



The Senate of the State of New Hampshire

107 North Main Street, Concord, N.H. 03301-4951

November 1, 2019

The Honorable Christopher Sununu
Governor of New Hampshire
State House, Room 208
Concord, NH 03301

The Honorable Donna Soucy
President of the Senate
State House, Room 302
Concord, NH 03301

The Honorable Stephen Shurtleff
Speaker of the House
State House, Room 308
Concord, NH 03301

RE: SB 273, AN ACT *establishing a committee to study the regulation of nursing assistants by the board of nursing and criminal history record checks for nurses.*

Dear Governor Sununu, Senate President Soucy and Speaker Shurtleff:

On behalf of the Committee to Study the Regulation of Nursing Assistants by the Board of Nursing and Criminal History Record Checks for Nurses, please accept this report on our findings as well as our recommendations regarding 2020 legislation.

Respectfully,

A handwritten signature in cursive script that reads "Ruth Ward".

Senator Ruth Ward

cc: Tammy L. Wright, Senate Clerk
Paul C. Smith, Clerk of the House
Michael York, State Librarian

SB 273-FN,
Chapter 284, Laws of 2019
*AN ACT establishing a committee to study the regulation of nursing assistants by
the board of nursing and criminal history record checks for nurses*

FINAL REPORT

Introduction

The above-named Joint Legislative Study Committee was created to study the regulation of nursing assistants by the Board of Nursing and to study the process of criminal history record checks for nurses

Duties of the Committee

Duties. The committee shall study the regulation of nursing assistants by the board of nursing and criminal history record checks for nurses. 284:7 The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. 284:8 The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2019.

Meeting Summaries

September 4, 2019: Senator Ward was elected Chair of the Committee. The Committee reviewed their duties and began discussions regarding the concerns of the prime sponsor of the bill, Senator Jay Kahn. One concern is whether or not three background checks are really necessary for licensure and employment. Another is that the licensing fees have become a barrier to becoming an LNA and currently, New Hampshire has a shortage of LNAs. Representative Campion and Senator Ward discussed potential questions that would need to be answered by stakeholders. What are the potential consequences of going back to just certification instead of licensure? What would the changes be to the process, education and training of nursing assistants? Who will oversee and regulate them if the Board of Nursing is not licensing them? Gina Balkus from the Home Care Hospice Association testified that only licensed medical nursing assistants can give certain medications in a nursing home or larger group setting. She also informed the committee that Medicare requires nursing assistants to have 12 hours of continuing education credits for the agency to be certified. It was discussed that if the Board of Nursing is not overseeing the nursing assistant there will be an added burden on the employer to make sure regulations are being followed. Bonnie Crumley Aybar from the Board of Nursing shared that for an LNA to be licensed in NH they must have a federal background check. Paula Minnehan from the NH Hospital Association shared that they have concerns with the multiple background checks needed for licensing but that the committee should hear from the LNAs who can testify as

to the impact losing their license might have. The committee members agreed that for the next meeting they would like to hear from some LNAs and from the Department of Safety to explain the background checks.

September 17, 2018: Senator Ward opened the meeting reviewing some of the topics that were discussed at the last meeting. Lindsey Courtney from OPLC, explained the process that LNAs must go through before they are employable. Once the nursing assistant candidate completes and passes the LNA program the process can take a while from application of license to license granted. Currently the OPLC is looking at ways to improve efficiency and make the processes for licensure standard. Joan Widmer from the NH Nurses Association described the background check process. When a student enters an LNA program they get a state background check, once they pass the program they get a federal background check, and then when they are hired the employer does a background check. It was discussed again by all stakeholders that one of the functions of licensure is that LNA discipline can be tracked. A CNA is not tracked and does not have to meet the standards of an LNA. Joni Menard, Director of Nursing at Dartmouth Hitchcock commented that they have concerns that the quality of care that LNAs give will not be monitored by the Board of Nursing if licensure is taken away. Senator Ward pointed out that making the change in licensing was supposed to make it easier for people to work but with the change training and monitoring will have to be addressed. The licensing fees of \$25 every other year were discussed with the consensus being that it is not a burden to LNAs. The committee heard testimony from LNA Brittney who stressed that she worked hard for her license and has continued by keeping up with her training and takes pride in her work. She stated that the \$25 fee is negligible. She believes taking away the license will turn people away from the job. Senator Ward and Representative Campion commented that after all the testimony they do not believe the licensing fees are a barrier to the job of LNA.

