



May 1, 2020

VIA EMAIL TO: nadine.pfeiffer@dhhs.nc.gov

The Honorable John Meier, IV, MD, Chair
NC Medical Care Commission

Nadine Pfeiffer
Rules Review Manager

Office of the Director
Division of Health Service Regulation
NC Department of Health and Human Services

RE: Proposed Temporary Rule pertaining to listing on Nurse Aide Registry by reciprocity under 10A NCAC 130 .0301

Chairman Meier and Ms. Pfeiffer:

The North Carolina Health Care Facilities Association (NCHCFA) represents more than 385 non-profit and proprietary nursing facilities throughout North Carolina. Collectively our members provide long-term and post-acute care to tens of thousands of North Carolinians every day. Ensuring that a sufficient number of qualified Nurse Aides are available to provide care to North Carolinians needing 24-hour skilled nursing care is as important to our members as it is to the Medical Care Commission (Commission) and the Department of Health and Human Services (DHHS), and we appreciate your efforts to create a pathway for Nurse Aides in other states to be listed on North Carolina's Nurse Aide registry by reciprocity. This has been a priority for NCHCFA, and we thank you for your leadership on this issue.

NCHCFA appreciates the opportunity to comment on the proposed revision under temporary procedures to 10A NCAC 130 .0301. While many of the concepts reflected in the Proposed Rule are positive, NCHCFA has concerns with some of the specific provisions and asks that changes be made to the Temporary Rule and/or the Permanent Rule we understand will follow this. While we believe our comments should be addressed as soon as possible, we do not wish to see a gap in effectiveness of this proposal and understand time may be of the essence as this process is only currently available by Emergency Rule. Therefore, if these changes can be addressed only in the Permanent Rule we anticipate will follow, we understand.

Regarding the proposed Temporary Rule, we offer the following suggested changes for the following reasons.

- Remove subsections (J), (K), (L), (M), (N), (O), and (P) from the proposed 10A NCAC 130 .0301(b)(1) and subsection (6) from the proposed 10A NCAC 130 .0301(c). These changes are recommended because when the Nurse Aide is listed on the state registry in another state, that state's registry has evidence of the Nurse Aide having taken the training/education program previously, and that state's judgment, evidenced by listing on its Nurse Aide registry, should be sufficient evidence of compliance with federal rules under which states' nurse aide registries operate. Further, the proposed 10A NCAC 130 .0301(b)(2) should provide adequate documentation of a Nurse Aide's listing on other state registry(s) in good standing, which itself again reflects satisfactorily completing an adequate training program.

If, however, these items reflect a North Carolina policy judgment that there are certain states that North Carolina has determined do not meet the basic requirements, we recommend listing those states whose Nurse Aide registry North Carolina will not accept for listing by reciprocity in North Carolina. This will make the parameters clearer to all involved.

- Remove subsection (Q) from the proposed 10A NCAC 130 .0301(b)(1) and subsection (4) from the proposed 10A NCAC 130 .0301(c). These items ask for information about employment history and whether the applicant for listing by reciprocity has earned income for performing Nurse Aide tasks under RN supervision for some period (though not a clear amount) of time within the previous 2 years.

These provisions should be eliminated for several reasons. First, they seem to prevent those who have been registered for less than 2 years in another state, categorically, from being listed in North Carolina. We see no valid policy reason for such a categorical bar. Second, these questions seem to go beyond the regulatory function of the Nurse Aide registry to determine whether a person meets the criteria for listing on the registry. While these are matters prospective employers should and very likely will examine, from a state regulatory perspective, a similar work history is not required for listing by training/testing in North Carolina and should not be required for listing on the registry for individuals who happened to train and test in another state—just because they trained and tested in another state. Lastly, we fear efforts to gather this information, particularly (and somewhat perversely) for well-experienced and long-tenured Nurse Aides, and attempts to verify it by the Nurse Aide registry as this proposed rule would require will lead to delays in the process of applications for listing Nurse Aides by reciprocity and may undermine this attempt to provide greater access to qualified employment candidates to North Carolina's long term care providers.

- Add a provision streamlining the process of listing by reciprocity during a declared State of Emergency by the federal or state government. The need for an even faster process

during a state of emergency is essential, as was recognized by the substantial debate during the recent Commission meeting during which the emergency rule was adopted.

We suggest a process like that used by the Board of Nursing during a state of emergency. The North Carolina Board of Nursing provides the following guidance for nurses licensed in states other than North Carolina who wish to practice in North Carolina during an emergency:

I am an out-of-state RN/LPN and would like to work in NC. What are the requirements for licensed nurses during the state of emergency?

Licensed nurses outside of NC are authorized to practice in NC under the following guidelines:

- *Nurses must hold an active, unrestricted multi-state license in any Nurse Licensure Compact state can practice in NC at any time.*
- *Nurses holding an active, unrestricted single state license in a non-compact state can practice in NC during periods of official disaster designation.*
- *Prior to allowing practice, employing system/facility must verify active, unrestricted licensure of all nurses (RN and LPN), from all states (compact or non-compact). Licensure information can be verified easily through NURSYS available at: www.nursys.com*
- *Employing system/facility must maintain a record of the names and verified license number for a period of 1 year and provide this information to the Board if requested.*

Available at <https://www.ncbon.com/news-publications-statistics-important-information-about-covid-19> (last accessed on May 1, 2020).

Accordingly, we recommend a similar process for listing Nurse Aides on the registry on a temporary basis during a state of emergency by requiring prospective employers to verify an out-of-state Nurse Aide's listing in good standing in his or her current state of practice, and retain documentation of such verification for a period of 1 year. This information could be shared with the North Carolina Nurse Aide registry for temporary listing without further examination during the declared state of emergency. After the state of emergency ends, or perhaps after some short period of time following the end of the emergency elapses, to allow for resuming normal operations, those Nurse Aides listed through this provision would no longer be able to work in North Carolina without first being listed through the normal, expanded reciprocity mechanism outlined in the proposed 10A NCAC 13O .0301, amended as we have requested in this comment letter.

We believe this provision should be adopted in the temporary and/or permanent rule regarding listing Nurse Aides by reciprocity and should be activated automatically when a federal or state emergency is declared. This will prevent the Commission from needing to take further action during an emergency and would provide appropriate relief sooner.

We appreciate the work of the DHHS and the Commission on this matter. Providing a pathway to listing on the North Carolina Nurse Aide registry is of critical importance to North Carolinians, both those who provide skilled nursing care and those who need it. We understand the complex federal and state legal framework under which nurse aide registries operate and appreciate the need for compliance. We believe compliance can still be achieved while furthering the purpose of this pathway by making the changes we have requested in this letter.

Thank you for your consideration of our comments, and please contact me at adams@nchcfa.org or 919.782.3827, or Polly Welsh at pollyg@nchcfa.org or 919.782.3827 if you have any questions or we can provide any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'ASL', with a long horizontal line extending to the right.

Adam Sholar
President and CEO

cc: Mark Payne, Director, Health Service Regulation (by email)
Emery Milliken, Deputy Director, Health Service Regulation (by email)
Jana Busick, Chief, Health Care Personnel Education and Credentialing (by email)
Joel Johnson, Assistant General Counsel, DHHS (by email)