COMMONWEALTH OF MASSACHUSETTS
HEALTH POLICY COMMISSION

EVALUATION OF THE COMMONWEALTH'S ENTRY INTO THE NURSE LICENSURE COMPACT

REPORT TO THE MASSACHUSETTS LEGISLATURE

MAY 2021

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INTRODUCTION

In this report, required by Chapter 227 of the Acts of 2020, the Massachusetts Health Policy Commission ("HPC") presents analyses and recommendations regarding the Commonwealth's entry into the Nurse Licensure Compact ("NLC", or "eNLC"[1], or the "Compact").[2] The NLC is an interstate compact that allows nurses in a state that has adopted the Compact to hold a license permitting them to practice in all Compact states, rather than obtain a license in each individual state in which they wish to practice.

The law requires the HPC, in consultation with the Massachusetts Board of Registration in Nursing ("BORN"), to conduct a number of analyses, including regarding nurse job vacancies in Massachusetts, whether entry into the NLC would increase the Commonwealth's emergency and pandemic preparedness, and evaluation of other states' entry into the NLC, and to make recommendations regarding the Commonwealth's entry into the NLC. (See Appendix A for the full text of the law.)

As an independent state agency established by Chapter 224 of the Acts of 2012, the mission of the HPC is to advance a more transparent, accountable, and equitable health care system through its independent policy leadership and innovative investment programs. The HPC's goal is better health and better care – at a lower cost – for all residents across the Commonwealth.

In undertaking this work, the HPC conducted a multi-faceted approach. In addition to consulting with BORN, the HPC reviewed available literature, researched key stakeholder perspectives[3], consulted with experts, engaged with the National Council of State Boards of Nursing ("NCSBN") and other states, and analyzed nurse and labor market data from a variety of sources, including from an independent labor market analytics firm.

THE NURSE LICENSURE COMPACT

BACKGROUND

Nurses are required to be licensed to practice where their patient is located at the time the nursing services are provided. The NLC is an interstate compact that, when adopted by a state, allows registered nurses ("RNs") and licensed practical/vocational nurses ("LPNs/LVNs") (does not include advanced practice registered nurses)[4] to hold one multi-state license to practice in nurses' home states and any other states in the Compact.[5] A multi-state license enables nurses to provide care to patients in person or via telehealth to patients in any Compact state, subject to each state's practice laws[6] and subject to continued residency in the license-issuing state (i.e., the nurse's primary state of residence)[7]. Under the multi-state licensure model, a nurse is *licensed* in their home state and granted a "*privilege to practice*", not issued a license, in the other Compact states. Notwithstanding that distinction, a Compact license is often referred to as a "multi-state *license*".

If a nurse is ineligible for a multi-state license, they may still be eligible for a single-state license in their home state. It is in the discretion of the nursing board in a Compact state whether nurses can elect to apply for a single-state license instead of a multi-state license. Nurses can only hold one Compact license at a time, issued by their home state.[8] However, nurses may hold as many single-state licenses in non-Compact states as desired or necessary.[9]

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1 See *Background* under *The Nurse Licensure Compact* for explanation of the enhanced Compact ("eNLC").

2 Section 96 of Chapter 227 of the Acts of 2020, *available at* https://malegislature.gov/Budget/FY2021/FinalBudget.

3 (alphabetically) American Nurses Association – Massachusetts, Massachusetts Health & Hospital Association, Massachusetts Nurses Association, National Council of State Boards of Nursing, Organization of Nurse Leaders – MA, RI, NH, CT, VT.

4 For purposes of this report, RNs and LPNs/LVNs are referred to collectively as "nurses", unless specifically distinguished. The NLC does not apply to any other nurses, including advanced practice registered nurses ("APRNs"), however, the NCSBN developed corresponding model legislation and rules for states to enact an APRN Compact. *See* NCSBN, *APRN Compact*, https://www.ncsbn.org/aprn-compact.htm (last visited May 11, 2021).

5 An interstate compact is a statutory agreement between two or more states "established for the purpose of remedying a particular problem of multistate concern." Nurse Licensure Compact, *Nurse Licensure Compact Forum*, Slide 3 (April 2016), *available at* https://www.ncsbn.org/2016NLC_JPuente.pdf.

6 Nurse Licensure Compact, Approved by the May 4, 2015 Special Delegate Assembly ("NLC Model Legislation"), Article III(e), *available at* https://www.ncsbn.org/NLC_Final_050415.pdf.

7 If a nurse changes primary state of residence by moving to another Compact state, the nurse must apply for licensure in the new home state, and the multi-state license issued by the former home state will be deactivated. *Id.* at Article IV(c).

8 *Id.* at Article IV(b).

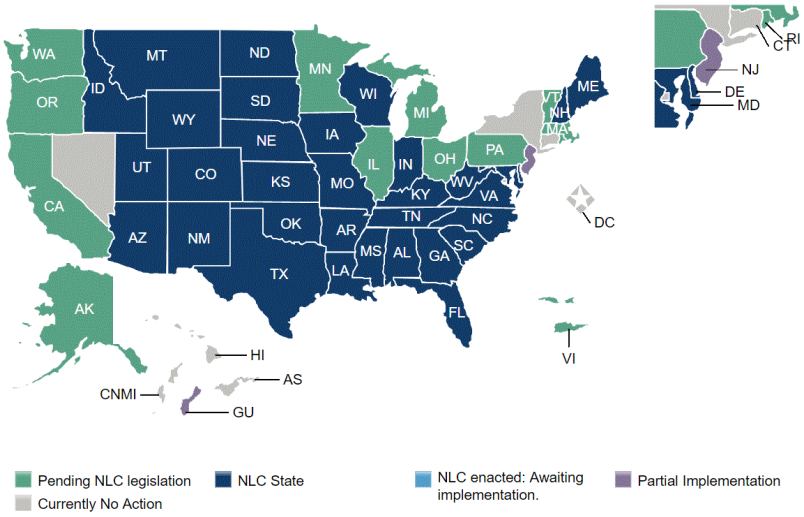
9 Interstate Commission of Nurse Licensure Compact Administrators, *Nurse Licensure Compact: New Grads and Students Webinar* (Jan. 26, 2021) ("New Grads and Students Webinar"), https://www.ncsbn.org/NLC-Webinar-NewGrads-Jan2021.pdf.

The NLC was developed following national efforts to reform health care workforce regulations. A 1995 Pew Health Professions Commission report included recommendations to promote health care provider mobility.[10] One of the Pew Commission's recommendations was to standardize entry-to-practice requirements and limit them to competence assessments to facilitate the physical and professional mobility of health professionals, in an effort to reduce rigidity and barriers to effective use of the health care workforce, integrated delivery systems, and use of emerging technologies (like telemedicine).[11]

NCSBN[12] developed and released the NLC in 1999 (the "original NLC"), and the first states implemented it in 2000 (each, a "party state" or "Compact state").[13] The original NLC was the first interstate compact for a licensed profession.[14] In order to join the NLC, a state must enact the model legislation.[15] Among other provisions, the original NLC facilitated enhanced communication among states, a shared state commitment to improving the collective ability to protect patients, and created uniform statutes, rules, and policies applicable and enforceable in all Compact states.[16]

By 2015, 25 party states had joined the original NLC, but adoption had slowed. NCSBN significantly revised the NLC, resulting in the enhanced NLC ("eNLC"), which was enacted in 2017 and implemented in 2018.[17] All but one of the states in the original NLC have joined the eNLC[18], and **there are currently 34 states (35 jurisdictions) in the eNLC** (see **Figure 1**).[19] (Unless otherwise noted, the eNLC is referred to interchangeably with the "NLC" or the "Compact" in the remainder of the report.)

Figure 1. Current NLC States and Status. Source: NCSBN (as of 5/13/21).[20]



10 Omobola Awosika Oyeleye, *The Nursing Licensure Compact and Its Disciplinary Provisions: What Nurses Should Know*, The Online Journal of Issues in Nursing Vol. 24 No. 2 (May 2019), https://ojin.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Vol-24-2019/No2-May-2019/Articles-Previous-Topics/What-Nurses-Should-Know.html; Finocchio et al, Pew Health Professions Commission, *Reforming Health Care Workforce Regulation: Policy Considerations for the 21st Century* (1995) ("Pew Commission Report"), *available at* https://www.leg.state.nv.us/74th/Interim_Agendas_Minutes_Exhibits/Exhibits/Lasers/E011008E.pdf.

11 Pew Commission Report, *supra* note 10, at 5-8.

12 Founded in 1978, NCSBN is an independent, 501(c)(3) not-for-profit organization whose 59 U.S. members include the nursing regulatory bodies in all 50 states, the District of Columbia, and four U.S. territories. See NCSBN's website for additional information: https://www.ncsbn.org/index.htm.

13 *See generally* Sandra Evans, MAEd, RN, *The Nurse Licensure Compact: A Historical Perspective*, Journal of Nursing Regulation, Vol. 6, Issue 3 (Oct. 2015). The first states to implement the original NLC were Arkansas, Delaware, Iowa, Maryland, North Carolina, Texas, Utah, and Wisconsin. Interstate Commission of Nurse Licensure Compact Administrators, *Unlocking Access to Care for 20 Years: Nurse Licensure Compact Annual Report 3* (Jan. 2021) ("NLC 2020 Annual Report"), *available at*: https://www.ncsbn.org/20-NLCAnnualReport.pdf.

14 Nurse Licensure Compact, *Updated Legislator FAQs* ("Legislator FAQs"), *available at* https://nursecompact.com/Updated_Legislator_FAQ.pdf. In recent years, other interstate compacts for licensure of health care professionals have emerged: physicians, emergency medical technicians, psychologists, and physical therapists. Massachusetts does not currently participate in those compacts.

15 *See generally* NLC Model Legislation, *supra* note 6. Conversely, a party state may withdraw from the NLC by enacting a statute repealing the NLC. *Id.* at Article X(c).

16 Evans, *supra* note 13, at 12.

17 Pursuant to Article X of the NLC Model Legislation, the effective date of the Compact is the earlier of the date of legislative enactment of the eNLC into law by no less than 26 states or December 31, 2018. The twenty-sixth state enacted the eNLC on July 20, 2017. NLC 2020 Annual Report, *supra* note 13, at 3. The implementation date, set by the NLC governing body (the ICNLCA) as January 19, 2018, was the date upon which the eNLC became operational. *Id.*

18 Rhode Island ceased being a Compact state in 2018 and has not yet joined the eNLC. ICNLCA, *NLC Member Jurisdictions*, *available at* https://www.ncsbn.org/nlcmemberstates.pdf. See also *The NLC in New England* for additional information.

19 (In alphabetical order, including territories) Alabama, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Guam (partial implementation), Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey (partial implementation), New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming. NCSBN, *Nurse Licensure Compact*, https://www.ncsbn.org/nurse-licensure-compact.htm (last visited May 12, 2021).

20 NCSBN, *Nurse Licensure Compact (NLC)*, https://www.ncsbn.org/nurse-licensure-compact.htm (last visited May 13, 2021).

