



2017 NCSBN Discipline Case Management Conference - Reconstructing Licensure Mobility: eNLC Video Transcript

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Event

2017 NCSBN Discipline Case Management Conference

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Presenter

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So, thank you, Kathy, for the introduction. Again, my name is Nicole Livanos, and I work in Legislative Affairs with National Council. So the theme of the conference is Transforming Principles Into Practice. So I wanted to keep that transformation theme going and find a way to fit my presentation into it. And so I'm going to be talking about reconstructing licensure mobility. So we're going to be taking a look at the 100-year-old licensure model of nursing that the NLC sought to modernize. I'm going to talk about state-based solution of the Interstate Compact, so the means that was chosen to address the problems in licensure. And that would be the Nurse Licensure Compact. As well as talk about the transition from the current Nurse Licensure Compact to the Enhanced Nurse Licensure Compact that many of you have been involved with or are aware of legislation moving in your state. And then I'm going to give a little bit of a legislative update since things are moving constantly in the ENLC space. We're now up to 23 enactments, and so we've had a really busy legislative year, this year and last. So I'll talk a little bit about that. So, first, I'll talk a little bit about the Historic Licensure Model for Nursing. So, in nursing, your license boundary has been the state line. So the state-based licensure was addressed in the Supreme Court case, *Gibbons v. Ogden*, that said, "States have power under the U.S. Constitution to regulate and license local matters." That license that you have is issued and enforced by a state. And you have one license per state, so when you go to another state, you get one license there per state. However, this created some modern challenges of jurisdiction. So there's a rise of telehealth, there's an ever-growing telehealth industry that requires or enables nurses to practice across state lines from the very desk or the very chair that they're sitting in. Also, we have an increasingly more mobile society. People aren't thinking of states, really, as having these boundaries, they're thinking of traveling across state lines, visiting. It's become easier than ever to take a plane somewhere, and cheaper than ever, in some cases. And then we have the increase of distance education. So nurse educators are teaching students in all 50 states, and those nursing students are receiving that teacher's education in all 50 states. So education is no longer where this university's building resides. So there are possible solutions that were brought up in many different conversations about how to address these modern challenges for nurse licensure. So first, we had national licensure. So telehealth advocates in the federal government, legislators came up with an idea of, "Why don't we just license nurses, either just in the telehealth space or overall licensing nurses at the national level?" So this would, of course, trouble us, as state boards of nursing would no longer be needed. We would have national licensure. There would be no boundaries. I guess the

