STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF RULE-MAKING PROCEEDINGS BEFORE THE BOARD OF NURSING	:	ORDER OF THE BOARD OF NURSING ADOPTING RULES

The statement of scope for this rule, SS # 003-18, was approved by the Governor on January 18, 2018, published in Register 745A4 on January 22, 2018, and approved by Board of Nursing on March 21, 2018.
This emergency rule was approved by the Governor on April 10, 2018

ORDER

An order of the Board of Nursing to repeal N 9.01, 9.02, 9.03, and 9.04; to amend N 2.10 (1) (intro.), 2.10 (2) (intro.), 2.11 (title), 2.12 (title), 2.20 (title) and 2.21 (title); and to create N 2.02 (1m), (8m), (9m), and (11), 2.10 (1m), 2.10 (2m), 2.105, 2.19, 2.31 (3) (note) and N 9 Appendix relating to the nurse licensure compact.

Analysis prepared by the Department of Safety and Professional Services.

FINDING OF EMERGENCY

2017 Act 135 provides authorization to the Board of Nursing to promulgate an emergency rule without providing evidence that an emergency rule is necessary for the preservation of the public peace, health, safety or welfare and without providing a finding of emergency.

ANALYSIS

Statutes interpreted: ss. 441.06, 441.10 and 441.51, Stats.

Statutory authority: s. 15.08 (5) (b), Stats.

Explanation of agency authority:

The examining board promulgates rules for its own guidance and for the guidance of the profession. [s. 15.08 (5) (b), Stats.]

The board approves all rules for the administration of ch. 441, Stats., in accordance with ch. 227, Stats. [s. 441.01 (3), Stats.]

Related statute or rule: ss. 441.06, 441.10 and 441.51, Stats.

Plain language analysis:

Section 1 creates definitions relating to the nurse licensure compact. A Board approved prelicensure education program is a program from a Wisconsin board approved school or a

prelicensure program approved by another state board of nursing. A multistate license is a license issued by Wisconsin which authorizes the person to practice in compact states under the multistate licensure privilege. A party state is any state that has adopted the nurse licensure compact. A single state license is a license issued by Wisconsin that allows the nurse to practice only in Wisconsin.

Sections 2 and 4 amends N 2.10 (1) and (2) to apply only to single state licenses.

Sections 3 and 5 create qualifications for a multistate license based upon the uniform licensure requirements. To qualify for a multistate license a nurse must graduate from a board approved prelicensure program, pass NCLEX, be eligible for or hold an active, unencumbered license, not be convicted of a felony, not be convicted of a misdemeanor related to the practice of nursing, not be enrolled in an alternative program (professional assistance procedure or equivalent) and holds a valid social security number.

Section 6 delineates the application process for the multistate license. An applicant must: complete an application; pay a fee; provide proof of graduation of a board approved prelicensure program; provide evidence of passing NCLEX; submit fingerprints or other biometric-based information for purposes of obtaining criminal history information; and if there is a misdemeanor conviction information necessary for the board to determine if the circumstances are substantially related to the practice of nursing.

Sections 7 and 8 amend the titles for sections N 2.11 and N 2.12 to pertain to only single state licenses.

Section 9 delineates the application process for multistate licenses by endorsement from another state or jurisdiction. An applicant must: complete an application; pay a fee; declare Wisconsin the primary state of residence; provide proof of graduation of a board approved prelicensure program; provide evidence of passing NCLEX; submit fingerprints or other biometric-based information for purposes of obtaining criminal history information; and if there is a misdemeanor conviction information necessary for the board to determine if the circumstances are substantially related to the practice of nursing.

Sections 10 and 11 amend titles to indicate the sections pertain only to single state licenses.

Section 12 creates a note indicating that a temporary license does not convey a multistate licensure privilege.

Section 13 repeals the rules which were authorized by the previous nurse licensure compact which was repealed by 2017 Act 135.

Section 14 creates an appendix which contains the nurse licensure compact rules promulgated by the Nurse Licensure Compact Commission.

Summary of, and comparison with, existing or proposed federal regulation: None

Comparison with rules in adjacent states:

Illinois: Illinois is not a member of the nurse licensure compact.

Iowa: Iowa has not yet promulgated rules to reflect the new nurse licensure compact.

Michigan: Michigan is not a member of the nurse licensure compact.

Minnesota: Minnesota is not a member of the nurse licensure compact.