OVERVIEW OF THE COMPACT

The more than two million nurses living in the 35 eNLC jurisdictions may practice in all Compact states, in person or via telehealth, without obtaining additional licensure.[21]

Among other topics, the Compact model legislation addresses: application for licensure in a party state; coordinated licensure information system and exchange of information; and oversight, dispute resolution and enforcement.[22] Additionally, the eNLC contains 11 uniform licensure requirements ("ULRs") for a nurse to obtain a multi-state license in their home state. (See Appendix B for a complete list of the ULRs.) Notably, one of the ULRs added in the eNLC is that licensure applicants must submit to state and federal fingerprint-based criminal background checks, one of the most significant improvements.[23]

The eNLC also established the governing body of the NLC, a quasi-governmental, joint public agency named the Interstate Commission of Nurse Licensure Compact Administrators (the "ICNLCA").[24] The ICNLCA's adopted Final Rules, which are binding on party states and have the same force and effect as the Compact, set forth additional details and requirements for implementation of the Compact, including, for example, information regarding the coordinated licensure information system, licensure details (e.g., change in primary state of residence[25]), and administration details (e.g., dues assessment and dispute resolution).[26] Each party state has one Compact administrator (the head of the state licensing board or designee), who participates in the business and affairs of the ICNLCA and is entitled to one vote in the promulgation of rules and creation of bylaws.[27]

The NCSBN and Compact administrators describe the following benefits of the NLC[28]:

- Expands access to care
- Enables telehealth practice (including triage, call centers, case managers)
- Facilitates disaster relief
- Provides support for nurse spouses in military families
- Facilitates online nursing education
- Is cost effective for nurses and employers[29]
- Addresses access for rural populations and areas of healthcare shortages
- Facilitates transport nursing
- Enables facility staffing – travel nursing
- Enhances mobility for nurses residing near borders and practicing in adjacent states
- Provides administrative efficiency
- Offers flexible licensure (i.e., nurses may still obtain a single-state license, if ineligible for a multi-state license)

Party states pay an annual Compact membership fee of $6,000.[30] See the section *Estimated Fiscal Impact* for additional information.

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21 NCSBN, *eNLC Fast Facts* ("eNLC Fast Facts"), *available at* https://www.ncsbn.org/NLC_Fast_Facts.pdf.

22 NLC Model Legislation, *supra* note 6.

23 NLC 2020 Annual Report, *supra* note 13, at 3 (noting that the slowdown of NLC adoption was caused by concerns related to the lack of a criminal background check requirement in statute).

24 NLC Model Legislation, *supra* note 6, at Articles VII and VIII.

25 For purposes of the Compact, a nurse can only have one primary state of residence, which is the state where the nurse can prove they legally reside. New Grads and Students Webinar, *supra* note 9, at slide 14. This may be supported by evidence such as a driver's license, voter registration card, or federal income tax return with a primary state of residence declaration. Primary state of residence does not pertain to home or property ownership. *Id.*

26 NLC Model Legislation, *supra* note 6, at Article VII(g); ICNLCA, Final Rules, Effective January 1, 2021, *available at* https://www.ncsbn.org/FinalRule-sadopted81120clean_ed.pdf.

27 NLC Model Legislation, *supra* note 6, at Article VII(b).

28 NLC, *Updated One Pager* ("Updated One Pager"), *available at* https://nursecompact.com/Updated_onepaged_NLC.pdf; New Grads and Students Webinar, *supra* note 9; and Legislator FAQs, *supra* note 14.

29 The argument is that the Compact is cost effective for employers that may share the costs of multiple licenses of their employees. Updated One Pager, *supra* note 28.

30 Legislator FAQs, *supra* note 14. States can receive financial assistance grants from NCSBN to help offset expenses of joining and implementing the Compact. *Id.*

KEY TAKEAWAYS: HOW DOES THE NLC WORK?

- **How does a state join the Compact?** A state must enact legislation to authorize the Compact, as well as undertake any administrative efforts required for implementation (e.g., determine licensure fees, updates to forms, processes, trainings).
- **Can the Compact be amended?** The Compact can be amended by the party states. An amendment becomes effective and binding once enacted into law by all party states.[31]
- **How does a state withdraw from the Compact?** A party state can withdraw from the Compact by enacting legislation to repeal the Compact.[32]
- **What is the benefit of a Compact license?** Nurses are required to be licensed in the state where the patient receiving nursing services is located at the time services are rendered. Nurses who work in more than one state must maintain separate licenses in each state (e.g., nurses who lives in a border area and work in neighboring states, travel nurses). A multi-state license allows nurses to practice in their home states, as well as all other Compact states, without the time, effort, and costs associated with obtaining licensure in each individual state.
- **How does a nurse obtain a Compact license?** A nurse must: (1) be a legal resident of a Compact state (i.e., nurse's primary state of residence must be a state that has adopted the Compact), (2) be eligible for a license in that Compact state pursuant to the authority of the state's board of nursing, and (3) meet all of the eNLC's ULRs. If a nurse is not eligible for a Compact license, they may still be eligible for a single-state license.
- **What governs a nurse's practice under a multi-state license?** State nurse practice acts define nursing, nursing practice, and scope of practice, which are not addressed in the Compact. A nurse practicing with a multi-state license is accountable for compliance with the state practice laws of each state in which they practice.

NURSING PRACTICE IN MASSACHUSETTS

Nursing practice and education in Massachusetts are governed by the BORN pursuant to M.G.L. c. 112, §§ 74 through 81C; M.G.L. c. 13, §§ 13 through 15D, and 244 CMR 3.00 – 9.00.[33] In implementing these statutes and regulations, BORN acts to protects the health, safety, and welfare of the citizens of the Commonwealth. BORN issues nursing licenses to qualified individuals through the following avenues: (1) initial licensure by exam; (2) initial licensure by reciprocity; and (3) licensure renewal.[34] Massachusetts generally does not issue temporary licenses. However, temporary licenses are being issued during the COVID-19 pandemic pursuant to the March 11, 2020 expedited licensure policy. See *Nursing in the Commonwealth's Response to the COVID-19 Pandemic* below, as well as *Temporary Licenses Issued During COVID-19 & BORN Authority Under the NLC*.

To be licensed as an RN or LPN in the Commonwealth, applicants for a nursing license by exam must provide proof that they: (1) graduated from a Board-approved nursing program; (2) are of good moral character, as defined in Massachusetts state law[35]; and (3) passed the National Council Licensure Examination ("NCLEX"), the national exam developed by NCSBN and taken by all nurses.[36] Applicants must also pay all required fees. Applicants for a nursing license by reciprocity (for nurses with an out-of-state license who wish to practice in Massachusetts) must meet those same requirements, have been licensed in another state or the District of Columbia, and have a valid Social Security number.[37] Nurses issued a license by reciprocity (for the full two-year license term) in Massachusetts are authorized to practice in the Commonwealth (in addition to the other state(s) in which they are licensed).

The fees associated with licensure by exam and licensure by reciprocity vary, and RN and LPN licenses expire on the licensee's birthday every two years (opposite years for RNs and LPNs).

Massachusetts does not currently perform criminal background checks for nurse licensure, unless an applicant self-identifies criminal history in response to the mandatory questions on good moral character. In such a case, BORN may perform a

31 NLC Model Legislation, *supra* note 6, at Article X(f).

32 NLC Model Legislation, *supra* note 6, at Article X(c). A withdrawal will not take effect until six months after enactment of the repealing statute. *Id.*

33 See also M.G.L. c. 112, § 61.

34 Massachusetts BORN, *Apply for a Nursing License by Exam*, https://www.mass.gov/how-to/apply-for-a-nursing-license-by-exam (last visited May 12, 2021); Massachusetts BORN, *Apply for a Nursing License by Reciprocity*, https://www.mass.gov/how-to/apply-for-a-nursing-license-by-reciprocity (last visited May 12, 2021); Massachusetts BORN, *Renew Your Nursing License*, https://www.mass.gov/how-to/renew-your-nursing-license (last visited May 12, 2021); and 244 CMR 8.00 (Licensure Requirements).

35 M.G.L. c. 112, §§ 74, 74A, and 76.

36 Massachusetts BORN, *Apply for a Nursing License by Exam*, https://www.mass.gov/how-to/apply-for-a-nursing-license-by-exam (last visited May 12, 2021). The NCLEX is a national exam for nurse licensure that may be taken in any state.

37 Massachusetts BORN, *Check Eligibility for a Nursing License by Reciprocity*, https://www.mass.gov/service-details/check-eligibility-for-a-nursing-license-by-reciprocity (last visited May 12, 2021); 244 CMR 8.00.

criminal offender record information ("CORI") check, which is a name-based search limited to Massachusetts information that is not fingerprint supported.[38]

THE NLC IN NEW ENGLAND

Maine and New Hampshire are the New England states currently in the Compact. **Maine** originally became a Compact state in 2000[39], and **New Hampshire** implemented the Compact in 2006.[40] **Rhode Island** was a member of the original NLC but concluded being a Compact state in 2018[41] because the state legislature did not enact the legislation required to join the eNLC. At the time of publication, enacting legislation to join the eNLC is pending in Rhode Island.

Vermont has not enacted legislation to join the Compact, although the state's Office of Professional Regulation ("OPR") and the Board of Nursing support participation.[42] In 2019, the OPR submitted a report to the state legislature that found "significant benefits" to participation (e.g., interstate portability, interstate collaboration, and access to information about nurses), declared participation good policy, and concluded that OPR supported the Compact in principle.[43] Following a survey of licensed nurses in Vermont which found high interest in Compact participation among nurses, with strong majority support for entry persisting notwithstanding associated fees, and near unanimous support of nurse employers, OPR recommended that the General Assembly implement Compact legislation.[44] Two bills are currently pending in the General Assembly.[45]

Connecticut has not enacted legislation to join the Compact. However, a bill introduced at the request of the Governor would require the Commissioner of Public Health to convene working groups to determine whether Connecticut should join any interstate licensure compacts.[46]

In **Massachusetts**, legislation to join the Compact has been proposed in the past several legislative sessions, including by Governor Baker in his 2019 health care bill.[47] BORN has supported the Commonwealth's entry into the Compact for many years.[48] Multiple bills are pending in the current (192nd) legislative session.[49]

Key stakeholder support and opposition to previous NLC bills is summarized below.

- The Massachusetts NLC Coalition (an organization representing nurses, providers, and other health care organizations, among others[50]) stated that joining the Compact would improve the Commonwealth's ability to respond to a changing

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38 Massachusetts Department of Criminal Justice Information Services, *Criminal Record Checks*, https://www.mass.gov/service-details/criminal-record-checks (last visited May 12, 2021).

39 NCSBN, *Maine Enacts Enhanced Nurse Licensure Compact (eNLC)* (Jun. 27, 2017), https://www.ncsbn.org/11032.htm.

40 State of New Hampshire, New Hampshire Board of Nursing, Communication to Governor Margaret Hassan and the Honorable Council (Jul. 31, 2015), https://sos.nh.gov/media/mtxpuvnq/01c-gc-agenda-082615.pdf.