boundaries would be the coasts, and so you would be bound by the United States. And so that, obviously, is concerning as we want to be able to license, enforce, and discipline at a local level so that we can be fast and efficient in doing so. Next is endorsements. So, as you know, your states allow nurses who have a current license in a different state to come into yours and receive a licensure by endorsement if they meet certain qualifications. They need to maintain that license so that any renewal requirements for that as well as pay, sometimes costly fees, to do so. And then we have reciprocity agreements. We had a bill this year, in New Hampshire, that was trying to give a sort of reciprocity agreement between New Hampshire and at some of the surrounding states. So you'll see that between states for different issues that they'll come together and say, "Hey, between us, we're good with this license transferring over there. We trust that your license is to a standard of ours, so we'll allow you in." And then finally there's Mutual Recognition, which is where the Compact comes into play. So first, what is an Interstate Compact? So an interstate compact has roots in the United States Constitution. And arguably, the United States Constitution was a compact within the United States. But it's specifically addressed in Article 2, Section 10 of the Constitution. It says, "No State shall, without the Consent of Congress, enter into any Agreement or Compact with another State, or with a foreign Power." So, this gives us a sense that the federal government was thinking that a compact could be a way that a state would address an issue with another state. So according to the evolving law and use of interstate compacts, "A compact is a formal binding contract, authorized by or enacted as legislation, between two or more States, in their capacity as States." And the purpose of a compact is to remedy a particular problem of multistate concern. So I had mentioned Mutual Recognition Model as being one of the ways in which states can address the licensure problem. And we see a common example in the driver's license compact. So, if I am from Pennsylvania... I'm not, but if I was from, I could be issued a driver's license in the state of Pennsylvania. And then what does not allow me to do? It doesn't only allow me to drive, you know, from Pittsburgh to Pennsylvania, but rather, I can cross the state border and drive right into Ohio. What else can happen in Ohio? In Ohio, I can get a speeding ticket. And that speeding ticket is because I violated Ohio state law. Not Pennsylvania where my license is, but Ohio state law. So by having a driver's license compact, of which Pennsylvania and Ohio are both members, it allows Ohio to enforce its laws on me as a driver, even though I hold a Pennsylvania license. So then what is the Nurse Licensure Compact? So again, in order to solve this licensure problem, we chose a tool, the Interstate Compact, which is that contract between states. And the operation method for it is mutual recognition. So we have one state-based license allowing a nurse to have one multistate license that's granted in their primary state of residency. That license is nationally recognized, so it permits the nurse to practice in other member states, that's, physically, electronically, or even telephonically providing care. And it's locally enforced, so it's subject to each state practice laws where the patient is located. So, to apply that to our driver's license model from the previous slide. So if a nurse in Pennsylvania...let's say, Pennsylvania and Ohio are in the Nurse Licensure Compact, which we all hope one day becomes reality. So we have a nurse who's issued a license in Pennsylvania, and they practice...let's say they're a case manager and they follow up with a patient who's in Ohio. So they're practicing nursing in Ohio. It's recognized in Ohio because they hold this multistate license and they're part of the compact. And let's say that they failed to provide adequate care to that patient or somehow harm that patient. They are subject to the Ohio Nurse Practice Act. So the rules of the road in Ohio apply to that Pennsylvania nurse because the care is taking place in Ohio. So let's look at the historical perspective of how we got to the current Nurse Licensure Compact. So, in 1997, the Special Delegate Assembly approved the Nurse Licensure Compact and endorsed the mutual recognition model. Thought that that was the best way to go in order to address some of the challenges. So, in 1999, the first state passes the Nurse Licensure Compact legislation. And in the next 10 years, 24 states would enact the Nurse Licensure Compact. And

in 2015, we hit that halfway mark. Fifty states, we got to the 25th state, and that was Montana. So some of the key components I want to highlight are primary state of residence, the Nurse Licensure Compact Administrators, and the communication tools that are all built into the Nurse Licensure Compact. So for primary state of residence. So, a nurse is going to sign a declaration of where their primary state of residence is. So, again, their license is going to be tied to their primary state of residence, that's where they will be issued the multistate license. And that's just the state where the applicant can prove legal residence. So that would be the address on your driver's license or a voter registration card with an address or some sort of a tax form as well. And there's only one primary state of residence per person, that's how the compact operates. Next, we have the Nurse Licensure Compact Administrators, which is a governing body that's created by the Compact, and there's one administrator per party state. They govern the policy and the procedures of the Compact in order to ensure that the Compact operates smoothly and safely. And speaking of safely, well, there's some communication tools that help for the Compact to ensure the highest level of patient safety. There's participation in nurses that's required by the Compact. Nurses is the coordinated licensure information system for party states to share licensure and disciplinary actions. Next, there's Current Significant Investigative Information Flags. So current investigative information indicates a nurse represents an immediate threat to public health and safety, regardless of whether the nurse has been notified or had an opportunity to respond. So how is this transmitted between boards? Well, it's a notice flag, is what we call it in nurses. That there's an investigation or something that rises to the significant investigation standard in nurses. And then that alert would be removed within 10 days of an action being taken. So it allows for communication tools between licensing boards who are participating in the Compact. So just a quick overview of the NLC Investigation Process. I should say, Sandy Evans is going to be presenting after me on some of the disciplinary aspects of the Compact. But just real quick to go through an investigation process. So a licensee practicing in a remote state on a Privilege to Practice, or PTP. So a complaint allegation is received by the remote state, home state, or both states. The initial inquiry is to determine the residency of the respondent, establish the location of the incidents, and then open a case if that's warranted. Both the home state and remote states may mutually determine the investigative leads of who's going to take the lead on this. And the frequency of communication between these states are going to be determined by the agreement and the level of risk involved. So, what are the actions? So, a remote state may take an adverse action affecting the multistate licensure privilege to practice within that party state. So again, you have one license, your primary state of residence. And in those other states, what you have is a privilege to practice. Not an individual license, but a privilege. So only the home state may take action against the license. And that home state action will affect the ability to practice in all party states. So who benefits from the Nurse Licensure Compact? So, nurses, they have the ability to practice in multiple states with one license. That reduces the regulatory and financial requirements by removing the necessity to maintain and obtain multiple state licenses. It also clarifies the nurse's authority to practice in multistates via telehealth. Again, we had mentioned that national licensure was of great concern, and telehealth companies were advocating for that, and so this clarified that a nurse had authority to practice in multistates over telehealth if they were in one of the Compact states. So, also Nursing Boards. So, Nursing Boards now have the ability to share complaint investigative information throughout the investigative course. They have a shared responsibility for patient safety that's not governed by geographical boundaries, and a shared commitment to improving the collective ability to protect patients. So we go back to the core of this, which is to protect patients while allowing for a more mobile nursing workforce. So who else? So patients benefit, telehealth, the industry that's growing more and more each day, benefits, hospitals and employers, nurse educators, and military spouses. One of the most common professions among military spouses is nursing. And with relocation happening for these