Summary of factual data and analytical methodologies:

In the old nurse licensure compact the default license was a multistate license unless disciplinary action required a single state license, therefore, the application process did not need to reflect a single state and a multistate application process. 2017 Act 135 adopts the new enhanced nurse licensure compact requiring separate licensing processes for the multistate license (meets the uniform licensing requirements) and a single state license (practice only in Wisconsin). This rule brings N 2 and 9 in compliance with 2017 Act 135 by crating separate licensing requirements and procedures, and repeals the rules promulgated by the Board under the authority granted by the old nurse licensure compact. In addition, it created an appendix for the rules promulgated by the Commission under the authority of the new enhanced nurse licensure compact.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

This rule implements 2017 Act 135 which does not have a fiscal impact.

Fiscal Estimate and Economic Impact Analysis:

There is no fiscal impact.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Kirsten.Reader@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov.

Comments must be received at or before the public hearing to be held on June 14, 2018 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. N 2.02 (1m), (8m), (9m), and (11) are created to read:

N 2.02 (1m) "Board approved prelicensure education program" means a nurse prelicensure program from a Wisconsin approved school or a prelicensure program approved by another state board of nursing.

(8m) "Multistate license" means a license to practice as a registered or licensed practical nurse issued by Wisconsin that authorizes the licensed nurse to practice in all nurse licensure compact party states under a multistate licensure privilege.

(9m) "Party state" means any state that has adopted the nurse licensure compact.

(11) "Single state license" means a license issued by Wisconsin that does not include a multistate licensure privilege to practice in any other nurse licensure compact party state.

SECTION 2. N 2.10 (1) (intro.) is amended to read:

N 2.10 (1) (intro) REGISTERED NURSE APPLICANTS FOR A SINGLE STATE LICENSE. An applicant is eligible for ~~licensure as~~ a registered nurse single state license if the applicant complies with all of the following requirements:

SECTION 3. N 2.10 (1m) is created to read:

N 2.10 (1m) REGISTERED NURSE APPLICANTS FOR A MULTISTATE LICENSE. An applicant is eligible for a registered nurse multistate license if the applicant meets all of the following requirements:

(a) Graduated from one of the following:

1. A board approved prelicensure education program.
2. A foreign registered nurse prelicensure education program that has been approved by the authorized accrediting body in the applicable country and has been verified by an independent credentials review agency to be comparable to a board approved prelicensure education program.

(b) If a graduate from a foreign prelicensure education program not taught in English or if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing, and listening.

(c) Successfully passed an NCLEX or recognized predecessor examination.

(d) Is eligible for or holds an active, unencumbered license.

(e) Has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law.

(f) Has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing.
(g) Is not currently enrolled in an alternative program.
(h) Is subject to self-disclosure requirements regarding current participation in an alternative program.
(i) Holds a valid United States social security number.

SECTION 4. N 2.10 (2) (intro.) is amended to read:

N 2.10 (2) (intro) LICENSED PRACTICAL NURSE APPLICANTS FOR A SINGLE STATE LICENSE. An applicant is eligible for ~~licensure~~ a single state practical nurse license if the applicant complies with all of the following requirements:

SECTION 5. N 2.10 (2m) is created to read:

N 2.10 (1m) LICENSED PRACTICAL NURSE APPLICANTS FOR A MULTISTATE LICENSE. An applicant is eligible for a practical nurse multistate license if the applicant meets all of the following requirements:

(a) Graduated from one of the following:
1. A board approved prelicensure education program.
2. A foreign practical nurse prelicensure education program that has been approved by the authorized accrediting body in the applicable country and has been verified by an independent credentials review agency to be comparable to a board approved prelicensure education program.

(b) If a graduate from a foreign prelicensure education program not taught in English or if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing, and listening.
(c) Successfully passed an NCLEX or recognized predecessor examination.
(d) Is eligible for or holds an active, unencumbered license.
(e) Has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law.
(f) Has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing.
(g) Is not currently enrolled in an alternative program.
(h) Is subject to self-disclosure requirements regarding current participation in an alternative program.
(i) Holds a valid United States social security number.

SECTION 6. N 2.105 is created to read:

N 2.105 Application procedure for a multistate license. (1) Each applicant for a multistate license shall complete and submit an application by the electronic application process or on forms provided by the department, declare Wisconsin as the primary state of residence, and shall pay the fee.
(2) The educational administrator or designee for a board approved prelicensure education program shall submit any of the following:

(a) Via the electronic application process a verification that the applicant has graduated.