October 16, 2018: Senator Ward opened the meeting and introduced Sergeant Michael McQuade from the Department of Safety. Sergeant McQuade explained the different types of criminal and history background checks. He clarified that the FBI check disseminates different information than the state back ground check. For the state back ground check it will only disseminate convictions in the state of NH and convictions from other states if the person was fingerprinted. The FBI check can only be shared by the state police to another government agency. A private employer could not get that information, they can only get NH history. All of the background checks are explained in HB 637. The benefit of an employer to get a background check is that they will get any history since the time of licensure and credentialing. Representative Campion clarified that when a person applies to an LNA program they get a background check with NH state convictions only, at the time of licensure with the FBI check it will be federal and state convictions, and then the employer would again get just state convictions. A discussion was had regarding having the school do the FBI check instead of the state check to reduce one of the state checks but Sergeant McQuade stated that the school or program is not a government agency and they cannot disseminate federal information to them. He explained that his department is in the process of developing an online portal to request and receive record dissemination. They have made great progress in efficiency and workflow on background checks. Where it used to take 6 weeks to get results, currently the turn around in 3-5 days. HB 637 has allowed them to revamp the system. He recommended that the current inefficiency in the licensing process regarding backgrounds checks may correct itself as they move forward with the

online portal. The committee members were all in agreement that between the OPLC and the Department of Safety the inefficiencies in process are being worked on and the length of time from application to licensure is improving. Additionally, the licensing fees have not proved to be a barrier or a burden to the LNA workforce.

Recommendations

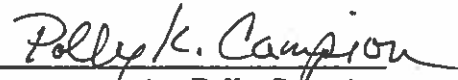
The concern that licensing fees and redundant background checks were contributing to the workforce shortage of Licensed Nursing Assistants in the state was not validated by this study. Fees were found to be minimal, and not a burden to the LNAs that appeared before the committee. The representative from the Department of Safety informed the Committee that they are working on a system to streamline background checks which will improve the redundancy and the turn-around time. Testimony revealed that taking away the licensing process in favor of certification would drastically reduce the training, study requirements, and monitoring of nursing assistants. This would be to the detriment of patients and employers. Additionally, all stakeholders agreed there would be a loss of professionalism and pride that comes with obtaining your nursing assistant license for those that are employed in the field.

After carefully reviewing all the information gathered and testimony given during the meetings, the Committee recommends no changes to the regulation of nursing assistants by the Board of Nursing nor to the criminal history background check process.

Respectfully submitted,



Senator Ruth Ward
Chair, District 8



Representative Polly Campion
Grafton, District 12



Representative Carol McGuire
Merrimack, District 29

SB 273, Chapter 284:4, Laws of 2019
AN ACT establishing a committee to study the regulation of nursing assistants by the board of nursing and criminal history record checks for nurses

Organizational Meeting Report

TO: Members of the Committee
FROM: Tricia Melillo, *Legislative Aide*
RE: Organizational Meeting Minutes on

MEETING DATE: September 4, 2019 1:00 p.m. LOB RM 102

Members of the Commission Present: Senator Ward, Representative Campion
Members of the Committee Absent: Representative McGuire

Summary of Meeting:

- Senator Ward opened the meeting.
- Senator Ward reviewed the materials provided to the committee members.
- Representative Campion nominated Senator Ward as Chair
- Senator Ward accepted the nomination of Chair

Discussion:

Senator Ward reviewed her understanding of the study committee goals. One is to reduce the fees that the LNA must pay and to discover if the Licensed Nursing Assistants would have an issue with not being licensed, just certified. She reviewed the hearing report from the public hearing and Senator Kahn's testimony. In 2001 NH added a second background check so there is one for federal, one for NH and then one that the employer does, and the committee needs to decide if all three are necessary. She then reviewed the fees for criminal back ground checks and the license fee for NH. The previous bill, sponsored by Senator Kahn, wanted to remove them to reduce some of the barriers to becoming an LNA/CNA as currently, New Hampshire has a shortage of Licensed Nursing Assistants.

Representative Campion suggested that they go over what some of the questions are that need to be answered.

Senator Ward would like to talk to more groups of LNAs to hear what their opinions are. She thinks they need to look at what the financial burden is for them and if not being licensed will be received by them as a demotion.

Representative Campion questioned what the other consequences would be of going back to just certification and not licensure. She would like the administrator

of the Board of Nursing to inform them about the new regulations and potential impacts. If the goal is to decrease the cost, are there changes to the process that could be accomplished without taking away the licensure? Would it be possible to combine the background checks for training programs, licensure and Employer?

Senator Ward commented that years ago there was only a certification process and then the State instituted the licensure process.