41 State of Rhode Island Department of Health, Nursing, https://health.ri.gov/licenses/detail.php?id=231 (last visited Apr. 6, 2021).

42 Vermont Secretary of State, *Office of Professional Regulation: Nursing*, https://sos.vermont.gov/nursing/ (last visited May 12, 2021).

43 Secretary of State, Office of Professional Regulation, Multi-State Nursing Licensure Compact: The Costs and Benefits for Vermont (March 2019), *available at* https://legislature.vermont.gov/assets/Legislative-Reports/Act-144-Nurse-Compact-Report.pdf at 2, 8.

44 Secretary of State, Office of Professional Regulation, A Supplement to the Report Submitted March 15, 2019 to the House and Senate Committees on Government Operations, entitled: Multi-State Nursing Licensure Compact: The Costs and Benefits for Vermont (November 2019), *available at* https://sos.vermont.gov/media/sdddeh1b/vermont-nlc-survey-report-march-2019.pdf.

45 H.99, An Act Relating to Vermont's Adoption of the Nurse Licensure Compact, https://legislature.vermont.gov/bill/status/2022/H.99; S.48, An Act Relating to Vermont's Adoption of the Nurse Licensure Compact, https://legislature.vermont.gov/bill/status/2022/S.48.

46 H.B. No. 6449, An Act Expanding Economic Opportunity in Occupations Licensed by the Department of Public Health, https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB06449&which_year=2021.

47 H.4134, An Act to Improve Health Care By Investing In Value (191st Session), https://malegislature.gov/Bills/191/HD4547.

48 *See, e.g.,* Commonwealth of Massachusetts, Board of Registration in Nursing, Minutes of the Regularly Scheduled Board Meeting, April 12, 2017, *available at* https://www.mass.gov/doc/april-12-2017/download?_ga=2.133396622.1273405004.1618233049-320599665.1599149065 (unanimously voted in support of a bill to enact the Compact). In 2002, BORN indicated its interest in participating in the Compact, citing as main reasons the elimination of duplicate licenses for nurses, improvement of continuity of patient care, to address telehealth and cross-state practice, and more timely licensure and disciplinary information. Joint Commission on Health Care, *Multi-State Nurse Licensure Compact Study,* Figure 8 (2002), *available at* https://rga.lis.virginia.gov/Published/2002/RD15/PDF ("Joint Commission on Health Care").

49 *See, e.g.,* S.163, An Act Relative to Nurse Licensure Compacts, https://malegislature.gov/Bills/192/SD671; H.1284, An Act Relative to Nurse Licensure Compact in Massachusetts, https://malegislature.gov/Bills/192/HD1988.

50 The Coalition includes the Organization of Nurse Leaders – MA, RI, NH, CT, VT, American Nurses Association Massachusetts, Massachusetts Health & Hospital Association, National Council of State Boards of Nursing, Massachusetts Association of Colleges of Nursing, Massachusetts-Rhode Island League for Nursing, Emergency Nurses Association Massachusetts State Council, Conference of Boston Teaching Hospitals, Case Management Society of New England, Night Nurse, Inc., Maxim Healthcare Services, Inc., AARP Massachusetts, Home Care Alliance of Massachusetts, Atrius Health, and Fresenius Medical Care North America.

healthcare delivery landscape, permit qualified nurses to care for patients across the health care continuum, augment the state's emergency preparedness, and support access to quality nursing care for all residents in the Commonwealth.[51]

- The Massachusetts Nurses Association ("MNA") stated in 2019 that there is no nursing shortage in the Commonwealth, arguing that the Compact is a solution to a problem that does not exist.[52] MNA also stated that joining the Compact is not necessary because there are existing processes in Massachusetts for disaster response and timely issuance of licenses to out-of-state RNs.[53] MNA also cited concerns including decreased licensing standards, loss of state licensing revenue, and eroding state oversight of licensees.[54]

NURSES, THE COVID-19 RESPONSE, AND THE NLC

Nurses have been identified as a critical component in the fight against the novel Coronavirus ("COVID-19") pandemic. There has been extensive documentation of the critical role nurses play in the health care delivery system in battling COVID-19, including the increasing demand for nurses throughout the pandemic and the significant toll caring for COVID-19 patients has taken on health care providers and nurses, in particular.[55] In a recent study exploring international health workforce responses to the COVID-19 pandemic by analyzing job advertisements in March and April 2020, nursing jobs were found to be the most advertised positions in every country studied.[56] While the health care delivery community in the United States faced competition in the early stages of the pandemic chiefly for equipment (e.g., ventilators and personal protective equipment), by fall 2020, when virtually every state was experiencing surges, the competition was centered around workforce personnel, and in particular nurses.[57]

As COVID-19's impact spread around the country, many states took actions in response to the public health emergency to bolster their health care delivery systems, including increasing the number of nurses available. For example, many states, including Massachusetts, responded to the crisis by enacting emergency orders related to nurse licensing.[58] *See inset: Nursing in the Commonwealth's Response to the COVID-19 Pandemic.*

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51 NLC Coalition Testimony on H1944 An Act Relative to Nurse Licensure Compact (Oct. 8, 2019), *available at*: https://www.mhalink.org/MHA/MyMHA/Communications/TCMassachusetts/Content/2019/Q2/H1944_An_Act_relative_to_nurse_licensure_compact_in_Massachusetts_NLC_Coalition_Letter.aspx ("NLC Coalition Testimony").

52 An Act relative to Nurse Licensure Compacts in Massachusetts H.1944: A public hearing before Massachusetts Joint Committee on Healthcare Financing, 191st Gen. Crt. (Mass. 2019, October 8). Text from: MassTrac Legislative Tracking Service; Accessed 12/11/2020.

53 An Act relative to Nurse Licensure Compact S.103: A public hearing before Massachusetts Joint Committee on Consumer Protection and Professional Licensure, 191st Gen. Crt. (Mass. 2019, May 13). Text from: MassTrac Legislative Tracking Service; Accessed 12/11/2020; see also Massachusetts Nurses Association, *Massachusetts Nurses Association Letter to Gov. Baker, Legislature on Coronavirus (COVID-19) Concerns and Recommendations* (Mar. 14, 2020), https://www.massnurses.org/region1/news/p/openItem/11616.

54 Massachusetts Nurses Association, *Why Nurses OPPOSE "Nurse Licensure Compact"* (Nov. 7, 2017), https://www.massnurses.org/news-and-events/p/openItem/10705.

55 *See, e.g.*, Shanoor Seervai, *"All Hands on Deck": The COVID-19 Pandemic Through Nurses' Eyes, The Commonwealth Fund* (Mar. 12, 2021), https://www.commonwealthfund.org/publications/podcast/2021/mar/all-hands-on-deck-covid-19-nurses; State of the World's Nursing 2020, World Health Organization (April 2020), *available at* https://www.who.int/publications/i/item/9789240003279; Nayna Schwerdtle et al, *Nurse Expertise: A Critical Resource in the COVID-19 Pandemic Response*, Annals of Global Health (May 2020), https://annalsofglobalhealth.org/articles/10.5334/aogh.2898/; Janice Phillips and Cathy Catrambone, *Nurses Are Playing A Crucial Role in this Pandemic – As Always*, Scientific American (May 4, 2020), https://blogs.scientificamerican.com/observations/nurses-are-playing-a-crucial-role-in-this-pandemic-mdash-as-always/; Kambhampati et al, *COVID-19 Associated Hospitalizations Among Health Care Personnel – COVID-NET, 13 States, March 1 – May 31, 2020*, Centers for Disease Control and Prevention morbidity and Mortality Weekly Report (Oct. 30, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6943e3.htm?s_cid=mm6943e3_w; and William Wan, *Burned Out by the Pandemic, 3 in 10 Health-Care Workers Consider Leaving the Profession*, Washington Post (Apr. 22, 2021), https://www.washingtonpost.com/health/2021/04/22/health-workers-covid-quit/.

56 Watts RD et al, *Who comes when the world goes Code Blue? A novel method of exploring job advertisements for COVID-19 in health care*, Nurs Open, 2020;00:1–7, *available at* https://doi.org/10.1002/nop2.721.

57 *See, e.g.*, Priyanka Dayal McCluskey & Felice J. Freyer, *ICU Capacity Shrinks at Hospitals As They Scramble to Find Enough Staff to Manage COVID Surge*, Boston Globe (Dec. 24, 2020), https://www.bostonglobe.com/2020/12/24/metro/icu-capacity-shrinks-hospitals-they-scramble-find-enough-staff-manage-covid-surge/?p1=StaffPage; Markian Hawryluk and Rae Ellen Bichell, *Need a COVID-19 Nurse? That'll be $8,000 a Week*, KHN.ORG (Nov. 24, 2020), https://khn.org/news/highly-paid-traveling-nurses-fill-staffing-shortages-during-covid-pandemic/.

58 *See, e.g.*, NCSBN, *State Response to COVID-19 (as of April 12, 2021)*, https://www.ncsbn.org/State_COVID-19_Response.pdf (last visited April 15, 2021).

NURSING IN THE COMMONWEALTH'S RESPONSE TO THE COVID-19 PANDEMIC

On March 10, 2020, Massachusetts Governor Charlie Baker declared a state of emergency in the Commonwealth due to the COVID-19 pandemic.[59] A number of key policies and orders related to the practice of nursing followed, as summarized below (with respect to nurses):

- **March 11, 2020 BORN Licensure Policy in the Event of a Declared Public Health Emergency:** BORN policy on expedited processing of reciprocal license applications (within one business day) in a declared public health emergency.[60]
- **March 17, 2020 Order Extending The Registrations of Certain Licensed Health Care Professionals (COVID-19 Order No. 8):** Order by Governor Baker extending the registrations of RNs and LPNs and waiving requirements for completion of training and continuing education[61] (rescinded effective July 10, 2020, per COVID-19 Order No. 41, signed by Governor Baker on June 26, 2020[62]).
- **April 3, 2020 Order Rescinding and Replacing the March 29, 2020 Order of the Commissioner of Public Health Maximizing Health Care Provider Availability:** Order by MA Department of Public Health ("DPH") Commissioner providing that nurses licensed in another state who present verification to BORN that their license is in good standing in the state where it was issued shall be issued a corresponding Massachusetts license that shall remain valid during the state of emergency.[63] Such nurses are permitted to provide services (within the authorized scope of practice) both in-person in Massachusetts and across state lines into the Commonwealth via telemedicine, where appropriate. The Order also established the ability of nurses who recently (in the last ten years) practiced with a license in Massachusetts but whose license had expired or lapsed to be immediately reinstated upon request, subject to certain criteria (e.g., license was not revoked or suspended).
- **April 9, 2020 Order Authorizing Nursing Practice by Graduates and Senior Students of Nursing Education Programs (COVID-19 Order No. 24):** Order by Governor Baker authorizing, subject to certain terms, nursing practice by graduates from registered nursing or practical nursing programs approved by BORN, and senior nursing students who are attending the last semester of a Board approved nursing program for the duration of the state of emergency.[64]
- **December 21, 2020 Notice Extending the Effective Date of the Rescission of License Extensions:** Given the continued presence of COVID-19 in the Commonwealth, DPH's Bureau of Health Professions Licensure issued an updated notice (original notice was issued October 2, 2020) extending the effective date of the recission of license extensions (see above) to June 30, 2021.[65]

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59 Massachusetts Office of Governor Charlie Baker and Lt. Governor Karyn Polito, *Declaration of a State of Emergency to Respond to COVID-19* (Mar. 10, 2020), https://www.mass.gov/news/declaration-of-a-state-of-emergency-to-respond-to-covid-19.

