



Since Implementing Statutory Changes, the State Board of Nursing Has Approved More Nursing Programs; the Legislature Should Address Implementation Issues

at a glance

To address the nursing shortage in Florida, the 2009 Legislature modified how nursing education programs are administered by the Board of Nursing. The board has taken several actions to implement the required changes and has received more than double the number of applications for new nursing programs from the previous year.

There are six issues associated with the board's implementation of the revised law.

- The program application timeframe is inconsistent with the timeframe established in the Administrative Procedure Act.
- The board's application for new nursing programs is not yet finalized and includes requirements beyond those in statute.
- The board's method for placing programs on probation is not finalized.
- The board's instructions for the 2009 Annual Report and Workforce Survey did not specify which items programs must complete to comply with statute.
- The board's interactive website does not include all required elements.
- The board's process for communicating with nursing education programs needs improvement.

The Legislature should consider clarifying language in the revised law to address these issues.

Scope

As directed by Ch. 2009-168, *Laws of Florida*, this report reviews the Board of Nursing's administration of the new program approval process.¹ The report answers two questions.

- How has the nursing program approval and regulation process changed?
- What issues developed when the board implemented statutory changes?

Due to the recent implementation of Ch. 2009-168, *Laws of Florida*, we were unable to evaluate the effectiveness of the new approval process in producing quality nursing programs and increasing the quality of nursing graduates. OPPAGA will issue subsequent reports on the program approval process and its outcomes in 2011 and annually thereafter through 2015. As part of this review, we interviewed stakeholders such as representatives from Florida nursing education programs, the Florida Nurses Association, and the Florida Hospital Association.

¹ The Florida Center for Nursing was also required to report on the Board's administration of Ch. 2009-168, *Laws of Florida*. Their report is located at: http://www.FLCenterForNursing.org/files/Report_of_Findings_BON_2010.pdf.

Background

To ensure quality nursing practice, Ch. 464, *Florida Statutes*, establishes the Florida Board of Nursing and grants the board the authority to adopt rules, discipline nurses who violate regulations, and approve and monitor nursing education programs. Comprising 13 members, including licensed practical nurses, registered nurses and consumer members, the board meets six times per year. Located in the Department of Health, Division of Medical Quality Assurance, the board is staffed with 43 full-time positions.

Nursing education programs must be approved by the Board of Nursing. Applications to establish new programs are evaluated by staff in the board's education unit.² Board approved nursing education programs prepare students to take a national nursing examination and to practice nursing in Florida.³

As shown by Exhibit 1, as of October 2009, 181 nursing education programs operated in

² Education staff also review the credentials for foreign trained nurses and applications for endorsement or examination for licensure. The education unit has six full-time positions.

³ Nursing graduates must pass the National Council of State Boards of Nursing national examination to be eligible to practice nursing in Florida.

Florida.⁴ These included 98 programs that offered a licensed practical nursing certificate, 58 programs that offered an associate degree in nursing, and 25 programs that offered a bachelor's degree in nursing. Many of these programs offered both a generic curriculum for students with no medical experience and a bridge curriculum, which is an expedited program for students with nursing licenses or previous medical experience.

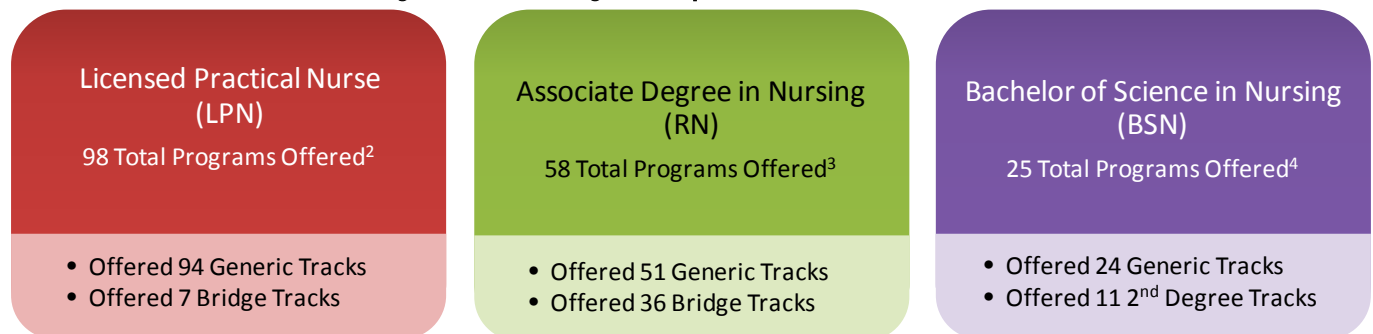
Nursing programs are offered by Florida's public school districts, Florida colleges, state universities, private institutions licensed by the Commission for Independent Education, and private institutions that are members of the Independent Colleges and Universities of Florida. Also, one institution, Pensacola Christian College is statutorily authorized by s. 1005.06 (1) (e), *Florida Statutes*, and offers a bachelor of science in nursing degree.⁵

