

## NOTICE OF INTENT

Department of Health  
Louisiana State Board of Nursing

### Employment of Student Nurses and Unsuccessful Candidates on the State Board Licensing Examination (NCLEX-RN) (LAC 46:XLVII.4303)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:918, that the Louisiana State Board of Nursing (LSBN) is proposing rule changes to Chapter 43, Section 4303, Subsections A and B, under Title 46, Professional and Occupational Standards, Part XLVII. The proposed revision will allow an undergraduate nursing student currently enrolled in a professional pre-licensure education degree program or a graduate nurse who has been unsuccessful on the NCLEX-RN examination to be employed in a nursing setting and to perform procedures and tasks for which they have been educated and certified as competent by their educational institution and/or by graduation from an LSBN-approved prelicensure nursing education program.

#### Title 46

#### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XLVII. Nurses: Practical Nurses and Registered Nurses

#### Subpart 2. Registered Nurses

#### Chapter 43 Employment of Unlicensed Persons

#### §4303. Employment of Student Nurses and Unsuccessful Candidates on the State Board Licensing Examination (NCLEX-RN)

A. Students in nursing and unsuccessful candidates on the **NCLEX-RN** licensing examination employed in nursing settings ~~shall~~ **may only** be employed as unlicensed persons and ~~cannot legally perform, nor be assigned nursing duties other than those allowable to other unlicensed nursing personnel engage in perform~~ **procedures and or tasks for which they have been educated and cleared by their educational institution and/ or by graduation from an LSBN approved prelicensure nursing education program.**

B. To assist these individuals to be employed in an acceptable position whereby they contribute to patient care and yet do not jeopardize the welfare of the patient nor legally implicate themselves or their employing institution, the board has adopted the following policies **for delegation of nursing activities to currently enrolled nursing students and pre-licensure nursing graduates who have been unsuccessful on the NCLEX-RN examination but**

who have not passed ~~exhausted their 4 attempts in 4 years requirement to pass~~ the NCLEX-RN examination within 12 months of their first attempt taking the NCLEX.

1. The employer shall:

a. document the unlicensed status of these individuals ~~as currently enrolled nursing students or pre-licensure nursing graduates who have not~~ passed the NCLEX-RN examination within 12 months of their first attempt taking the NCLEX ~~exhausted the 4 attempts in 4 years requirement in Louisiana for passage of the NCLEX-RN examination;~~

b. ~~develop and~~ review the written job description with the employee;

c. provide proper orientation to and training for the position; and

~~d. provide supervision of these unlicensed personnel by an RN or APRN;~~

~~d. make no distinction between the student of nursing, the unsuccessful candidate for registered nurse licensure, and any other unlicensed nursing personnel in regard to the delegated responsibilities and functions;~~

e. inform all nursing personnel that the student of nursing and the unsuccessful candidate ~~have no legal right to function in any nursing capacity reserved for the licensed nurse.~~ may perform procedures and or tasks enumerated in the job description.

2. Employers shall not jeopardize the potential for licensure of the student in nursing or the unsuccessful candidate for licensure in order to augment their staffing. ~~It is understood that these unlicensed personnel may not perform the nursing tasks and procedures enumerated in their specific job description independently without the requisite supervision of the RN and/or APRN. The future professional careers of these individuals are at stake.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918. HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 3:421 (October 1977), amended by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998).

### **Family Impact Statement**

The proposed additions and/or changes to the rules of the board, Louisiana State Board of Nursing should not have any known or foreseeable impact on any family as defined by R.S. 49.972(D) or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. a family's earnings and budget;
5. the behavior and personal responsibility of the children; or
6. the family's ability or that of the local government to perform the function as contained in the proposed Rule.

### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will not have an impact on child, individual, or family poverty in relation to individual or community asset development as described on R.S. 49:973.

### **Small Business Analysis**

The impact of the proposed Rule on small businesses, as defined in the Regulatory Flexibility Act, has been considered. It is estimated that the proposed action is not expected to have any significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will not have an impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

### **Public Comments**

Interested persons may submit written comments on the proposed Rule to Dr. Karen C. Lyon, 17373 Perkins Road, Baton Rouge, LA 70810, or by facsimile to (225) 755-7585. All comments must be submitted by 5 p.m. on or before October 10, 2024.

Karen C. Lyon, PhD, MBA, APRN-CNS, NEA  
Executive Director/CEO

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES** **RULE TITLE: Employment of Student Nurses** **and Unsuccessful Candidates on the State Board Licensing Examination**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Other than the cost of rulemaking, which is approximately \$250 in FY 24 and FY 25 related to publishing the proposed rule and final rule in the Louisiana Register, the proposed rule changes are not anticipated to result in implementation costs or savings to state or local governmental units. This cost will be paid from self-generated funds.

Currently, students in nursing and unsuccessful candidates on the National Council Licensure Examination for Registered Nurses (NCLEX-RN) may only be employed as unlicensed persons and

cannot legally perform, nor be assigned nursing duties other than those allowable to other unlicensed nursing personnel.

The proposed rule changes will allow an undergraduate nursing student currently enrolled in a professional pre-licensure education degree program or a graduate nurse who has not passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN) examination within 12 months of their first attempt to be employed in a nursing setting and to perform procedures and tasks for which they have been educated and certified as competent by their educational institution and/or by graduation from a Louisiana State Board of Nursing (LSBN)-approved prelicensure nursing education program.

## II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will not affect revenue collections for state or local governmental units.

## III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

The proposed rule changes will benefit nursing students and nursing graduates who have not passed the NCLEX-RN examination by allowing them to perform nursing procedures for which they have been certified as competent by their educational institution. For informational purposes, in 2022, there were 6,672 students enrolled in clinical nursing courses and 328 nursing graduates who did not pass the NCLEX-RN on their first attempt and thus may have benefitted from the proposed rule changes.

## IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes may increase employment and competition in the nursing field by allowing employment of nursing students and graduate nurses who have not yet passed the NCLEX-RN examination to the full extent of their knowledge and training. This increase in nursing staff may provide adjunct support to RNs and Advanced Practice Registered Nurses (APRN) in providing care to patients during the ongoing state and national nursing shortage.