- Repeals the definition of "required passage rate" which, under current law, means the graduate passage rate that an approved nursing education program is required to attain and relies on a graduate passage rate of not more than ten percentage below the national average

for first-time test takers on the NCLEX during the same calendar year for graduates of comparable degree programs who were educated in the U.S.;

- Requires an approved program to achieve an average graduate passage rate of 80 percent or greater for the most recent average graduate passage rate on the NCLEX or be placed on probation or terminated;
- Amends the requirements for an approved programs' annual reports to the Board of Nursing (BON) to change the due date and includes additional requirements;
- Requires an approved program to provide students who fail the NCLEX on the first attempt, for at least one year after graduation, information about remediation programs designed to assist the student in passing the NCLEX;
- Prohibits the BON from considering, in any manner, the average graduate passage rates of any approved program for the calendar years 2020 and 2021 when determining whether to take any adverse action against the program; and
- Provides Legislative intent for the bill's provisions relating to probation and termination to apply retroactively to January 1, 2021, to prevent the BON from placing or continuing an approved program on probation or terminating an existing approved program that is already on probation.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Part I of ch. 464, F.S., the Nurse Practice Act, governs the licensure and regulation of nurses in Florida. Nurses are licensed by the Department of Health (DOH)¹ and are regulated by the BON.² Currently a nurse desiring to practice nursing in the state of Florida must obtain a Florida license by examination or endorsement.

Applicants for licensure by examination as a registered nurse (RN) or licensed practical nurse (LPN) must, among other requirements:

- Graduate from an approved program or its equivalent as determined by the BON;³
- Submit an application to the DOH;
- Pay a fee;
- Submit information for a criminal background check;⁴ and
- Pass the NCLEX.⁵

Licensure by endorsement requirements include submitting an application and fee, passing a criminal background screening, and:

- Holding a valid license to practice professional or practical nursing in another state or territory of the U.S. which, when issued, met or exceeded those in Florida at that time;

¹ Section 464.008, F.S.

² The BON is composed of 13 members appointed by the Governor and confirmed by the Senate who serve four-year terms. All members must be residents of the state. Seven members must be registered nurses who are representative of the diverse areas of practice within the nursing profession. Three members must be licensed practical nurses and three members must be laypersons. At least one member of the board must be 60 years of age or older. *See* Section 464.004, F.S.

³ Section 464.008(1)(c), F.S.

⁴ Section 464.008(1)(b), F.S.

⁵ Section 464.008(2), F.S.

- Meeting the requirements for licensure in Florida and having successfully completed an examination in another state which is substantially equivalent to the examination in Florida; or
- Having actively practiced nursing in another state, jurisdiction, or territory of the U.S. for two of the preceding three years without having his or her license acted against by the licensing authority of any jurisdiction.⁶

In 2016, the Legislature created s. 464.0095, F.S., – Florida’s entrance into the Nurse Licensure Compact (NLC) – which took effect January 19, 2018, and adopts the revised NLC in its entirety into state law. This allows for licensed practical and professional nurses to practice in all member states by maintaining a single license in the nurse’s primary state of residence. To date, 34 states, including Florida, have adopted the revised NLC.⁷

The National Council of State Boards of Nursing, Inc. (NCSBN)

The NCSBN is an independent, non-profit organization that was created in 1978 out of recognition that in order to guard the safety of the public, the organization involved in the regulation of nurses needs to be a separate entity from the American Nurses Association (ANA) Council on State Boards of Nursing, which represents professional nurses. The NCSBN’s membership is now composed of state boards of nursing and other nursing regulatory bodies that are charged with the responsibility of providing regulatory excellence for public health, safety, and welfare. To meet that goal, the NCSBN developed a psychometrically sound and legally-defensible nurse licensure examination consistent with current nursing practice. NCSBN became the first organization to implement computerized adaptive testing for nationwide licensure examinations in 1994, – the NCLEX-RN and NCLEX-LPN.⁸

Nursing Education Program Approval and Accreditation

Section 464.019, F.S., requires an institution desiring to offer a pre-licensure nursing education program to submit an application to the DOH and pay a program review fee for each campus or instructional site. In addition to identifying information about the program, the application must indicate the name of the accrediting agency.