Representative Campion stated that it was her understanding that in order to give medication you must be a Medication Nursing Assistant and wondered if that distinction also required a license and if the licensure process is taken away how will that be affected.

Senator Ward stated that nothing would change with training, function and education. There would just be certification instead of a license.

Gina Balkus – Home Care Hospice Association stated that in terms of administering medications LNA's can do it in the home setting through the nurse delegation process. They do not have to be an MNA when it is for a specific purpose with one patient in the home.

Senator Ward asked if you are working in a nursing home do you need to be an MNA to give medication.

Bonnie Crumley Aybar - Board of Nursing answered yes, the MNAs provide medications to a larger group at one time so they need additional training. They are restricted as to what kind of medication they can give and what route it is given. The only injections they can only give are sub-cutaneous medications and pre-drawn insulin.

Senator Ward asked if in a home setting they are restricted as well.

Ms. Crumley Aybar answered yes, it is the same.

Senator Ward stated that the big questions to be answered in this study are what will the impacts be of making the change, on the process, education, training, etc.

What would the oversight for any infractions or abuse look like? Who would adjudicate continuing education? Currently the Board of Nursing oversees the licenses. Would these responsibilities move to the employer?

Ms. Balkus stated that Medicare requires Nursing Assistants to have 12 hours of continuing education credits which is a burden on the home health and hospice agencies to provide. It must be documented in order for the agency to stay credentialed with Medicare.

Representative Campion asked if there are private agencies that do not contract with Medicare.

Ms. Balkus answered that there are some that are not Medicare certified but she is not certain of how many.

Representative Champion commented that there are likely to be changes for small employers if the state is not playing a role.

Senator Ward questioned if the overall sense is that if you are not licensed you are not regulated by the Board of Nursing. She also questioned who oversees the federal requirements.

Ms. Crumley Aybar stated that when someone passes a nursing assistant program their name is entered into the federal registry so that employers can confirm the applicants record.

Senator Ward stated that if the name, any infractions and education are listed it would seem to be that the employer would have to be sure that regulations are being followed.

Representative Champion commented that the smaller agencies will have more to do.

Senator Ward agreed that there would be added responsibility to the employer.

Ms. Balkus asked if for an LNA to be licensed they must do the federal back ground check. **Ms. Crumley Aybar** answered yes. **Ms. Balkus** asked, if in order to enroll in a certified state nursing program a background check must be done. **Ms. Crumley Aybar** stated that the Board of Nursing has no control over which programs do a state background check.

Ms. Balkus stated that after a student graduates, they go on the federal registry and there is not another background check until they are licensed by the state. When that happens, they go through the federal background check and then when they are hired, they go through another one by the employer.

Senator Ward stated that it seems like a lot of background checks on one person.

Ms. Balkus commented that currently you must have a license in NH which requires the FBI back ground check.

Representative Champion questioned if it would be possible to change the requirement for how soon the back-ground check is completed. Maybe a person can go through all the processes and then do the back-ground check once before they are employed. She expects there are some that go through the training program and then there is a time gap before they get licensed or gain employment.

Paula Minnehan NH Hospital Association stated that they all raised concerns at the public hearing on this bill. This started without their input or the input of

LNAs. One big issue raised is the multiple background checks needed for licensing. For every clinician that must go through licensing the background process is tedious and repetitive. She believes the committee needs to hear from the LNAs and that they should bring folks in who can testify as to the impact this may have. Hospitals will pay the fees, so she is not sure of the impact for those individuals. They want this to be a stepping stone to becoming a nurse or other medical profession. Their understanding is that the registered nurses' license fee would have to absorb the absence of the nursing assistants' license fee. They felt they needed a study to hammer out what the real issue is and come up with something that makes sense. She is not sure if the goal of having more CNAs in the state will be accomplished by removing licensing.

Senator Ward questioned if some of the larger agencies are picking up the fees why the Board of Nursing would lose money and the answer was if they eliminate the licensing there will be no fee to collect.

Representative Campion asked if they could get the LNAs and other agencies that may want to come in, to give testimony, such as Dartmouth Hitchcock. There could be Employers, the Health Care Association and perhaps the County and Private nursing homes weighing in on these important issues. They employ a lot of LNAs, and this will affect them most. Nursing homes have started creating a career ladder for nursing assistants so that they can recruit and retain people.

Senator Ward commented that it is nice to see there is progress. She stated that between the licensing fee and the renewal fee it was \$107 dollars and she is wondering if this is a huge barrier to LNAs.