60 Commonwealth of Massachusetts, Board of Registration in Nursing, *Licensure Policy 10-03*, https://www.mass.gov/doc/expedited-processing-of-reciprocal-license-applications-in-the-event-of-a-declared-public/download. See also Massachusetts Office of Governor Charlie Baker and Lt. Governor Karyn Polito, *COVID-19 State of Emergency*, https://www.mass.gov/info-details/covid-19-state-of-emergency.

61 Governor Charlie Baker, Order Extending the Registrations of Certain Licensed Health Care Professionals (Mar. 17, 2020), *available at* https://www.mass.gov/doc/march-17-2020-registration-of-health-care-professionals-order/download.

62 Governor Charlie Baker, Order Authorizing the Reopening of Child Care Programs and Rescinding Eight COVID-19 Orders (COVID-19 Order No. 41) (Jun. 26, 2020), *available at* https://www.mass.gov/doc/signed-rescission-and-childcare-reopen-order-41/download.

63 Commissioner Monica Bharel, Order Rescinding and Replacing the March 29, 2020 Order of the Commissioner of Public Health Maximizing Health Care Provider Availability (Apr. 3, 2020), *available at* https://www.mass.gov/doc/order-maximizing-available-healthcare-providers/download. Although the April 3 Order significantly expanded the definition of "health care provider", RNs and LPNs were previously included in the definition in the March 29 Order, which is *available at* https://www.mass.gov/doc/the-order-of-the-commissioner-of-public-health-maximizing-health-care-provider-availability/download.

64 Governor Charlie Baker, Order Authorizing Nursing Practice by Graduates and Senior Students of Nursing Education Programs (COVID-19 Order No. 24) (Apr. 9, 2020), *available at* https://www.mass.gov/doc/april-9-2020-nursing-school-students/download.

65 Massachusetts Department of Public Health, Bureau of Health Professions Licensure, Notice to Licensed Health Care Professionals, COVID-19 Registration Renewal Extension (Dec. 21, 2020), *available at* https://www.mass.gov/doc/covid-19-registration-renewal-extension-notice/download. In summary, licenses, certifications, permits, and certificates of registration in good standing that were due to expire during the state of emergency (beginning March 10, 2020), and have not yet renewed, will expire on June 30, 2021 in adherence with COVID-19 Order No. 41 (see https://checklicense.hhs.state.ma.us/MyLicenseVerification/).

During the COVID-19 pandemic, the demand for travel nurses, which represent only 2% of the nursing population in the United States, has risen sharply.[66] Specifically, the need for travel intensive care unit ("ICU") nurses was particularly concentrated at times, as COVID-19 hot spots shifted around the country.[67] For example, NurseFly, a source of travel nursing jobs, reported that COVID-19 caused a 305% increase in demand for ICU travel nurses from March to November 2020 and that pay for traveling ICU nurses rose eighty to ninety percent near the end of 2020.[68]

ANALYSES

NURSING WORKFORCE CHARACTERISTICS AND VACANCY RATES

While there are currently more than 130,000 active RN license holders in Massachusetts[69], there are approximately 90,000 currently-active employed licensed RNs working in Massachusetts.[70] The distribution of respondents to the Massachusetts Department of Public Health's RN licensure renewal survey across employment settings in Massachusetts is shown below.[71]

Massachusetts RNs according to primary practice locations, 2018 (listed alphabetically)

PRIMARY PRACTICE POSITION	PERCENT
Acute Care	19.3%
Administration	2.5%
Anesthesia/Perioperative	5.2%
Case Management	4.8%
Critical Care	6.9%
Dialysis	1.0%
Education	2.3%
Emergency/Trauma	5.1%
Family Practice	1.5%
Home Health	6.1%
Infection Prevention	0.3%
Labor & Delivery/Post-Partum	4.1%

PRIMARY PRACTICE POSITION	PERCENT
Long term care	4.8%
Mental Health/Substance Abuse	5.7%
Not Applicable	1.3%
Occupational Health	0.5%
Oncology	3.4%
Other	11.2%
Palliative Care	0.9%
Primary Care	5.6%
Public Health	1.1%
Rehabilitation	2.9%
School Health	3.6%

Notes: Data are preliminary. Analyses include employed Massachusetts RNs with a primary practice location in Massachusetts (N=~88,000 in preliminary data sets, but counts are subject to change in final data sets and analyses).[72]

66 *See, e.g.,* Hannah Sampson, *Travel nurses typically see the country. During the last year, many saw the worst of the pandemic*, The Washington Post (Mar. 8, 2021), https://www.washingtonpost.com/travel/2021/03/08/travel-nurse-covid-pandemic/.

67 Richard Longyear et al, *Considering Concerns Related to Demand for Travel ICU Nurses Across COVID-19 Hotspots*, New England Journal of Medicine Catalyst: Innovations in Care Delivery (Oct. 28, 2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7592854/.

68 Robert King, *Demand, pay for travel ICU nurses soar as hospitals fact staff crunch due to COVID-19*, Fierce Healthcare (Dec. 17, 2020), https://www.fiercehealthcare.com/hospitals/demand-pay-for-travel-icu-nurses-soars-as-hospitals-face-staff-crunch-due-to-covid-19?utm_medium=nl&utm_source=internal&mrkid=80433117&mkt_tok=eyJpIjoiTkRSak5qQTRaR1JsWVdRMiIsInQiOiJKOXhnZkc2YzFoT3V3Z2pNM3lOQlRUc3pCYVl2NjArdGRPQnE5UFZ3RkZIaHZqVEY5QXZIaDJMcGgybmJxOUF4TE5sdHhQcVJMMXNhZUZJRUhLYWpwclhRNmFQUFE4aGV2VFNqcnNaNDlOajVcL2J1eE9XR2ZZekFSY1hHWjVIYzFpajRsMzFhRmlpd2wrXC8wb3JCSVBJUT09Ino%3D.

69 See Massachusetts BORN, *Statistics About Massachusetts Nursing Licensees*, https://www.mass.gov/service-details/statistics-about-massachusetts-nursing-licensees; or Massachusetts Executive Office of Health and Human Services, Massachusetts Health Professions License Verification Site, https://checkalicense.hhs.state.ma.us/MyLicenseVerification/. Many active Massachusetts RN license holders also hold licenses in, live, and work in other states. Based on the data available on the license verification website, the proportion of license holders with non-Massachusetts addresses has increased in recent years.

70 U.S. Department of Health and Human Services, Health Resources and Services Administration ("HRSA"), National Center for Health Workforce Analysis, 2018 National Sample Survey of Registered Nurses: Brief Summary of Results, Appendix Table 1 (2019), *available at* https://bhw.hrsa.gov/sites/default/files/bureau-health-workforce/data-research/nssrn-summary-report.pdf; U.S. Bureau of Labor Statistics, *Occupational Employment and Wage Statistics, May 2020 State Occupational Employment and Wage Estimates Massachusetts*, https://www.bls.gov/oes/current/oes_ma.htm#29-0000.

71 The data were collected in a survey accompanying the online RN license renewal application, which is part of the Massachusetts Health Professions Data Series that provides data on licensed health professions. Data are preliminary and subject to change in final data sets.

72 These preliminary data are derived from the 2018 Health Professions Data Series administered by the Massachusetts Board of Registration in Nursing in collaboration with the DPH Healthcare Workforce Center. For any further data requests or questions regarding the data collection please contact the Massachusetts Department of Public Health Office of Statistics and Evaluation Director, Sanouri Ursprung (sanouri.ursprung@state.ma.us).

While there are more RNs per capita in Massachusetts than in the United States overall, the Massachusetts RN workforce is older, with 44% age 50 and above compared to 35% in the U.S. overall.[73] The age differences are even larger among acute and critical care RNs (who together comprise 26% of RNs in Massachusetts). As of 2018, 49% of Massachusetts inpatient hospital RNs and 42% of critical care RNs were age 50 and older compared to 32% of U.S. inpatient hospital RNs and 24% of critical care RNs in the rest of the U.S.[74]

Nationally, the nursing workforce is generally experiencing steady growth and significant turnover, with a large number of "Millennial" RNs (born between 1981 and 1996, i.e., age 23 to 38 in 2019) replacing retiring "Baby Boomer" RNs (born between 1946-1964, i.e., 55 and older).[75] In 2019, the Massachusetts RN workforce remained composed of 30% Baby Boomers compared to 23% in the rest of the US.[76] At the same time, the number of Millennial RNs in Massachusetts grew 69% between 2014 and 2019, compared to 79% growth in the US overall. These data suggest that the Massachusetts RN workforce may experience slower growth and face a tighter labor market than in other parts of the country in the near future.

Although nurses enter the Massachusetts labor market from all over the country, data on annual takers of the required national licensure exams (NCLEX) in each state suggest slower rates of growth in Massachusetts. According to data from the NCSBN, the number of first-time takers of the NCLEX-RN in Massachusetts grew 4% from 2014 to 2019 (from 3,860 to 4,018) but was outpaced by 9% growth in the number of test takers in the U.S. overall. The number of Massachusetts takers of the NCLEX for licensed practical nurses (NCLEX-PN) dropped 18% between 2014 and 2019, more than the 13% drop in the U.S. overall.[77] BORN data on nurse graduates from 2012 shows 3,584 RN and 912 LPN graduates (4,496 total), and data from 2020 shows 4,299 RN and 679 LPN graduates (4,978 total).

Data on nursing vacancies provide more detailed insight into areas of demand and the ability to recruit and fill positions. Based on a 2018 survey of acute care and specialty hospitals in the Massachusetts hospital nursing market, the Massachusetts Health & Hospital Association ("MHA") and Organization of Nurse Leaders – MA, RI, NH, CT, VT ("ONL") report an overall hospital RN vacancy rate of 5.9% (a 0.9% increase from the 2017 vacancy rate), with RN vacancy rates of 5.8% and 7.3% in acute care hospitals and specialty hospitals, respectively.[78] The survey showed variation by specialty, with the highest RN vacancy rates in emergency departments (8.8%), telemetry (8.3%) and rehabilitation (8.1%), and by geographic region, with the southeast and western regions of MA reporting the highest vacancy rates (9.1% in each), while the central region had the lowest rate (4.3%).