families very often, the Nurse Licensure Compact allows them to have that one license, and whenever they're practicing in a Compact state, they can continue to work, get a job, and have a seamless transition right into that new state. So I had this slide or had this image on an earlier slide but I wanted to put it up again because there is a problem here. So with the current Nurse Licensure Compact, we don't have all these states as blue. There's a lot of gray areas, and boards of nursing sought to address that. That is why we moved from the Nurse Licensure Compact, the logo on the left, to the Nurse Licensure Compact, the logo on the right, or otherwise known as the Enhanced Nurse Licensure Compact. So why did we enhance the NLC? So there were multiple reasons for change. One of the biggest changes, I should have put this up there first, is that current NLC States wanted to ensure long-term growth and viability of the NLC. The goal for any Compact should be 50 states. And at 25 we're only halfway there, so we sought to recognize issues that people had with the Compact or just hesitations to join. So one of those is that in the years since the Nurse Licensure Compact was first introduced, there's been a trend toward requiring criminal background checks for licensed health care professionals. So most states require federal CVCs for nurses in their states, but some do not. And that was true of the members of the current NLC. Some of those states required it upon renewal or initial licensure, and some did not. So some states were allowing nurses who had Compact licenses to practice in their states even though they did not have a criminal background check as the nurses around them in that state did. There was also a lack of uniformity and uniform licensure of requirements. So some states expressed concern that they didn't know what the licensure requirements were in the states where nurses were coming into their state from. "So, if your primary state of residence only requires 5 things but mine requires 10, how do I know that you have those other 5 qualifications if they weren't checked?" There's also a need for facilitating interstate nursing practice. It had continued to grow. Telehealth only got greater since the early '90s, and distance education has become a large industry in a way that a lot of people receive nursing education. So, NCSBN sought out to respond to the changes. In 2013 to 2014, NCSBN members convened a series of meetings to consider the best possible licensure model. So, again, we talked about endorsement. We talked about national licensure. We talked about Compact and mutual recognition. And the decision was made to continue to use an interstate compact as a means, and to just revise the existing NLC. So 2014 to '15, the NLC redrafted as a new compact, and then May of 2015, NCSBN members overwhelmingly approved the enhanced NLC. And at this time also, the APRN Compact had a Special Delegate Assembly. In May of 2015, NCSBN's board of directors commits staff and financial resources to advocate for state adoption of enhanced NLC, and here I am. So what are some of the enhancements that were made? So there are now 11 uniform licensure requirements required for a nurse to meet in order to obtain a multistate license. So again, there weren't any before. They just had to meet the state's requirements, now you must meet the state requirements in your primary state of residence, in addition to these uniform licensure requirements that will mostly, for the most part, in the majority of states, mirror the requirements that are required currently at the state level. This would be like passing the NCLEX or graduating from a board-approved program, etc. There's also a grandfather provision. So, as nurses who are in current Compact states transition into the Enhanced Nurse Licensure Compact. As long as they hold a multistate license on that day that their state or that the Compact comes into effect, then they are able to be grandfathered into the Compact and don't have to go through any additional steps. So next, there's an authority to obtain and submit to a criminal background check. So again, there's that federal criminal background check layer that comes in and would apply to states that traditionally had not had criminal background checks. There's prompt reporting to nurses of participation to and alternative to discipline programs. There's an interstate commission. So right now it's the NLCA we had talked about, now it'll be the ICNLCA. But it'll work in a very similar manner with one member from each state representing. However, they will now have rulemaking authority, and that's just to facilitate