Ms. Minnehan stated that she will check with Joan Widmer because she knows there was a survey done. She will also do another survey with the homecare/hospice LNA's to get a more updated picture.

Senator Ward commented that she was aware of two surveys that had been done. If this is a big issue for them, it would be nice to hear from them as she does not want to take away any sense of professionalism from the LNAs.

Representative Campion asked Ms. Minnehan about changes to the background check process and could she summarize it for them.

Ms. Minnehan answered that she will get someone from the Department of Safety who oversees the background checks to explain it. It is a barrier for other clinicians to get the background checks as well, so there is support from everyone to improve the process. She is hopeful there will be a bill to address it because to streamline the process would be great.

Senator Ward stated that it has improved from two years ago when it took forever to get the back-ground check done.

Ms. Minnehan commented that it will be helpful to have the Department of Safety speak about these issues.

The committee reviewed dates for meetings in the future and settled on September 25th and October 16th at 1:00 in LOB 102. October 23rd will be used if needed.

Next Meeting Date: **September 25, 2019 at 1:00 p.m.**

Report Due: November 1, 2019

SB 273, Chapter 284:4, Laws of 2019
AN ACT establishing a committee to study the regulation of nursing
assistants by the board of nursing and criminal history record checks for
nurses
Meeting Report

TO: Members of the Committee
FROM: Tricia Melillo, *Legislative Aide*
RE: Organizational Meeting Minutes on

MEETING DATE: September 26, 2019 1:00 p.m. LOB RM 102

Members of the Commission Present: Senator Ward, Representative Campion,
Representative McGuire
Members of the Committee Absent: None

Summary of Meeting:

- Senator Ward opened the meeting.
- Meeting Minutes were reviewed and approved
- Lindsey Courtney from OPLC explained LNA application process
- Discussion

Discussion:

Minutes were accepted from last meeting.

Senator Ward reviewed some of the questions that they discussed at the last meeting. She stated that her understanding was that part of the shortage of LNA's is the burden of the license fee. That is to be discussed today.

Lindsey Courtney OPLC Director of Health Professions explained the process that LNA's go through before they are employable. Once they complete an LNA program and pass the competency exam they need to submit their certificate and scores to the Board of Nursing and then they are placed on the registry. Once that is done they can apply for licensure. She stated this can take a while because sometimes the Board of Nursing receives the certificate from the student, and it is not the right one. Something that OPLC can do is change the policy so that they receive the certificate and scores directly from the nursing program.

Representative McGuire asked if she meant they needed to change statute to do that or just policy in house.

Lindsey Courtney replied that would be done in house at OPLC.

Representative Campion requested that OPLC does work to make those changes.

Lindsey Courtney stated that they have been looking at ways to streamline and make the processes for licensure standard.

Senator Ward asked if the certification and scores sent to OPLC are the originals or a copy.

Lindsey Courtney stated she is not sure but will check. She mentioned that after they complete that process the temporary license can be issued and then the background check needs to be done.

Representative McGuire asked if a background check was required before they went on the registry.

Lindsey Courtney stated she thought it was after.

Joan Weidner stated that an LNA applies, when they enter a program to have a state background check and that is what is entered on the registry. Once they pass they must have the federal background check and then the employer will do one during the hiring process.

Lindsey Courtney commented that is the procedure in a nutshell and now they have identified some process they can change. License renewal is every 2 years. There has been no consensus on licensing because there has not been a vote. One of the functions of licensure is that LNA discipline can be tracked. She mentioned that on page 3 and 4 of her handout it shows, if there has been a finding on the OIG list it just says there is a finding. If the NH Board of Nursing reports a finding they provide more specific information relating to the issue.

Representative McGuire asked how many LNAs are licensed in the state and how many have findings of discipline.

Brittany LNA replied that there are 14,000 licensed in the state but she has no data as far as discipline.

Lindsey Courtney stated that she would be happy to find that information out for the committee.

Joan Weidner commented that out of the 14,000, they do not know how many of them are currently employed.

Brittany commented that there are a certain number of hours needed to work and CEU credits to renew within the 2-year period before an LNA can renew their license.

Joni Menard - Dartmouth Hitchcock Director of Nursing stated that Dartmouth Hitchcock has some questions and concerns that need to be addressed before they would agree to change from LNAs to CNAs only. A big concern is that currently the Board of Nursing monitors the quality of care that LNAs give and if the switch is made that will no longer be the case. Also, there is a difference in the length and content of training between CNAs and LNAs. CNAs have 75 hours versus the 100 hours for LNAs. CNAs only complete the federal requirements and LNAs complete the federal and the NH Board of Nursing requirements.