According to the MHA and ONL report, open RN positions that took the longest time to fill, measured by the share reporting greater than 60 days to fill the position, were in operating rooms (63%), critical care – adult (intensive care unit, burn unit, etc.; 39%), and emergency departments (39%). The highest percentages for filling open RN positions in the least time, measured by the share reporting fewer than 30 days to fill the position, were in ambulatory care (22%), post anesthesia care (19%), and medical/surgical (19%). For all positions/services, the share of hospitals reporting positions taking fewer than 30 days to fill in 2018 was 9.3%, an all-time low (previous low was 20% in 2017).

Hospitals report that vacant positions are temporarily filled using per diem nurses, staffing pools, overtime, on-call staff, and agency or traveler nurses. Regarding use of agency or traveler nurses, 55% of hospital respondents said use of such nurses increased from the previous year, while 21% reported no changes in use and 25% reported a decrease from previous years. The average number of agency/traveler RN full-time equivalents ("FTEs") in a hospital during the prescribed time

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73 Massachusetts Health Policy Commission, *Mandated Nurse-to-Patient Staffing Ratios in Massachusetts, Research Presentation: Analysis of Potential Cost Impact* (Oct. 15, 2018), https://www.mass.gov/doc/presentation-analysis-of-potential-cost-impact-of-mandated-nurse-to-patient-staffing-ratios/download. HPC analysis of data from the U.S. Census Bureau's American Community Survey (2019) finds Massachusetts has 120 RNs per 10,000 residents, placing it 16th among states. New Hampshire has 128 RNs per 10,000 residents, Connecticut has 102, Rhode Island has 105, New York has 106, and the U.S. in the aggregate has 104. See https://www.census.gov/programs-surveys/acs for additional information.

74 Data based on original HPC analysis of HRSA's 2018 National Sample Survey of RNs, *supra* note 70.

75 Auerbach et al, *Millennials almost twice as likely to be registered nurses as baby boomers were*, Health Affairs, 36.10 (Oct. 2017): 1804-1807, *available at* https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2017.0386.

76 Based on original HPC analysis of data from the U.S. Census Bureau's 2019 American Community Survey.

77 NCSBN, *Exam Statistics & Publications*, https://www.ncsbn.org/exam-statistics-and-publications.htm (last visited May 5, 2021). Note that the resident population in Massachusetts grew at the same rate as the rest of the U.S. from 2010 to 2020 (7.4%). Hartley et al, *A Preliminary Analysis of U.S. and State-Level Results from the 2020 Census,* U.S. Census Bureau (Apr. 2021), *available at* https://www.census.gov/content/dam/Census/library/working-papers/2021/demo/pop-twps0104.pdf.

78 *2018 Survey of Hospital Nurse Staffing Issues in Massachusetts, Summary & Table of Results,* Massachusetts Health & Hospital Association and Organization of Nurse Leaders, MA, RI, NH, CT, VT (Feb. 2021). Fifty-five hospitals responded to the survey (64.7% response rate) – 47 acute care hospitals and eight specialty hospitals. In the survey, vacancy rate is defined as number of vacant full-time equivalents ("FTEs") divided by the number of budgeted FTEs, multiplied by 100. The vacancy data was for a one-week period in December 2018.

period (in December 2018) was 14.3 FTEs, and the median was 8 FTEs. Twelve of the fifty-one respondents on the question reported zero agency/traveler RN FTEs during that period.

KEY FINDING

While Massachusetts has a higher rate of RNs per capita than the United States overall, data suggest that the RN labor market in Massachusetts may experience slower growth and tighten in the coming years.

- The Massachusetts RN workforce is older, and the age differences are even greater for acute and critical care RNs; growth in nursing graduates is slower than other areas of the country.
- Hospitals reported that vacancy rates varied by specialty and geographic region (e.g., highest RN vacancy rates in emergency departments), and open RN positions in adult critical care and emergency department were among those that took the longest time to fill.

EMERGENCY AND PANDEMIC PREPAREDNESS

Certain crises, including natural disasters and public health emergencies, require urgent nursing support. In addition to the ongoing COVID-19 pandemic, examples include hurricanes, flu season, the H1N1 pandemic, and the Merrimack Valley gas explosions in Massachusetts in 2018.[79]

There is growing recognition among health care providers that national licensure frameworks are critical for emergency preparedness.[80] Accordingly, participation in the NLC can facilitate state emergency preparedness and disaster response, allowing nurses with a Compact license to assist in any Compact state automatically, without a need for government action to modify licensure requirements.[81]

According to NCSBN, some members of the health care workforce in Compact states lauded membership in the Compact during the COVID-19 pandemic response.[82] New Jersey, which had enacted but not implemented the Compact, accelerated partial implementation in March 2020 to allow nurses with Compact licenses to practice in the state.[83] In Pennsylvania, a non-Compact state, the Pennsylvania Nurses Association reversed its previous opposition to the NLC, citing COVID-19's "exacerbation" of the need to reduce the regulatory burden on nurses.[84] However, notwithstanding membership in the Compact, certain Compact states expedited licensing processes for out-of-state nurses to facilitate additional aid (e.g., Texas, Georgia).[85]

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79 *See, e.g.,* Cyd Charisse Villalba, *Compact licensure is a critical response to the pandemic crisis*, American Nurse (Oct. 15, 2020), https://www.myamericannurse.com/compact-licensure-is-a-critical-response-to-the-pandemic-crisis/ (discussing Hurricanes Katrina and Harvey); Jeannie P. Cimiotti, *2021 NCSBN Scientific Symposium – Patient Outcomes, Inpatient Costs and Hospital Performance During a Disaster: The Implications for the Nurse Licensure Compact Video Transcript,* NCSBN (2021), https://www.ncsbn.org/Transcript_2021SciSymp_jcimiotti.pdf (discussing Hurricane Sandy); An Act relative to Nurse Licensure Compacts in Massachusetts H.1944: A public hearing before Massachusetts Joint Committee on Healthcare Financing, 191st Gen. Crt. (Mass. 2019, October 8). Text from: MassTrac Legislative Tracking Service; Accessed 12/11/2020 (discussing the Lawrence gas explosions); Geraldine Collier, Worcester Telegram & Gazette, *Economic Driver: Bay State nurses excluded from national nursing compact*, National Nurses United (May 16, 2016), https://www.nationalnursesunited.org/news/economic-driver-bay-state-nurses-excluded-national-nursing-compact (discussing H1N1 and the flu).

80 *See, e.g.,* Liss et al, *Mutual Recognition of Physician Licensure by States Would Provide For Better Patient Care,* Health Affairs (May 10, 2021), https://www.healthaffairs.org/do/10.1377/hblog20210505.311262/full/ (citing the NLC as a successful model of mutual recognition); Donelan et al, *Physician and Nurse Practitioner Roles in Emergency, Trauma, Critical, and Intensive Care*, Nursing Outlook 598 (Apr. 2020), *available at* https://www.nursingoutlook.org/article/S0029-6554(20)30004-X/pdf; Fraher et al, *Ensuring and Sustaining a Pandemic Workforce*, NEJM (Jun. 4, 2020), https://www.nejm.org/doi/full/10.1056/NEJMp2006376; Joanne Spetz, *There Are Not Nearly Enough Nurses to Handle the Surge of Coronavirus Patients: Here's How to Close the Gap Quickly*, Health Affairs (Mar. 31, 2020), https://www.healthaffairs.org/do/10.1377/hblog20200327.714037/full/.

81 *See, e.g.,* NLC Coalition Testimony, *supra* note 51; Dow et al, *Emerging from the COVID Crisis With a Stronger Health Care Workforce,* Academic Medicine (Aug. 18, 2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7437419/; NLC 2020 Annual Report, *supra* note 13, at 5; NCSBN, *The Nurse Licensure Compact and COVID-19 – A Tale of Two States* (June 2020) ("NLC and COVID-19 – A Tale of Two States"), https://www.ncsbn.org/14826.htm; and NCSBN, *Now is the Time: Compact Licensure Cannot Wait Until the Next Crisis* (Dec. 2020), https://www.ncsbn.org/15280.htm.

82 E.g., NLC and COVID-19 – A Tale of Two States, *supra* note 81.

83 NLC and COVID-19 – A Tale of Two States, *supra* note 81; NCSBN, Nurse Licensure Compact, https://www.ncsbn.org/nurse-licensure-compact.htm; and NLC 2020 Annual Report, *supra* note 13. Nurses residing in New Jersey cannot apply for a multi-state license until full implementation in 2021.

84 Pennsylvania State Nurses Association ("PSNA"), *PSNA Responds to Nurse Licensure Compact* (Jul. 16, 2020), https://www.psna.org/psna-responds-to-nurse-licensure-compact/. Although the bill for which the PSNA expressed support did not pass, the PSNA identified the ULRs and background checks among its reasons for newly supporting the NLC.

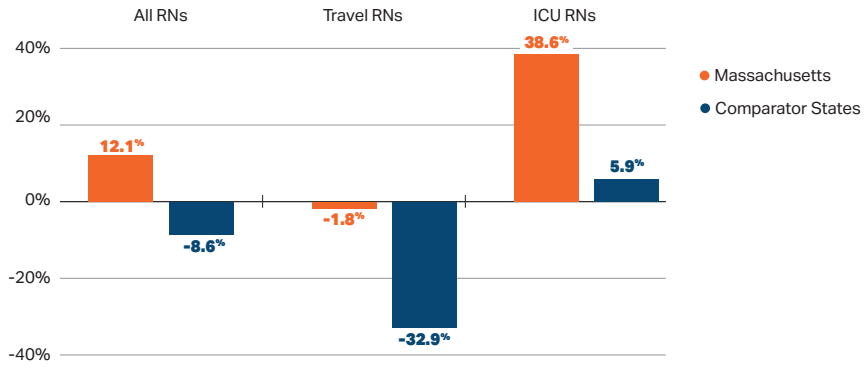
85 Texas Board of Nursing, *COVID-19 Disaster Licensing for Out-of-State Nurses*, https://www.bon.texas.gov/FastTrackOutofStateLicensing.asp (last visited May 12, 2021); Georgia Board of Nursing, https://sos.ga.gov/index.php/licensing/plb/45 (last visited May 12, 2021).

Trust for America's Health ("TFAH"), a national non-profit public health policy organization, has identified adoption of the NLC as one of the ten top-priority indicators in its rankings of state emergency preparedness.[86] According to TFAH "[w]orkforce shortages can impair a state's ability to effectively manage disasters or disease outbreaks, potentially resulting in poorer health outcomes for those affected"[87] and the NLC, which provides standing reciprocity without a requirement for an emergency declaration, "enables health officials to quickly increase their staffing levels"[88]. Accordingly, while TFAH ranked Massachusetts in the high tier in 2020, based on other indicators, it got no score for adoption of the NLC.