The application must document compliance with the following program standards: faculty qualifications; clinical training and clinical simulation requirements, including a requirement that no more than 50 percent of the program’s clinical training consist of clinical simulation; faculty-to-student supervision ratios; and curriculum and instruction requirements.

Once the DOH determines an application is complete, it forwards the application to the BON. The BON may conduct an onsite evaluation if necessary to document the applicant’s compliance with required program standards. Upon receipt, the BON has 90 days to approve the application or to provide the applicant with notice of its intent to deny and the reasons for the denial. An

⁶ Section 464.009, F.S.

⁷ The National Council of State Boards of Nursing administers the NLC. They refer to it as the enhanced NLC. *available at* https://www.nursecompact.com/Updated_onepaged_NLC.pdf (last visited on March 23, 2021).

⁸ National Council of State Boards of Nursing, Inc., *History*. *available at* <https://www.ncsbn.org/history.htm> (last visited Mar. 28, 2021).

applicant may request a hearing under ch. 120, F.S., on a notice of intent to deny his or her application.⁹

Chapter 464, F.S., recognizes and distinguishes between nursing education programs that are approved by the BON and programs that are approved and accredited.¹⁰

An “accredited program” is accredited by a specialized nursing accrediting agency that is nationally recognized by the U.S. Secretary of Education to accredit nursing education programs.¹¹ The specialized nursing accrediting agencies currently recognized by the U.S. Department of Education include the Commission on Collegiate Nursing Education and the Accreditation Commission for Education in Nursing.¹²

A BON-approved nursing education program¹³ is required to submit an annual report to the BON which includes an affidavit certifying compliance with the program standards and documentation for the previous academic year that sets forth data related to the number of students who applied, were accepted, enrolled, and graduated; retention rates; and accreditation status.¹⁴

The BON posts the following information on its website:¹⁵

- A list of all accredited programs and graduation rates for the most recent two years;
- A list of all approved programs that are not accredited;
- All documentation submitted in a program’s application;
- A summary of the program’s compliance with program standards;
- A program’s accreditation status, probationary status, graduate passage rates for the most recent two years, and retention rates.¹⁶

Approved programs must have a graduate passage rate not lower than ten percent below the national average for two consecutive years. Programs are placed on probation for low performance with NCLEX scores for two consecutive years and are subject to termination. The program director is required to present a plan for remediation to the BON that includes specific benchmarks to identify progress toward a graduate passage rate goal. The program must remain on probationary status until it achieves a graduate passage rate that equals or exceeds the required passage rate for any one calendar year. If the program does not achieve the required passage rate in any one calendar year after a program has been placed on probationary status, the

⁹ Section 464.019(2)(c), F.S. If the BON does not act on a program application within the 90-day review period, the program application is deemed approved. *Id.*

¹⁰ The program application and approval process, the annual report requirement, the data submission requirements and the pass rate requirements are not applicable to accredited programs.

¹¹ Section 464.003(1), F.S.

¹² United States Department of Education, *Accreditation in the United States: Specialized Accrediting Agencies*, available at https://www2.ed.gov/admins/finaid/accred/accreditation_pg7.html (last visited Mar. 25, 2021).

¹³ Section 464.003(4), F.S., defines an “approved program” as “a program for the pre-licensure 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.”

¹⁴ Section 464.019(3), F.S.

¹⁵ Florida Department of Health, Board of Nursing, *Education and Training Programs*, available at <https://floridasnursing.gov/education-and-training-programs/> (last visited Mar. 28, 2021).

¹⁶ Section 464.019(4), F.S.