Joan Weidner stated that the CNA requirements can be changed by the state if needed.

Senator Ward commented that it was her understanding that the changes the committee is trying to make will only make it easier for people to work. Now we are learning that the training is different and will need to be addressed if the changes in licensing are made.

Joni Menard commented that they are concerned that there will be unintended consequences with this change. The training requirements are different between federal and state for LNAs. New Hampshire has strict regulations about who can teach in an LNA program. In the CNA program there is no requirement that the educators are nurses. CNAs receive 73% fewer practical training hours, 16 hours in NH. For LNAs it is 60 hours. NH requires 12 CEU hours for LNAs but CNAs do not have any requirement. LNAs are required to work 200 hours in a 2-year period the CANs have no requirement. They have some regulatory concerns, but they have been addressed by Joan. LNAs receive a state background check. CNAs are not required to have one.

Representative Campion stated that it is her understanding that not all LNA training programs perform a background check before the student begins.

Joan Weidner replied that she thought they were required to by the state, but she is not sure.

Brittany stated that she knows for a fact that she had to do the state and federal background checks prior to practicing.

Lindsey Courtney explained that it is probably a Board of Nursing rule.

Representative Campion asked if they knew if those who are trained outside of the state can work here without a license.

Joan Weidner replied that she does not believe so. If the CNA coming in to the state does not meet the requirements of the state of NH they cannot practice.

Joni Menard commented that NH has a permanent ban for certain crimes committed, for LNAs. For the CNA that is less restrictive and that is a difference in standard. LNAs have a duty to warn of client harm and unlicensed persons do not have this duty. The nurse practice act states that LNAs have a duty to report sexual relations with a client, but CNA's do not have that duty. From the Board of Nursing's perspective, they cannot support the \$200,000 loss of revenue from LNA licensing being added on to the nurse's license fees.

Joan Weidner commented that the fee for an LNA to renew is only \$25 every other year.

Lindsey Courtney stated that the OPLC is looking at all the fees and there is an open question as to whether the Board of Nursing can establish their own fees.

Joni Menard commented that currently LNAs can participate in the alternative recovery program and certified medical assistant program in long term care, CNA's cannot.

Senator Ward asked what the renewal fee for CNAs is.

Joan Weidner replied that there is not one. Once you are on the registry you are done.

Joni Menard added that for renewal, LNAs must pay \$25, have 200 hours of work experience and earn CEU credits every two years.

Representative Campion clarified that for a CNA once the federal requirements are done and they are put on the registry that is it.

Joan Weidner quoted the Nurse Practice Act, RSA 326-B:21

326-B:21 Licensed Nursing Assistant; Licensure by Endorsement. -

An applicant for licensure by endorsement as a licensed nursing assistant who is currently licensed or certified in any other state or jurisdiction shall:

I. Provide proof of current and original licensing, certification, or nursing assistant registry status;

II. Have committed no acts or omissions which are grounds for disciplinary action as set forth in this chapter, or, if such acts have been committed and would be grounds for disciplinary action, the board has found, after investigation, that sufficient restitution has been made; and

III. Meet other criteria as established by the board.

She had questioned why the state added licensure in the first place. What she found was that essentially, when the federal regulations were created it was designed to register nurse assistants that worked in long term care but did not address the others. NH decided they wanted a single registry for everyone. Her office sent out a survey of nursing assistants and 60 percent responded that they were opposed to losing licensure. Comments across the board were that it is a loss of professionalism. They feel that patients are more confident with them and that there is more work and commitment to keep up the license. She quoted from some testimony of LNAs who do not want to see their license, which they have had to maintain and work hard for, taken away. Joan added, if the purpose of the legislation was to increase the number of LNAs this may very well do the opposite.

Representative McGuire stated she was told that CNAs and LNAs have the same training requirements and that the only difference was that the Board of Nursing keeps track of the LNA CEUs. She feels she was misled.

Joan Weidner commented that the bill only changed license to certification and did not deal with the training aspect. She added that the cost for initial licensure is not the issue. The issue is looking at streamlining the flow to get LNAs working sooner. OPLC is working on processes to do that and so is the federal government, so most of the reasons for this legislation are already being taken care of.

Senator Ward stated that she thought that they were going to reduce the fees to make it easier and did not realize it would affect training.

Joan Weidner commented that a big part of what she relied upon as a nurse was the well trained LNA to take higher quality care of her patients.

Senator Ward questioned that she has not heard that the license fee is a hardship.

Joan Weidner replied not from anyone she has spoken to.