During the COVID-19 pandemic, Massachusetts faced nurse staffing challenges, notwithstanding the temporary licenses issued by the BORN during the state of emergency. To facilitate analysis of the nursing labor market during the pandemic, the HPC obtained data from Burning Glass ® Technologies, a software analytics firm that provides real-time labor market information.[89] Analysis of RN job postings before and during COVID-19 suggest that Massachusetts hospitals and other employers of RNs may have struggled to meet critical staffing needs more than comparator states.[90,91] The figure below displays the change in the number of monthly hospital RN job postings in Massachusetts during the pandemic compared to a set of comparison states (New Hampshire, Maine, and Maryland).[92]

As shown in **Figure 2**, during the period of March 2020 to February 2021, RN job postings in Massachusetts increased by 12% while falling 9% in comparator Compact states New Hampshire, Maryland, and Maine. While postings for traveling RNs, in particular, spiked in Massachusetts in the spring of 2020, they declined in the following months as overall hospitalizations dropped due to cancellation and shutdown of elective and other surgeries, though the decline was not as large as in comparator states. Since travel nurse agencies are administratively able to place a nurse with a multi-state license in a Compact state more quickly, it is more challenging to secure traveling nurses as a non-Compact state. Finally, regarding critical care or ICU RNs who were particularly needed to care for COVID-19 patients, postings in Massachusetts grew nearly 40% over the prior year compared to growth of 6% in comparator states.

Figure 2: Percent change in monthly job postings 3/20–2/21, relative to 12-months prior



Source: HPC analysis of Burning Glass Technologies, "Labor Insight™ Real-Time Labor Market Information Tool." http://www.burning-glass.com (2021).

86 Ready or Not: Protecting the Public's Health From Diseases, Disasters, and Bioterrorism, Trust for America's Health (Feb. 2020), *available at* https://www.tfah.org/wp-content/uploads/2020/01/2020ReadyOrNotFINAL.pdf. TFAH is a non-profit, non-partisan public health policy, research, and advocacy organization.

87 *Id.* at 33.

88 *Id.* at 6.

89 For additional information, see https://www.burning-glass.com/.

90 *See also* Longyear, *supra* note 67.

91 Data were queried from Burning Glass to reflect average monthly new job postings for registered nurses in the health care and social assistance industry sector. Data were extracted for Massachusetts and separately for a group of comparator states (Maine, New Hampshire, and Maryland). An average number of new monthly postings was computed for each geographic comparison (Massachusetts vs. Comparator States) and for three categories of job postings for RNs. The three categories were all RNs but excluding postings for traveling RNs ("All RNs"), postings specifically for traveling RNs ("Travel RNs"), and a subset of job postings for Intensive or Critical Care nurses ("ICU RNs"). A pre-period ("Pre-COVID") was defined as 1-year (March 2019 – February 2020), while a post-period ("COVID") was defined as 1-year (March 2020 – February 2021). A percent change in monthly new job postings between March 2020 and February 2021 relative to the 12-months before was calculated. For job postings that include salary information, the median salary was extracted comparing hospital registered nurse job postings and non-hospital registered nurse job postings. A percent difference was calculated over the previously indicated time periods of interest.

92 New Hampshire and Maine were selected as comparison states due to being near Massachusetts and in the Compact, while Maryland was selected for being a Compact state and of similar size and demographics as Massachusetts. Maryland is much larger than New Hampshire and Maine and accounts for the majority of postings from this group of comparison states. Though they did not experience a surge of COVID-19 cases in the spring of 2020 with the same intensity as Massachusetts did, it was nevertheless substantial. Including Louisiana as a comparator state, which experienced aCOVID-19 surge in the spring of 2020 like Massachusetts, did not change the overall results of the analysis.

In addition to the spike in job postings for Massachusetts critical care hospital RNs, salary offers included with those postings also jumped in Massachusetts – again suggesting employers were facing critical difficulties attracting RNs to needed positions. Salary offers included in Massachusetts hospital RN job postings during COVID-19 jumped 3.1% between March 2020 and February 2021, in contrast to comparator states which did not show such a jump and in the case of non-hospital RNs in either Massachusetts or in comparator states.[93]

KEY FINDING

Joining the Compact would facilitate the Commonwealth's emergency preparedness, enabling the Massachusetts health care delivery system to react more dynamically to unforeseen and sudden changes in nursing needs, during pandemics and other emergencies.

- Massachusetts faced significant challenges meeting the demand for nurses during COVID-19, most notably regarding ICU RNs, and data suggest Massachusetts hospital employers had greater difficulty than comparator states.
- The Compact would enhance the ability of Massachusetts to more readily address staffing needs, particularly for the nurse specialties most sought during pandemics, natural disasters, or other crises.

OTHER STATES' ENTRY INTO THE NLC

According to NCSBN, membership in the Compact for the 35 states/jurisdictions that have joined to date has been a positive experience, with benefits for state boards of nursing, employers, and individual nurses. While Compact membership had slowed by 2015, adoption has increased in recent years following the adoption of the eNLC, which includes the requirement for state and federal criminal background checks. While Rhode Island is the one state in the original NLC that has not enacted legislation to join the eNLC, no party states have repealed the Compact.[94]

There is limited academic literature published on the impact of the NLC. One study found no impact of Compact adoption on labor force participation, employment levels, hours worked, or nurse wages.[95] It also found "little evidence that the labor supply or mobility of nurses increased following the adoption of the Compact in the nurses' home state", even among nurses who live in counties bordering other Compact states who are potentially most affected by the NLC. Another study found an 11% increase in job-to-job movement (or "job flows") upon joining the Compact from Compact-to-Compact states and an 11% decrease in job flows from Compact-to-non-Compact states.[96]

It is generally recognized that the Compact does not increase the size of the overall nursing workforce, but it is a policy solution that addresses short-term staffing needs, related to emergencies and otherwise.[97] States that have evaluated entry into the Compact have noted that the Compact's effect on jobs is predominantly about the removal of state licensure barriers to address short-term needs, rather than addressing long-term nursing shortages.[98] In addition to addressing short-term needs during emergencies (see *Emergency and Pandemic Preparedness* section above), Compact membership could also help address non-emergency related nursing needs, such as those in particular areas of the state (e.g., western Massachusetts) and during seasonal population fluctuations (e.g., on the Cape and islands). The Compact can also allow nurses living near state borders to more readily fulfill nursing needs in Massachusetts.

93 Salary information included in the job postings may not reflect final salaries (e.g., following negotiation).

94 NCSBN identified one instance of legislation introduced to repeal the Compact in a Compact state, which was unsuccessful.

95 DePasquale and Stange, *Labor Supply Effects of Occupational Regulation: Evidence from the Nurse Licensure Compact*, National Bureau of Economic Research (2016), *available at* https://www.nber.org/papers/w22344.

96 Aimi Abdul Ghani, *The impact of the nurse licensing compact on inter-state job mobility in the United States*, OECD Economic Survey of the United States: Key Research Findings (2019): 103.

97 *See, e.g.*, Lasater et al, *Chronic hospital nurse understaffing meets COVID-19: an observational study*, BMJ Qual Saf (Aug. 2020), https://qualitysafety.bmj.com/content/qhc/early/2020/08/13/bmjqs-2020-011512.full.pdf.

98 Joint Commission on Health Care, *supra* note 48, at 13; *Nurse Licensure Compact Would Produce Some Benefits But Not Resolve the Nurse Shortage*, Office of Program Policy Analysis & Government Accountability (2006) ("FL OPPAGA Report"), *available at* https://oppaga.fl.gov/Documents/Reports/06-02.pdf.

With respect to state fiscal impact, there is some data to suggest that joining the Compact has not been a significant, persistent burden for state nursing boards.[99]

KEY FINDING

Compact membership has increased following adoption of the revised eNLC, and participating jurisdictions (now 35) report benefits to state boards of nursing, employers and nurses.

- Research on the impact of the Compact has not identified negative effects of joining the Compact.
- Other states have acknowledged that the Compact can reduce administrative barriers to licensure of qualified nurses, enhancing member state ability to address short-term nursing needs.

NURSE PERSPECTIVES ON THE NLC

The benefits of the Compact for individual nurses include the potential for reduced time, effort, and expenditure to obtain multiple state licenses, as well as increased mobility and opportunity to work in Compact states as a travel nurse or otherwise.

There is evidence that nurses see a benefit in the Compact. According to a 2017 survey of RNs conducted by AMN Healthcare, 77% of Millennials said that it would be helpful to their careers if there were national-level licensing (rather than state-by-state) for nurses.[100]

In a survey conducted by the Minnesota Board of Nursing in 2017, 80% of respondents were in favor of joining the Compact (and fewer than 5% were not in favor of joining). In addition, they found respondents with a Compact license overwhelmingly felt the Compact was of benefit to them.[101] As noted above, nurses recently surveyed in Vermont also strongly support joining the Compact.[102] In reversing its opposition to the Compact in 2020, the Pennsylvania State Nurses Association cited a survey of 15 state affiliates of the American Nurses Association on their nurses' experiences with the NLC, which were "overwhelmingly positive."[103]

In a 2014 survey of Massachusetts nurses, approximately two-thirds of respondents (< 150 respondents) indicated support for joining the Compact.[104] A recent survey (> 500 respondents) of Massachusetts nurses regarding the state of nursing in the Commonwealth highlighted concerns regarding staffing[105], which the Compact could help address.

KEY FINDING

The Compact offers potential benefits to individual nurses, and there is evidence from other states that nurses recognize such benefits.

TEMPORARY LICENSES ISSUED DURING COVID-19 & BORN AUTHORITY UNDER THE NLC

Although BORN does not typically issue temporary nursing licenses, it began issuing such licenses following the COVID-19 state of emergency declaration. BORN has issued 8,569 temporary nurse licenses (7,509 RN and 1,060 LPN licenses).[106] In contrast to a license by reciprocity, temporary licenses are generally valid for one year from the date of issue. As a pre-COVID-19 reference point, BORN issued a total of 9,711 licenses to RNs and LPNs in 2019.

99 FL OPPAGA Report, *supra* note 98, at 9 (noting that Compact state licensing authorities reported little to no change in licensure revenues or fiscal impact following Compact enactment). In a 2012 survey conducted by the Nurse Licensure Compact Administrators ("NLCA") regarding fiscal impact of joining the NLC post-implementation, 17 of 19 respondents agreed that being a Compact member did not have a "significant enduring negative impact on the BON budget". *Review of 2012-2013 Annual Report*, Nurse Licensure Compact Administrators (2013), *available at*: https://www.ncsbn.org/12_nlca_annualreport_web.pdf. Note: the NLCA administered the Compact before the ICNLCA was created.

100 *2017 Survey of Registered Nurses: Viewpoints on Leadership, Nursing Shortages, and Their Profession*, AMN Healthcare 23 (2017), *available at* https://www.amnhealthcare.com/uploadedFiles/MainSite/Content/Healthcare_Industry_Insights/Industry_Research/2017%20RN%20Survey%20Campaign%20-%20RN.com%20clinician.pdf.

101 Minnesota Board of Nursing, *A Survey of Knowledge and Opinion of the Nurse Licensure Compact Among Nurses Licensed in Minnesota* (Mar. 29, 2017), *available at* https://mn.gov/boards/assets/PPT_2017_NLC_Survey_Results_vs3_tcm21-311676.pdf.