BON is authorized to terminate the program or may extend the probation for one additional year.¹⁷

An approved program which has been placed on probation must disclose its probationary status in writing to the program's students and applicants.¹⁸

If an accredited program ceases to be accredited, the educational institution conducting the program must provide written notice to that effect to the BON, the program's students and applicants, and each entity providing clinical training sites or experiences. It may then apply to be an approved program.¹⁹

An approved program graduate who does not take the licensure examination within six months after graduation must enroll in, and successfully complete, a licensure examination preparatory course pursuant to s. 464.008, F.S.

The BON does not have rulemaking authority for the approval of nursing education programs, except as to the format for submitting applications, the format for the annual report required to be submitted by each approved program, and to administer the documentation of the accreditation of nursing education programs.²⁰ The BON may adopt rules relating to the nursing curriculum, including rules relating to the uses and limitations of simulation technology and rules relating to the criteria to qualify for an extension of time to meet accreditation requirements.²¹ The BON may not impose any condition or requirement on an educational institution submitting a program application, an approved program, or an accredited program.²²

Florida Nurse Education Program Graduate Passage Rates - 2019²³

In 2001 the Legislature created The Florida Center for Nursing (FCN) to establishing and maintaining a database on nursing supply and demand and evaluate nursing program-specific data for each approved program and accredited nursing education program to determine each program's student populations and NCLEX passage rates.

The FCN found that Florida's NCLEX passage rates varied by program type, and by the program's classification as public or private. According to the FCN in 2019, "**For the third year in a row, Florida's NCLEX passage rates for RN and LPN programs were at or near the bottom of the United States and Territories.**"(emphasis original).²⁴ RN programs include graduates of bachelor's degree nurse (BSN) programs and associate degree nurse (AARN) programs. As a group, BSN graduates performed the best, followed by licensed practical nurse (LPN) graduates. AARN graduates collectively performed at the lowest level.

¹⁷ Section. 464.019(5), F.S.

¹⁸ *Id.*

¹⁹ Section 464.019(9)(b), F.S.

²⁰ Section 464.019(8), F.S.

²¹ *Id.*

²² *Id.*

²³ This is the most recent Florida Center for Nursing report available, as of this writing.

²⁴ Florida Center for Nursing, *Review of Florida Nurse Education Program Graduate Passage Rates on the National Council of State Boards of Nursing Licensure Examination: Calendar Year 2019*, April 2020, available at <https://floridasnursing.gov/forms/2019-nclex-pass-rates.pdf> (last visited Mar. 28, 2021) (emphasis original).

Florida's performance standard requires each program's passage rate to be no more than 10 percentage points below than national passage rates of comparable degree programs in the same calendar year. Nearly half of all Florida programs scored below the state's performance standard, including 89 AARN (54 percent), 66 LPN (47 percent), and 18 BSN (31 percent) programs.

In total, 364 nursing programs in Florida had graduates that took the NCLEX in 2019 for the first time, including 98 public programs and 266 private programs. Among AARN and BSN programs, the NCLEX passage rates of public programs were above the national totals. Public LPN programs were below the national passage rate but above the state's performance standard. In contrast, the total passage rate for private programs in each category (e.g. LPN, AARN, BSN) were below national rates with the LPN and AARN passage rates falling well below the state's 10-percentage point standard. However, all non-profit private programs scored above the standard.

The state of Florida invests in its post-secondary education programs with the intent to meet the talent needs of industry. Nursing program graduates cannot practice in their chosen field unless they successfully pass the RN or LPN NCLEX and are awarded a license to practice by the BON. The majority of licensed LPN and AARN graduates prepared to work as nurses in Florida are coming from public programs. Private BSN programs produced 61 percent of licensed graduates in 2019, which may be impacted by private programs outnumbering public schools about five to one.²⁵

In 2017, the Florida Legislature directed the FCN to evaluate program-specific data for all approved and accredited nursing education programs in the state, including graduate passage rates on the NCLEX.²⁶