(b) A certification of graduation.
(c) An official transcript indicating graduation.

(3) If the applicant graduated from a foreign prelicensure education program, the applicant shall submit a certificate or report demonstrating verification from an independent credentials review agency that the prelicensure education program is comparable to a board approved prelicensure education program.

(4) If the applicant graduated from a foreign prelicensure program was not taught in English or if English is not the applicant's native language, the applicant shall submit proof of successfully passing an English proficiency examination that includes the components of reading, speaking, writing, and listening.

(5) (a) The board shall notify the applicant of eligibility for admission to the NCLEX once it receives verification of any of the following:

1. Certificate of approval.
2. Graduation.

(b) The applicant shall contact the examination provider to schedule the NCLEX date and time within one year from the time the notice of eligibility is received by the applicant.

(c) The board shall send notification of results to applicants who fail to earn a passing score on the NCLEX. An applicant may apply to the board for authorization to schedule reexamination. The reexamination may not occur earlier than 45 days after the most recent sitting for the NCLEX.

(6) The applicant shall submit, through an approved process, fingerprints or other biometric-based information for the purpose of obtaining an applicant's criminal history information from the federal bureau of investigation and the Wisconsin department of justice.

(7) If the applicant has been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense, the applicant shall provide the board all related information necessary for the board to determine whether the circumstances substantially relate to the practice of nursing.

SECTION 7. N 2.11 (title) is amended to read:

N 2.11 **Application procedure <u>for a single state license</u> for applicants from board-approved schools.**

SECTION 8. N 2.12 (title) is amended to read:

N 2.12 **Application procedure <u>for a single state license</u> for applicants from comparable schools.**

SECTION 9. N 2.19 (insert in Subchapter III) is created to read:

N 2.19 **Endorsement of an applicant for a multistate license. (1)** Each applicant for a multistate license by endorsement shall complete and submit an application on forms provided by the department and shall pay the fee.

(2) The applicant shall provide all of the following:

(a) Evidence of holding an active, unencumbered license.
(b) Declaration or evidence that Wisconsin is the primary state of residence.
(c) Evidence of graduation from one of the following:

1. A board approved nurse prelicensure education program or
2. A foreign nurse prelicensure education program that has been approved by the authorizing accrediting body in the applicable country and has been verified by an independent credentials review agency to be comparable to a board approved prelicensure education program.

(d) If the applicant graduated from a foreign prelicensure program not taught in English or if English is not the applicant's native language, evidence of successfully passing an English proficiency examination that includes the components of reading, speaking, writing, and listening.

(e) Evidence of successfully passed an NCLEX exam or recognized predecessor.

(f) If the applicant has been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense, all related information necessary for the board to determine whether the circumstances substantially relate to the practice of nursing.

(3) The applicant shall submit, through an approved process, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the federal bureau of investigation and the Wisconsin department of justice.

SECTION 10. N 2.20 (title) is amended to read:

N 2.20 Endorsement of an applicant from a nurse licensure compact state <u>for a single state license</u>.

SECTION 11. N 2.21 (title) is amended to read:

N 2.21 Endorsement of an applicant from another U.S. state, territory or Canada <u>for a single state license</u>.

SECTION 12. N 2.31 (3) (note) is created to read:

Note: A temporary license does not grant multistate licensure privileges.

SECTION 13. N 9.01, 9.02, 9.03 and 9.04 are repealed.

SECTION 14. N 9 Appendix is created to read:

APPENDIX
NURSE LICENSURE COMPACT RULES

SECTION 100. DEFINITIONS

(1) "Commission" means the Interstate Commission of Nurse Licensure Compact Administrators.

(2) "Compact" means the Nurse Licensure Compact that became effective on July 20, 2017 and implemented on January 19, 2018.

(3) "Convert" means to change a multistate license to a single-state license if a nurse changes primary state of residence by moving from a party state to a non-party state; or to change a single-state license to a multistate license once any disqualifying events are eliminated.

(4) "Deactivate" means to change the status of a multistate license or privilege to practice.