the operation and implementation of that commission. And next, there were improvements made to dispute resolution and termination if necessary. So that would be if a state was out of whack with how the Compact was operating, how the Compact Commission would be able to address that state and get them up to standards. So I'm really excited to be able to present the Nurse Licensure Compact, or the Enhanced Nurse Licensure Compact legislative update. However, Kathy requires slides to come into her very early. So this is as of date of May 10th and a lot has changed since then. So just by looking at this map, the dark blue are states that have enacted the enhanced NLC legislation. That would be in 2016 and 2017. Purple are states with Enhanced Nurse Licensure Compact legislation awaiting the governor's signature. And the light blue are states where legislation is pending. So just to give you a quick little update as you look at the map. So we have Montana, South Carolina, and Maryland, all highlighted in purple. Their governors have decided to sign the bill. So in all three states, the ENLC has been enacted. And then in Texas as well. So Texas also has now enacted the ENLC. Further, the bills in Nevada, Colorado, and Illinois, their sessions are over and so their bills have died. And, you know, we'll see if they're reintroduced next year and have better success there. And then the light blue states that would be remaining are where legislation is still moving through the process, and in some of those states has a lot of time to do so. So at the moment, I had mentioned we have 23 states that have enacted the Enhanced Nurse Licensure Compact, and that is very close to the goal of 26. So first, a state must pass the enhanced NLC legislation to join the Compact. So if you are an old Compact state, you can't just now suddenly become a new Compact state. You need to actually go through the legislative process and then have a governor sign in order to enact the bill. So the Compact does not become effective, the ENLC, until the earlier date of either the enactment by 26 states or December 31st, 2018. So again, we're only 3 away and we have about 5 bills pending, so we're pretty confident that that 26th state, we could hit that in the next couple of weeks. But nothing is guaranteed in the legislature, as you know. And then lastly, a multistate license issued under the current NLC will still be recognized by party states, whoever is party to the current NLC, for six months after the ENLC effective date. So this will give nurses a chance to become educated on what states they can and cannot practice in and where they may need to obtain additional licensure if some states do not transition over. So, in order to stay connected, I gave you a lot of information. But believe me, there's a lot more. Nursecompact.com is a microsite for the legislative campaign, and it has many Compact resources, as well as an interactive map. So you can hover over a state and find out their status. And it'll be up-to-date, unlike the map I showed you. And you can also sign up for updates or take action by contacting your legislators and governors. And you can do that, of course, in the most modern of forms. Email, Twitter, or Facebook. Lastly, please feel free to write down my information, or if it's in your session books already, and to contact me if you have any questions, concerns, or if your state wishes to move forward and you want to find out a little bit about how to do that. Okay, thank you.