Representative Champion commented that the initial costs are higher. She added that one of the items that has come up is that if there is a way to streamline the process it would be better. Currently, there are 3 background checks and the question would be could we eliminate one.

Joan Weidner wondered if they could have the schools do the federal background check when the student applies because that would really help streamline everything.

Representative McGuire replied that the Board of Nursing could change the process to do that.

Senator Ward stated that she heard from an LNA that works per diem because he makes more money that way.

Joan Weidner commented that she has encouraged the LNAs to write their legislators about their difficulties.

Brittany commented that regarding LNAs, the employers do reimburse some of the fees and some do tuition reimbursement which is a good thing to look at for employers if they want qualified help. She went through a two-year program while she was in high school. She worked hard, kept up with training, paid fees and had practical on the job training. Her concern would be the lack of training needed to be a CNA. Usually employers will provide the CEU programs for credits so there is not a burden with that. She agrees that losing her license would be a loss of professionalism as she takes pride in her work and needs to know a lot to care for her acutely sick patients. Taking away the license will turn people away from the job. She believes the fee is negligible, they do make enough to pay the \$25. Starting off is a lot but there is a lot of employer reimbursement. The federal back ground check must be done, and her boss does not want just anyone she wants those that have been vetted with the other background checks. A lot of them work with vulnerable seniors and LNAs have a higher standard and a higher pride to do the best job and provide the best care. As a patient she would not want a CNA that has not been supervised with a skilled professional.

Senator Ward asked Brittany where she studied to get her LNA license.

Brittany replied that in Derry at Pinkerton academy where they had a nurse instructor and they made sure they were doing everything by the book.

Joan Weidner commented that the Pinkerton program is a state sponsored program.

Brittany commented that by increasing the opportunity in high school for students to join these programs, it will help with the shortage issue. She is thankful that she had the opportunity.

Joan Weidner stated that they have more applicants than seats in the current programs. They are very popular and there is a need for more.

Brittany agreed that there is a desire by students to get into the profession, but the process needs to be kept at the highest standard. If not, you may increase employment, but it will increase lower quality care.

Senator Ward commented that what she is hearing is that the fee is not an issue at all.

Paula Minnehan stated that she tried to get someone from the Department of Safety to come and discuss background checks.

Representative McGuire commented that she thinks that they should not do anything because it seems there is not a problem.

Brittany commented that the real issues are compensating LNAs more and safe staffing so that patients and staff are not at risk. There should be someone looking at enforcing the 6-8 patients per LNA, which is current law. Increasing compensation will increase the employees

and solve the shortage problem. A lot of LNAs are trying to pursue nursing school because of the lack of compensation they get. This takes away from the LNA workforce.

Representative Campion commented that she would like to suggest to OPLC that a standard application template for programs applying in New Hampshire be created. The Board of Nursing does not have a template for training programs to use. Currently they submit an application and there is a multiple step process back and forth before they get any results.

It was discussed that Tricia will call the Department of Safety and find someone who could answer some questions on background checks for the committee.

Meeting was adjourned

Next Meeting Date: October 16, 2019 at 1:00 p.m.

Report Due: November 1, 2019

SB 273, Chapter 284:4, Laws of 2019
AN ACT establishing a committee to study the regulation of nursing assistants by the board of nursing and criminal history record checks for nurses
Meeting Report

TO: Members of the Committee
FROM: Tricia Melillo, *Legislative Aide*
RE: Organizational Meeting Minutes on

MEETING DATE: October 16, 2019 1:00 p.m. LOB RM 102

Members of the Commission Present: Senator Ward, Representative Campion, Representative McGuire
Members of the Committee Absent: None

Discussion:

Senator Ward opened the meeting. Minutes were reviewed and accepted by all members.

Sergeant Michael McQuade from the Permits and Licensing Unit in the Department of Safety. He stated that from his perspective everyone needs to be clear on the intent of criminal background checks which is determining the character and past conduct of a potential licensee or employee. The state police do them on their employees. The criminal record dissemination is not all inclusive. A background check is inclusive of everything involving someone's criminal activity within the state of NH. The state regulates through the legislature what is disseminated. The FBI will send only what the state requires. The other form of a criminal record dissemination is now called a public record and that is conviction history only and everything else is private. Those checks are everything that comes from the court to the state police, they maintain it and disseminate it. Some of those records are fingerprint supported which means their fingerprints are collected at the time of arrest or conviction. Those are forwarded to the FBI and in some cases they maintain the database or provide a link to the state. It is data in and data out. It is plausible (each state has different regulations) that a person could be convicted of a homicide and never get fingerprinted. Their record would come from the FBI without that record to NH because of the lack of fingerprint verification. The value of a fingerprint record is that a person who uses a false name, could get found out. The FBI record is not the complete record. For example, someone who was arrested in Las Vegas and was fingerprinted, the arrest record would come to NH and they would have to investigate with Nevada for the details. The FBI only gives you a picture of the record. When a background check is requested, he is not aware of any agency in NH that gets a full response record. For credentialing services, it would not be a full record. It could become valuable in section 5 criteria (schools), to have a full record though it is a complicated process.