102 See *supra* note 44.

103 See *supra* note 84.

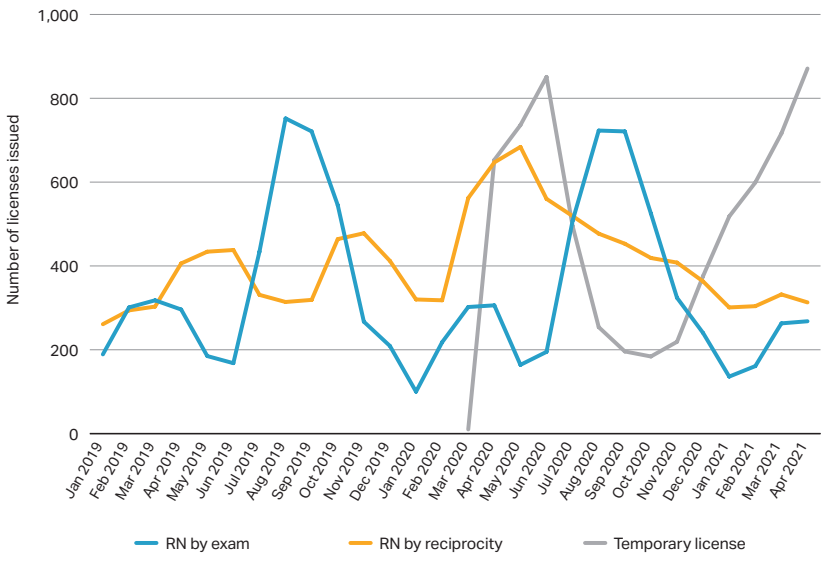
104 NCSBN, National Nurse Licensure Compact Survey (2014).

105 Beacon Research, "State of Nursing in Massachusetts" survey (March 2021). See https://www.massnurses.org/news-and-events/p/openItem/12063 for additional information.

106 Data provided by BORN as of April 26, 2021.

According to BORN, temporary licenses by reciprocity are to be issued within 24 hours pursuant to an expedited policy, and BORN verifies only the reciprocal state during the review process (whereas all other state licenses are verified during review of an application for permanent licensure by reciprocity).[107] According to BORN, permanent licenses by reciprocity are issued an average of 42.8 days from receipt of application for licensure, which includes time required for the applicant to submit all required documents.

Figure 3: Number of RN licenses issued in Massachusetts by type



Notes: Data provided by BORN. Data points represent 3-month trailing averages (e.g., data for September 2020 represents an average of July-September 2020). Data for April 2021 include data up to April 26 only.

Of the more than 8,500 temporary licenses issued in Massachusetts during the COVID-19 pandemic, a total of 21 licenses (0.2%) have had a complaint taken against them.[108] The majority of these licenses were from non-Compact states (thirteen were issued to nurses from one particular non-Compact state).

If the Commonwealth were to join the Compact, BORN would retain complete authority over nurse licensure in Massachusetts and the Massachusetts Nurse Practice Act. All nurses (whose primary state of residence is Massachusetts) applying for licensure in Massachusetts, whether for a single-state or multi-state Compact license, would be required to satisfy the Massachusetts requirements for nurse licensure (as reinforced by the Compact's ULRs).

The Compact would enhance BORN's oversight authority to protect the health, safety, and welfare of citizens in Massachusetts in two ways. First, the Compact's ULRs require applicants to submit to both state and federal fingerprint-based criminal background checks.[109] This would bring Massachusetts, which currently does not require criminal background checks for nurse licensure (apart from CORI checks when a nurse self-identifies via the good moral character questions), in line with the majority of other states, including non-Compact states.[110]

Second, under the Compact, BORN would have increased and more timely information about nurse licensees to provide oversight. Like all Compact states, BORN would be required to participate in the coordinated licensure information system ("Nursys") to assist in the coordination of nurse licensure and enforcement efforts.[111] BORN would be a contributor and recipient of updated information collected, stored, and shared on nurse licensure and enforcement activities related to nurse licensure laws from other Compact states via Nursys (which BORN currently utilizes for other purposes, namely licensure verification).[112]

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107 Massachusetts Board of Registration in Nursing, *Licensure Policy* 10-03, *supra* note 60.

108 BORN notes that a number of temporary licenses converted to permanent licenses, which affects tracking of disciplinary action for temporary licenses.

109 NCSBN, *Uniform Licensure Requirements for a Multistate License*, https://www.ncsbn.org/NLC_ULRs.pdf (last visited May 12, 2021) ("NLC ULRs"). NCSBN has stated that by using both state and federal background checks, a state board of nursing can assess the criminal histories of new nurse graduates, currently licensed nurses who may have previously misreported, nurses requesting reinstatement, and nurses who are moving from one state to another. NCSBN, *Criminal Background Checks (CBCs) for Nurse Licensure: Frequently Asked Questions (FAQs)* (Apr. 2013), https://www.ncsbn.org/13_CBC_FAQs_AprilUpdate.pdf.

110 NCSBN, *Criminal Background Checks for Licensure as a Nurse, Approved American National Standard* (2015), https://www.ncsbn.org/NCSBN_Approved_Standard_CBC.pdf; and American Nurses Association, *Criminal Background Checks (CBC) for Nurse Licensure, ANA Position Statement* (April 2013), https://www.nursingworld.org/practice-policy/nursing-excellence/official-position-statements/id/criminal-background-checks-cbcs-for-nurse-licensure/.

111 NLC Model Legislation, *supra* note 6, at Article VI.

112 *See, e.g.,* NLC Model Legislation, *supra* note 6, at Articles III, V, and VI.

Nurses must comply with the governing nurse practice act in each state in which they practice, irrespective of the Compact. Only a very small fraction of nurses nationally face discipline.[113] According to NCSBN, the annual rate of discipline on a nursing license is less than 1%.[114] Under the Compact, a nurse can face disciplinary action with respect to an issue in both the nurse's home state (i.e., the state that issued the multi-state license) and other Compact states, as may be appropriate.[115]

Under the Compact, BORN would retain its authority under state law to take action on a nurse's license, as it deems appropriate. BORN could take action against any multi-state license it issues (e.g., probation, suspension, revocation, etc.), including based on findings of another Compact state, while other Compact states may take action against the privilege to practice (e.g., issue a cease and desist order) on licenses issued by BORN.[116]

KEY FINDING

Under the Compact, BORN would retain its authority over nursing practice and education in Massachusetts, including in determining all requirements for licensure in the Commonwealth, and in licensure enforcement.

- BORN's experience processing thousands of temporary licenses during the COVID-19 response was administratively burdensome, but BORN has not identified any issues with the quality of the nurses practicing in Massachusetts with temporary licenses (and fewer than 1% of the temporary licenses issued since March 31, 2020 have had a complaint taken against them).
- The Compact ULRs would strengthen BORN's licensure application process, bringing it in line with the highest regulatory standards for licensed health care professionals, and participation would improve BORN's ability to communicate in a timely manner with other states regarding nurse licensure and enforcement activities.

TELEHEALTH, CROSS-BORDER CARE & NURSING EDUCATION

With advances in telehealth technologies, nurses can increasingly care for patients across the health care continuum wherever they are and without being hindered by state or other physical barriers.[117] However, requirements that nurses must be licensed in each individual state can pose other types of barriers to practice.[118]

The Compact facilitates care across state lines, as well as across modalities. Nurses who hold a Compact license may engage in telehealth nursing in all Compact states without additional licensure.[119] Joining the Compact would allow Massachusetts nurses to provide nursing services by telehealth to patients in other Compact states, such as for providing follow up with out-of-state patients after discharge from Massachusetts facilities. By enhancing predictability for nurses to provide seamless care, the Compact may improve the continuity and quality of patient care.[120]

Moreover, the COVID-19 pandemic has underscored and increased the need for the health care workforce to be able to deliver care via telehealth.[121] While noting that nearly all states (including Massachusetts[122]) have modified health care provider licensure requirements or renewal policies, including out-of-state requirements for telehealth, the federal Health

113 *See, e.g.*, Oyeleye, *supra* note 10.

114 NCSBN, Discipline, https://www.ncsbn.org/discipline.htm (last visited May 13, 2021).

115 NLC Model Legislation, *supra* note 6, at Article V; Oyeleye, *supra* note 10.

116 NLC Model Legislation, *supra* note 6, at Article V.

117 *See, e.g.*, Liss et al, *supra* note 80.

118 *See, e.g.*, Patti Mataxen, *Licensure Barriers to Telehealth Nursing Practice*, Nursing 2019 (Nov. 2019), https://journals.lww.com/nursing/Citation/2019/11000/Licensure_barriers_to_telehealth_nursing_practice.17.aspx; Peter Critikos III, *License to Screen: A Review of the Medical Licensure Schemes Impacting Telehealth Proliferation in the United States, the European Union, and Australia*, 32 Emory Int'l L. Rev. 317 (2018), *available at* https://scholarlycommons.law.emory.edu/eilr/vol32/iss2/4/.

119 eNLC Fast Facts, *supra* note 21.

120 NLC Coalition Testimony, *supra* note 51.

121 Massachusetts Health Policy Commission, *Impact of COVID-19 on the Massachusetts Health Care System: Interim Report* (Apr. 2021), *available at* https://www.mass.gov/doc/impact-of-covid-19-on-the-massachusetts-health-care-system-interim-report/download.

122 *See, e.g.*, Governor Charlie Baker, Order Extending the Registrations of Certain Licensed Health Care Professionals, *supra* note 61; and Governor Charlie Baker, Order Expanding Access to Telehealth Services and to Protect Health Care Providers (Mar. 15, 2020), https://www.mass.gov/doc/march-15-2020-telehealth-order/download. *See also* HPC *Impact of COVID-19 interim report*, *supra* note 121.

Resources and Services Administration notes that interstate compacts, like the NLC, simplify cross-state telehealth for specialists in participating states.[123]

Advances in technology are also important for nursing education, facilitating remote education capabilities for students and faculty. Nurse educators are not exempt from licensure requirements, and as with clinical practice, faculty typically must be licensed in the state where their students are located, which can result in the need for multiple state licenses.[124] Under the Compact, however, if a nurse educator is licensed in a Compact state and the students are also in Compact states, the faculty member will not need additional licenses.[125] The nursing educator shortage, often described as a "crisis", is well documented.[126] By facilitating remote opportunities for nurse educators, joining the Compact may help improve the educational pipeline for nurses in the Commonwealth.[127]

KEY FINDING

The COVID-19 pandemic highlighted the importance of and potential for telehealth and demonstrated the need to remove barriers to cross-state practice in order to strengthen the ability of the health care system to adapt care delivery modes and respond to needs more flexibly in a post-COVID-19 world.

- The Compact supports the delivery of telehealth nursing practice across the health care continuum and across state lines, with potential positive impacts on costs and quality of care.
- Compact membership may also help address the significant concerns regarding the supply of nurse educators, providing an investment in the future of nursing education.

ANTICIPATED IMPACT ON HEALTH CARE COST, QUALITY & ACCESS

If Massachusetts joined the Compact, participation could increase access to care as a result of greater access to nursing care when it is most needed (e.g., in particular parts of the state, or in an emergency response situation). Increased access to care across the continuum and, in particular, access to telehealth, may improve quality and could further result in lower costs of care.