(5) "Director" means the individual referred to in Article IV of the Interstate Commission of Nurse Licensure Compact Administrators Bylaws.
(6) "Disqualifying Event" means an incident, which results in a person becoming disqualified or ineligible to retain or renew a multistate license. These include but are not limited to the following: any adverse action resulting in an encumbrance, current participation in an alternative program, a misdemeanor offense related to the practice of nursing (which includes, but is not limited to, an agreed disposition), or a felony offense (which includes, but is not limited to, an agreed disposition).
(7) "Independent credentials review agency" means a non-governmental evaluation agency that verifies and certifies that foreign nurse graduates have graduated from nursing programs that are academically equivalent to nursing programs in the United States.
(8) "Licensure" includes the authority to practice nursing granted through the process of examination, endorsement, renewal, reinstatement and/or reactivation.
(9) "Prior Compact" means the Nurse Licensure Compact that was in effect until January 19, 2018.
(10) "Unencumbered license" means a license that authorizes a nurse to engage in the full and unrestricted practice of nursing.

SECTION 200. COORDINATED LICENSURE INFORMATION SYSTEM

201. UNIFORM DATA SET AND LEVELS OF ACCESS

(1) The Compact Administrator of each party state shall furnish uniform data to the Coordinated Licensure Information System, which shall consist of the following:

(a) the nurse's name;
(b) jurisdiction of licensure;
(c) license expiration date;
(d) licensure classification, license number and status;
(e) public emergency and final disciplinary actions, as defined by the contributing state authority;
(f) a change in the status of a disciplinary action or licensure encumbrance;
(g) status of multistate licensure privileges;
(h) current participation by the nurse in an alternative program;
(i) information that is required to be expunged by the laws of a party state;
(j) the applicant or nurse's United States social security number;
(k) current significant investigative information; and
(l) a correction to a licensee's data.

(2) The public shall have access to items (1)(a) through (g) and information about a licensee's participation in an alternative program to the extent allowed by state law.
(3) In the event a nurse asserts that any Coordinated Licensure Information System data is inaccurate, the burden of proof shall be upon the nurse to provide evidence in a manner determined by the party state that substantiates such claim.
(4) A party state shall report the items in the uniform data set to the Coordinated Licensure Information System within fifteen (15) calendar days of the date on which the action is taken.

202. QUERYING THE COORDINATED LICENSURE INFORMATION SYSTEM

(1) Upon application for multistate licensure, with the exception of renewal by a nurse, a party state shall query the Coordinated Licensure Information System to determine the applicant's current licensure status, previous disciplinary action(s), current participation in an alternative program, and any current significant investigative information

(2) Upon discovery that an applicant is under investigation in another party state, the party state in receipt of the nurse licensure application shall contact the investigating party state and may request investigative documents and information.

SECTION 300. IMPLEMENTATION

301. IMPLEMENTATION DATE

The Compact shall be implemented on January 19, 2018.

302. TRANSITION

(1) (a) A nurse who holds a multistate license on the Compact effective date of July 20, 2017, and whose multistate license remains unencumbered on the January 19, 2018 implementation date and who maintains and renews a multistate license is not required to meet the new requirements for a multistate license under the Compact.

(b) A nurse who retained a multistate license pursuant to subsection (a) of this section and subsequently incurs a disqualifying event shall have the multistate license revoked or deactivated pursuant to the laws of the home state.

(c) A nurse whose multistate license is revoked or deactivated may be eligible for a single state license in accordance with the laws of the party state.

(2) A nurse who applies for a multistate license after July 20, 2017, shall be required to meet the requirements of Article III (c) of the Compact.

(3) During the transition period, a licensee who holds a single state license in a Compact state that was not a member of the prior Compact and who also holds a multistate license in a party state, may retain the single state license until it lapses, expires or becomes inactive."

(4) After the implementation date, party states shall not renew or reinstate a single state license if the nurse has a multistate license in another party state.

303. RECOGNITION OF NEW PARTY STATES AFTER JANUARY 19, 2018

(1) All party states shall be notified by the Commission within fifteen (15) calendar days when a new party state enacts the Compact.

(2) The new party state shall establish an implementation date six (6) months from enactment or as specified in the enabling language and shall notify the Director of the date.

(3) Upon implementation, a new state licensee who holds a single state license in a Compact state that was not a member of the prior Compact and holds a multistate license in a party state, may retain the single state license until it lapses, expires or becomes inactive.