Senator Ward if a person is applying to an LNA program what is done for each background check, all three, that are required.

Sergeant McQuade replied that it is the same for all three except that the FBI only releases certain information. A state background check if it is a conviction only history can be

shared. He stated that his department has made leaps and bounds in efficiency on processes for better work flow on background checks. In some cases, there was a 24 hour turn around for background check results and others it was 6 weeks. They looked at everything and now they have established a 3-5 day turn around. It is run as first in first out and they have not taken longer than 5 days in getting results delivered. HB 637 allowed them to have more freedom to revamp the system. A new online portal will give other states access to NH convictions. There are some logistics in regard to sharing the information. There are two phases to the project with the municipality side done first. This will allow an agency to look at an individual record online within 5 days of request. It will take approximately 12 – 18 months to get the whole program up and running.

Representative Campion asked if their process for this new portal is written down anywhere.

Sergeant McQuade replied that they do have it in house, and he can work on something that would tighten the language up for the committee. The problem is that the standards change all the time especially with the FBI, so what he states today could change by July.

Representative Campion what is the difference between a full record response and public access records.

Sergeant McQuade replied that it is hard to explain but all of them are in statute in HB 637.

Representative Campion commented that what they are looking for is what does a request from the board of nursing for a background check get.

Sergeant McQuade replied that they get convictions only for NH or if the FBI has anything. Often there is no record found.

Representative McGuire questioned if a conviction history is public data and if you are fingerprinted it will give you NH and other states convictions.

Sergeant McQuade yes that is correct. In NH they do a direct state query if there is a conviction in another state.

Representative McGuire questioned if that data is public and can be shared.

Sergeant McQuade replied that the FBI information can only be shared to another government agency.

Representative McGuire commented that the NH information can be shared and then the FBI information can only be shared with the board of nursing. She asked if an employer would only get NH history.

Sergeant McQuade replied yes, a hospital or nursing facility would only get NH history unless they did a direct query with a state.

Representative McGuire replied that they would have to know which state to query.

Sergeant McQuade commented yes and stated if you think of a triangle, the regulating agency would be at the top getting the information. He added that any entity that receives these type of records has to be audited every three years.

Representative McGuire asked what the benefit of the employer is to get a background check if the regulating agency has already done one.

Sergeant McQuade replied that employers want the control of who they hire and who they do not. Also, if there has been an arrest between credentialing and hiring, the employer would be able to get that information.

Representative McGuire commented that she is sure a full background check on a police officer makes sense but not really on a nurse.

Sergeant McQuade replied that, that depends on the agency.

Senator Ward commented that in healthcare and education we do not want to hire a pedophile or a domestic abuser.

Representative Campion clarified if when an employer requests a background check they only get NH convictions, who would need to request a further investigation.

Sergeant McQuade replied that by law his department can only give conviction history.

Representative McGuire asked why do they look at all the other data if they can only give conviction information.

Sergeant McQuade replied that it is a complicated procedure. When his staff runs the record, it is a full one and they have to pull the convictions.

Representative McGuire asked if he is authorized to make an opinion on what he sees in the record.

Sergeant McQuade replied that he is not.

Representative Campion clarified that for criminal background checks for nurses and nursing assistants, when they apply to a program, the back-ground check gives state convictions only. At the time of licensure, the BON would have access to the federal and state convictions. Then the last check with the employer, it would again be the state convictions only.

Sergeant McQuade replied yes, that is how it works.

Representative McGuire asked if it would make sense to just do a full background check at the time of licensure and then a state back ground check every 5 years of employment.

Sergeant McQuade replied yes, that would be a good model to implement. Also, the online portal will be able to have anyone check.

Senator Ward questioned if the employer will have access to the portal.

Sergeant McQuade answered yes, it is open to full public access.

Senator Ward asked if the Board of Nursing rechecks the records.

Kim Cicchetto from the OPLC replied that they do not recheck an LNA's background.

Senator Ward clarified that if she renews her license they will not do another background check.