There is no evidence that nurses licensed in a Compact state provide lower quality of care than nurses licensed in Massachusetts. All nurses who obtain a Compact license have the same educational requirements as nurses currently licensed in Massachusetts, have passed the same national examination, and meet the Compact's 11 ULRs.

While the Compact does not include any Continuing Education ("CE") requirements, a nurse who holds a multi-state license must meet the CE requirements in their home state.[128] (If a nurse also holds single-state licenses in any non-Compact states, they may be required to complete CE requirements for those states as well.[129])

State-mandated CE requirements vary among states, including among New England states, ranging from zero (e.g., in Connecticut) to, for example, 30 contact hours every two years (e.g., in New Hampshire).[130] In Massachusetts, nurses must complete 15 contact hours of CE within the two years immediately preceding license renewal (excluding the first renewal)

123 Telehealth.hhs.gov, *Telehealth Licensing Requirements and Interstate Compacts*, https://telehealth.hhs.gov/providers/policy-changes-during-the-covid-19-public-health-emergency/telehealth-licensing-requirements-and-interstate-compacts/ (last visited May 12, 2021); *see also, e.g., Telehealth in the Time of COVID-19*, Center for Connected Health Policy, The National Telehealth Policy Resource Center, https://www.cchpca.org/covid-19-related-state-actions (last visited May 12, 2021).

124 Oyeleye, *supra* note 10; and NCSBN, *Leader to Leader: What Educators Need to Know About the Enhanced Nurse Licensure Compact* (Mar. 2017) ("What Educators Need to Know"), https://www.ncsbn.org/Leader_to_Leader_NLC_Issue2017.pdf.

125 Oyeleye, *supra* note 10; and What Educators Need to Know, *supra* note 124.

126 *See, e.g.*, Preparing Nurse Faculty, and Addressing the Shortage of Nurse Faculty and Clinical Preceptors, National Advisory Council on Nurse Education and Practice (Dec. 2020), *available at* https://www.hrsa.gov/sites/default/files/hrsa/advisory-committees/nursing/reports/nacnep-17report-2021.pdf; American Association of Colleges of Nursing, *Fact Sheet: Nursing Faculty Shortage* (Sept. 2020), https://www.aacnnursing.org/Portals/42/News/Factsheets/Faculty-Shortage-Factsheet.pdf.

127 NLC Coalition Testimony, *supra* note 51.

128 New Grads and Students Webinar, *supra* note 9, at slide 22.

129 *Id.*

130 *See, e.g.*, Mackenzie Maxwell, *Registered Nursing (RN) Requirements by State*, NursingJournal.org (Apr. 29, 2021), https://nursejournal.org/registered-nursing/rn-licensing-requirements-by-state/ (listing requirements by state). The HPC did not independently verify all individual state requirements.

and complete the one-time cognitive impairments training requirement.[131] Given the variability of requirements, a nurse practicing with a Compact license in another Compact state may have completed less, more, or a comparable amount of CE in their home state compared to the remote state, while specific CE topics may vary. In addition to state nursing boards, employers can also mandate CE requirements.[132]

The HPC did not find evidence to suggest that quality of care would be negatively impacted by Massachusetts joining the Compact.

KEY FINDING

There is no evidence that joining the Compact would have a negative effect on quality of nursing care in the Commonwealth, and the ability to fill short-term staffing needs and facilitate telehealth could yield positive effects for health care access, quality, and cost.

ESTIMATED FISCAL IMPACT

As previously noted, the current annual Compact state membership rate is $6,000. Further, BORN estimates that joining the Compact would result in an annual licensure revenue loss of approximately $1.3 million. Should Massachusetts join the Compact, BORN would continue to receive licensure fees from nurses licensed in Massachusetts. However, BORN would experience some level of revenue loss from non-Massachusetts-resident nurses who live in other Compact states (e.g., travel nurses, nurses currently licensed in Massachusetts but who live in a Compact state, such as New Hampshire or Maine) because those nurses would have or need a Compact license issued by their home states and an additional license in Massachusetts would no longer be necessary.

KEY FINDINGS

The Compact is estimated to have only a modest fiscal impact and will not impede BORN's ability to continue its mission.

» BORN would continue to receive licensure fees from nurses licensed in Massachusetts, except for some revenue collected from nurses residing in other Compact states who currently pay for licensure by reciprocity in Massachusetts.

131 244 CMR 5.00 (Continuing Education); *see also* Massachusetts BORN, *Mandatory Continuing Education for Nurses*, https://www.mass.gov/service-details/mandatory-continuing-education-for-nurses (last visited May 12, 2021); and Massachusetts BORN, *Renew Your Nursing License*, https://www.mass.gov/how-to/renew-your-nursing-license (last visited May 12, 2021).

132 While continuous learning and competency is a professional requirement for nursing, it is not clear that completing CE requirements is the most effective measure of nurse competency. *See, e.g.,* June E. Smith, *Exploring the Efficacy of Continuing Education Mandates*, JONA's Healthcare Law, Ethics and Regulation (2004), *available at* https://pubmed.ncbi.nlm.nih.gov/15206173/; *Redesigning Continuing Education in the Health Professions*, Institute of Medicine (2020), *available at* https://www.ncbi.nlm.nih.gov/books/NBK219811/; NCSBN, *NCSBN Model Nursing Practice Act and Model Nursing Administrative Rules 36* (Sept. 2009), *available at* https://www.apna.org/files/public/Model_Nursing_Practice_Act_December09_final%5B1%5D.pdf (noting that "[CE], while an important strategy that is used by many nurses regardless of BON mandate, in and of itself has not been demonstrated to assure competence.")

RECOMMENDATIONS REGARDING THE COMMONWEALTH'S ENTRY INTO THE NLC

The Key Findings of this report, restated at a high-level below, reflect multiple benefits for Massachusetts in joining the Compact, including for the oversight of nursing practice in Massachusetts, for health care employers, and for individual nurses. Compact membership would also enhance the ability of the Massachusetts health care system to prepare for pandemics, emergencies, and other staffing needs and to facilitate telehealth and other care delivery transformations in the future.

SUMMARY OF KEY FINDINGS

- While Massachusetts has a higher rate of RNs per capita than the United States overall, data suggest that the RN labor market in Massachusetts may experience slower growth and tighten in the coming years.
- Joining the Compact would facilitate the Commonwealth's emergency preparedness, enabling the Massachusetts health care delivery system to react more dynamically to unforeseen and sudden changes in nursing needs, during pandemics and other emergencies.
- Compact membership has increased following adoption of the revised eNLC, and participating jurisdictions (now 35) report benefits to state boards of nursing, employers and nurses
- The Compact offers potential benefits to individual nurses, and there is evidence from other states that nurses recognize such benefits.
- Under the Compact, BORN would retain its authority over nursing practice and education in Massachusetts, including in determining all requirements for licensure in the Commonwealth, and in licensure enforcement.
- The COVID-19 pandemic highlighted the importance of and potential for telehealth and demonstrated the need to remove barriers to cross-state practice in order to strengthen the ability of the health care system to adapt care delivery modes and respond to needs more flexibly in a post-COVID-19 world.
- There is no evidence that joining the Compact would have a negative effect on quality of nursing care in the Commonwealth, and the ability to fill short-term staffing needs and facilitate telehealth could yield positive effects for health care access, quality, and cost.
- The Compact is estimated to have only a modest fiscal impact and will not impede BORN's ability to continue its mission.

In conclusion, for the foregoing reasons, the Health Policy Commission recommends that the Massachusetts state legislature enact legislation enabling Massachusetts to join the 35 other jurisdictions, including neighboring states New Hampshire and Maine, that successfully operate under the Compact.

APPENDICES

APPENDIX A: CHAPTER 227 OF THE ACTS OF 2020

SECTION 96. Notwithstanding any general or special law to the contrary, not later than June 15, 2021, the health policy commission, in consultation with the board of registration in nursing, shall conduct an analysis and issue a report evaluating the commonwealth's entry into the nurse licensure compact. The study shall include, but not be limited to: (i) an analysis of registered nurse and licensed practical nurse job vacancies in the commonwealth broken down by practice specialization, and projected vacancies based on the demographics of the commonwealth's nursing workforce and nursing school graduate retention rates; (ii) an analysis of whether entry into the nurse licensure compact would increase the commonwealth's emergency and pandemic preparedness; (iii) an analysis of other states' entry into the nurse licensure compact and any impact on quality of care resulting from entry; (iv) an evaluation of the number of registered nurses and licensed practical nurses granted a temporary license under the emergency orders issued by the governor and the commissioner of public health pursuant to the governor's March 10, 2020 declaration of a state of emergency and the number of disciplinary actions taken by the board of registration in nursing on such nurses; (v) a comparison of the board of registration in nursing's oversight, background check and licensing authority under the emergency orders issued by the governor and the commissioner of public health pursuant the governor's March 10, 2020 declaration of a state of emergency and upon entry into the nurse licensure compact; (vi) an analysis of the ability of registered nurses and licensed practical nurses in the commonwealth to provide follow-up care across state lines, including via telehealth; (vii) an analysis of impacts to health care quality, cost and access resulting from other states' entry into the nurse licensure compact, as well as anticipated impacts to health care quality, cost and access associated with entry into the nurse licensure compact by the commonwealth; and (viii) recommendations regarding the commonwealth's entry into the nurse licensure compact. The report shall be filed with the speaker of the house of representatives, the senate president, the house and senate committees on ways and means and the joint committee on health care financing.

APPENDIX B: ENLC UNIFORM LICENSURE REQUIREMENTS[133]

1. Meets the home state's qualifications for licensure or renewal of licensure, as well as, all other applicable state laws;
2. i. Has graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN prelicensure education program; or ii. Has graduated from a foreign RN or LPN/VN prelicensure education program that (a) has been approved by the authorized accrediting body in the applicable country and (b) has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;
3. Has, if a graduate of 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;
4. Has successfully passed an NCLEX-RN® or NCLEX-PN® Examination or recognized predecessor, as applicable;
5. Is eligible for or holds an active, unencumbered license;
6. Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records;
7. 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;
8. Has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;
9. Is not currently enrolled in an alternative program;
10. Is subject to self-disclosure requirements regarding current participation in an alternative program; and
11. Has a valid United States Social Security number.

133 NLC Model Legislation, *supra* note 6, at Article III(c); or see NLC ULRs, *supra* note 109.

ACKNOWLEDGMENTS

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The HPC acknowledges the contributions from the Massachusetts Board of Registration in Nursing, led by Executive Director Lorena Silva. The HPC also received expert input and guidance from Professors Joanne Spetz, Ph.D., Director of the Philip R. Lee Institute for Health Policy Studies and Associate Director for Research at Healthforce Center, University of California San Francisco and Karen Donelan ScD, EdM, inaugural Stuart H. Altman Professor and Chair of US Health Policy, Schneider Institutes for Health Policy, Brandeis University.

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