The FCN found that for the third year in a row, Florida program graduates performed below national totals for their program type. Within Florida, BSN graduates performed the best with an 89-percent passage rate, followed by LPN graduates with a 72-percent passage rate. The AARN graduates performed at the lowest level with a 66-percent passage rate, as a group. In 2019, the statewide BSN passage rate was the same as 2018, which was a slight improvement over 2017 (87 percent). The AARN program passage rates decreased from 2017 to 2018 and again from 2018 to 2019. The LPN passage rate improved slightly between 2017 and 2018 but decreased in 2019.²⁷

The FCN also found of the 364 nursing programs in Florida, 98 (27 percent) were classified as public programs and 266 (73 percent) are private programs and that the total NCLEX passage rate of public AARN and BSN programs exceeded the corresponding national passage rate. In contrast, the total NCLEX passage score of LPN programs and all private programs were below national passage rates and, for private LPN and AARN programs, more than 10 percentage points below the national totals.²⁸

²⁵ *Id.*

²⁶ Chapters 2009-168, 2010-37, 2014-92, and 2017-134, Laws of Florida.

²⁷ Florida Center for Nursing, *Review of Florida Nurse Education Program Graduate Passage Rates on the National Council of State Boards of Nursing Licensure Examination: Calendar Year 2018*, June 2019, (on file with the Senate Committee on Health Policy).

²⁸ See Note 23.

2019 Florida NCLEX Passage Rates by Program Type

Program	National	Florida Public		Florida Private	
	Passage Rate	Passage Rate	Programs	Passage Rate	Programs
BSN	91.2	92.9	10	86.5	18
AARN	85.2	89.3	31	52.3	92
LPN	85.6	82.8	57	55.9	61

According to the FCN, prior to the COVID-19 pandemic, Florida was already experiencing a critical shortage of RNs and LPNs which was expected to worsen as demand increased.

According to the FCN, the continued decreasing passage rates of public and private AARN and BSN programs, the impact of the pandemic, and the aging of Florida's population, demonstrate the extreme challenge to provide an adequate health workforce in response to a public health crisis when the health system is already experiencing shortages. In addition, the aging of the nurse population and pending health worker retirements contributes to the urgency to address the supply of nurses and compounds the already inadequate supply of working RNs and LPNs, according to the FCN. In 2019, Florida lost almost 1,000 potential LPNs and almost 4,700 potential RNs because nursing program graduates did not pass their licensure exams. The FCN indicates the importance of identifying the institutional characteristics that contribute to this substantial number of graduates being ill-prepared for licensure examination.²⁹

National NCLEX Passage Rates and COVID-19

In response to the COVID-19 pandemic, the NCSBN introduced several carefully-evaluated and tested modifications to the NCLEX examinations. These modifications expired on Sept. 30, 2020, and, beginning Oct. 1, 2020, both NCLEX-RN and NCLEX-LPN exams will retain some of the characteristics of the modified exam. The difficulty levels and passing standards of the exams have not changed.³⁰

NCLEX pass rates appear to be starting to decrease slightly as the COVID-19 pandemic continues. NCLEX Data shows the following:

- **RN:** NCSBN data shows that NCLEX test takers for the RN version had been hovering around a pass rate of 89 percent for all of 2019 and into early 2020. However, the first-time passage rate for the RN test had dropped to just under 85 percent.
- **LPN:** NCLEX first-time test takers for the LPN version had been around 86 percent passage rate in 2019 and early 2020. The passage rate had dropped down to slightly below 83 percent.

III. Effect of Proposed Changes:

The bill:

- Amends terminology to expand the number and time frame over which a nursing education and training program's graduate passage rates of the NCLEX are measured, from the percentage of first-time test takers in a calendar year passing the NCLEX:

²⁹ *Id.*

³⁰ National Council of State Boards of Nursing, Inc., *COVID-19 Impact to NCLEX Candidates*, available at <https://www.ncsbn.org/14428.htm> (last visited Mar. 28, 2021).