Kim Cicchetto replied that she is not sure if employers do but OPLC does not.

Representative Campion clarified that the only federal check done is at the time of licensure.

Paula Minnehan stated she thought it was done through PT research.

Sergeant McQuade replied that no, they do not do them. PT research is a private company that hospitals use to get information from the state police. They build a civilian database of all the responses from state police, but they are not official, and they are not obligated to update the records. They provide a service by reaching out to the states that have information to give to the employers about the employee and are basically private investigators.

Representative Campion asked if they only get convictions.

Sergeant McQuade replied that they get convictions and then investigate and get records from the court which is not official.

Representative McGuire asked if the trigger for that is one conviction.

Sergeant McQuade responded that through the conviction they can figure out which towns and courts they need to go to and get records. They do not have access to the FBI records.

Representative Campion state that at one time there was only one location to get finger prints done.

Sergeant McQuade replied that there are a number of locations now. He added that this is part of getting more efficient.

Representative McGuire commented that the current schedule of getting a full records check at the time of licensure is the way to go.

Senator Ward asked what the cost is for a full records check.

Sergeant McQuade replied \$47 to do the full and \$25 to do the NH check.

Representative McGuire asked if it would be different if the school asks for it and then the department gives the results to the licensing agency.

Sergeant McQuade replied that would be okay. If you are talking about a full check there would be restrictions of what the licensing agency can share with the school.

Representative McGuire there has been legislation suggested that would allow the board of nursing to share records with the school.

Representative Campion stated that she thought he was only releasing state and federal convictions.

Sergeant McQuade replied yes, but a full record check could not be shared, only the state conviction history could be shared with the school.

Bonnie Crumley from the Board of Nursing asked if the school is not a government agency can the BON share the conviction history with them.

Sergeant McQuade replied only if the school or entity is an authorized recipient of the record it could be shared. He explained that criminal record fingerprints are retained, licensee applicants' prints are not. The FBI's program allows for the retention of fingerprint records, then notification goes out on that, if necessary. This program looks great on paper, other states have had issues with that process, it is relatively new. (10-15 years).

Rep. McGuire stated that we do not want to require people to get fingerprints taken if they are only good for five years.

Rep. Campion asked if 5 years was the correct timeline and if the fingerprints are taken at the beginning of the 3-week program, will prints be available to licensure after the three weeks.

Sergeant McQuade said no they will not. They are purged almost immediately. He said it is their responsibility to accurately capture all ten fingerprints, send them off to the FBI, and it costs about \$35-40 dollars to send off prints.

Paula Minnehan stated that since some fingerprints have different purposes, relying on the Board to retain all of that isn't the best idea.

Lindsey Courtney agrees with that point from NHHA.

Rep. McGuire said we ought to see if the state has imposed any requirements on employers to require background checks. A thorough check when you're first licensed should be done with a continued follow-up.

Paula Minnehan said that from a licensed facility perspective, Rep. McGuire's point is not an inappropriate position, as they already do that kind of process and analysis, hospitals have to go through background checks on anyone who has potential access to patients.

Kim Cicchetto said that it is up to LNA programs if they want to have a state check. She does not believe it is an official requirement, they strongly advise pre-screenings though, including drug test screenings. She said that trouble comes if someone has record, gets through program, spent money on finishing program, and then cannot move forward due to their record.

Sen. Ward said that it may be in the Board's best interest to suggest, up front, if you have a conviction or record, please state it before you waste your time in the program. In other words, a full background check at time of licensure.

Sergeant McQuade reminded that it would not technically be a full background check. He also recommended that as they move forward with the online portal, current inefficiency in process might correct itself, and then committee could look at inefficiencies afterwards.

Rep. McGuire explained that the committee's deadline to report is November 1st, 2019, and their program doesn't roll out until next year.

Senator Ward said that, not at any point, has she gotten a sense that individuals would go for being certified in order to not pay the license fees, they want to be licensed. She said she believes people take pride in their title, i.e. being licensed.

Rep. McGuire stated that the training required to become licensed is more than certification training.

Rep. McGuire, Rep. Campion and Senator Ward agreed there is no recommendation for legislation.

Director Courtney said that the Board of Nursing is interested in streamlining process of applicants as referenced previously in the committee's requests. The Board is still looking at all of the requests of committee. Their Administrator is looking at possible tweaks to streamlining this process. They are still discussing the universal application template request. She said the Board does not want to handover complete application package where it would remove the work of applicant.

Senator Ward adjourns meeting at 2:04 p.m.

Report Due: November 1, 2019