(4) At least ninety (90) calendar days prior to the implementation date, all other party states shall notify any active single state licensee with an address in the new party state that the licensee may only hold one multistate license in the primary state of residence. The licensee shall be advised to obtain or maintain a multistate license only from the primary state of residence.

(5) Each party state shall deactivate a multistate license when a new home state issues a multistate license.

SECTION 400. LICENSURE

401. PARTY STATE RESPONSIBILITIES

(1) On all application forms for multistate licensure, a party state shall require, at a minimum:

(a) A declaration of a primary state of residence and

(b) Whether the applicant is a current participant in an alternative program.

(2) (a) An applicant for licensure who is determined to be ineligible for a multistate license shall be notified by the home state of the qualifications not met.

(b) The home state may issue a single state license pursuant to its laws.
(3) A party state shall not issue a single state license to a nurse who holds a multistate license in another party state.

402. APPLICANT RESPONSIBILITIES
(1) On all application forms for multistate licensure in a party state, an applicant shall declare a primary state of residence.
(2) A nurse who changes primary state of residence to another party state shall apply for a license in the new party state when the nurse declares to be a resident of the state and obtains privileges not ordinarily extended to nonresidents of the state, including but not limited to, those listed in 402 (4) (a) – (e).
(3) A nurse shall not apply for a single state license in a party state while the nurse holds a multistate license in another party state.
(4) A party state may require an applicant to provide evidence of residence in the declared primary state of residence. This evidence may include, but is not limited to, a current:
(a) driver's license with a home address;
(b) voter registration card with a home address;
(c) federal income tax return with a primary state of residence declaration;
(d) military form no. 2058 (state of legal residence certificate); or
(e) W2 form from the United States government or any bureau, division, or agency thereof, indicating residence.
(5) An applicant who is a citizen of a foreign country, and who is lawfully present in the United States and is applying for multistate licensure in a party state may declare either the applicant's country of origin or the party state where they are living as the primary state of residence. If the applicant declares the foreign country as the primary state of residence, the party state shall not issue a multistate license, but may issue a single state license if the applicant meets the party state's licensure requirements.
(6) An applicant shall disclose current participation in an alternative program to any party state, whether upon initial application or within ten (10) calendar days of enrollment in the program.
403. CHANGE IN PRIMARY STATE OF RESIDENCE
(1) A nurse who changes his or her primary state of residence from one party state to another party state may continue to practice under the existing multistate license while the nurse's application is processed and a multistate license is issued in the new primary state of residence.
(2) Upon issuance of a new multistate license, the former primary state of residence shall deactivate its multistate license held by the nurse and provide notice to the nurse.
(3) If a party state verifies that a licensee who holds a multistate license changes primary state of residence to a non-party state, the party state shall convert the multistate license to a single state license within fifteen (15) calendar days, and report this conversion to the Coordinated Licensure Information System.

404. TEMPORARY PERMITS AND LICENSES
A temporary permit, license, or similar temporary authorization to practice issued by a party state to an applicant for licensure shall not grant multistate licensure privileges. Page **8** of **8**

405. IDENTIFICATION OF LICENSES
A license issued by a party state shall be clearly identified as either a single state license or a multistate license.

406. CREDENTIALING AND ENGLISH PROFICIENCY FOR FOREIGN NURSE GRADUATES
(1) A party state shall verify that an independent credentials review agency evaluated the credentials of graduates as set forth in Article III (c)(2)ii.
(2) The party state shall verify successful completion of an English proficiency examination for graduates as set forth in Article III (c)(3).

407. DEACTIVATION, DISCIPLINE AND REVOCATION
A party state shall determine whether a disqualifying event will result in adverse action or deactivation of a multistate license or privilege. Upon deactivation due to a disqualifying event, the home state may issue a single state license.

SECTION 500. ADMINISTRATION
501. DUES ASSESSMENT
(1) The Commission shall determine the annual assessment to be paid by party states. The assessment formula is a flat fee per party state. The Commission shall provide public notice of any proposed revision to the annual assessment fee at least ninety (90) calendar days prior to the Commission meeting to consider the proposed revision.
(2) The annual assessment shall be due within the Commission's first fiscal year after the implementation date and annually thereafter.

SECTION 15. EFFECTIVE DATE. This emergency rule shall take effect upon publication in the official state newspaper.

(END OF TEXT OF RULE)

Dated 4/20/18

Agency _____
Chair
Board of Nursing