- To the program's average graduate passage rate of test takers passing the NCLEX during the two most recent calendar years, including those retaking the NCLEX but excluding those who fail more than three consecutive times; or
- To the program's passage rate as calculated by the contract testing service of the National Council of State Boards of Nursing if the average passage rate is 80 percent or greater on the NCLEX for the prior calendar year;
- Defines, "test takers" to include those graduates who take the NCLEX within one year after graduation and do not fail the examination more than three consecutive times;
- Repeals the definition of "required passage rate" which, under current law, means the graduate passage rate that an approved nursing education program is required to attain and relies on a graduate passage rate of not more than ten percentage below the national average passage rate for first-time test takers of the NCLEX during the same calendar year for graduates of comparable degree programs who were educated in the U.S.;
- Requires an approved program to achieve an average graduate passage rate of 75 percent, or greater than the most recent average graduate passage rate, or be placed on probation or terminated;
- Amends the requirements for the approved programs' annual reports to the BON to:
 - Change the due date from November 1 to April 1;
 - Change the reporting period from the previous academic year to the previous calendar year;
 - Require reporting of the programs' average graduate passage rate or the program's passage rate as calculated by the contract testing service of the National Council of State Boards of Nursing if the average passage rate is 80 percent or greater on the NCLEX for the prior calendar year; and
 - The number of students who failed to pass the NCLEX on their first attempt, that the approved program provided information to on the availability of remediation programs designed to assist the student in passing the NCLEX.
- Authorizes the BON to place approved programs' on probation if the programs' average graduate passage rate does not equal or exceed the required average graduate passage rate of 80 percent;
- Requires the accredited programs to remain on probation until it achieves an average graduate passage rate of 80 percent or greater for test takers who took the NCLEX during the most recent calendar year and do not fail the examination more than three consecutive times, and the BON will remove the probationary status at the next regular BON meeting;
- Requires an approved program to provide each student who fail the NCLEX on his or her first attempt, for at least one calendar year following his or her graduation, information about remediation programs designed to assist the student in passing the NCLEX;
- Prohibits the BON from considering, in any manner, the average graduate passage rates of any approved program for calendar years 2020 and 2021 when determining whether to take any adverse action against the program;
- Provides Legislative intent for the bill's provisions relating to probation and termination to apply retroactively to January 1, 2021, to prevent the BON from placing or continuing an approved program on probation or terminating an existing approved program that is already on probation.
- Amends the information the BON must publish on its website for its list of accredited programs to include:

- The programs' average graduate passage rate, rather than the graduate passage rate; and repeals the requirement that the information be for the most recent two calendar years;
- The average graduate pass rates for the test takers educated in the U.S., rather than the graduate passage rates, for first-time U.S.-educated test takers; and
- Amends s. 960.28, F.S., to make a technical change.

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill uses an undefined term on lines 142-143, i.e. "graduate passage rate." The bill replaces current law's defined term "graduate passage rate" with "average graduate passage rate" and changes every occurrence of the former to the latter, except on lines 142-143.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 464.003, 464.019, and 960.28.

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

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

CS by Health Policy on March 31, 2021:

The CS:

- Revises the definition of “test takers” to exclude persons who fail the nurse licensure exam more than three consecutive times;
- Moves the due-date for nursing education program’s annual reports to April 1st instead of February 1st;
- Provides an alternative to programs reporting their two year “average graduate passage rate” to allow programs to report their passage rate calculated by the National Council of State Boards of Nursing if the average passage rate is 80 percent or greater on the NCLEX for the prior calendar year;
- Requires programs to achieve an average graduate passage rate of 80 percent or greater, instead of 75 percent as in the underlying bill, or be placed on probation or terminated;
- Eliminates the underlying bill’s requirement that programs report numerous types of data pertaining to graduate passage or failure on licensure exams;
- Removes the underlying bill’s requirement for programs to offer remediation to students who fail the licensure exam on their 1st attempt and, instead, requires programs to provide such students with information about remediation programs; and
- Prohibits the BON from considering, in any manner, a program’s average graduate passage rate for the 2020 and 2021 calendar years when determining whether to take adverse action against the program.

B. Amendments:

None.