⁴ Twenty-one programs were approved by the Board of Nursing but did not have students enrolled during 2008-09. Nineteen of these programs were newly approved programs, while two had changed the curriculum and start dates of programs.

⁵ In addition, one program is offered by an institution in another state. Indiana State University has a distance learning nursing program for students to receive a bachelor of science in nursing.

Exhibit 1

As of October 2009, 181 Nursing Education Programs Operated in Florida¹



¹ The total includes all tracks for programs, including those 43 programs with multiple tracks.

² Three Licensed Practical Nurse programs have both a generic track and a bridge track.

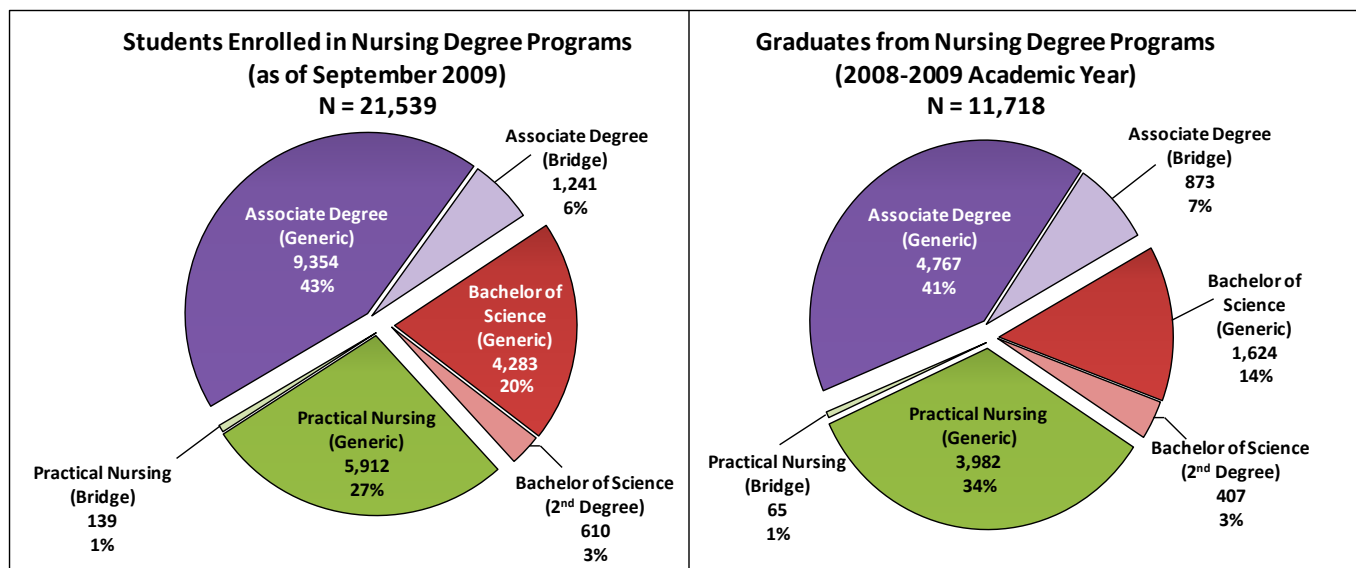
³ Thirty associate degree programs have both a generic and bridge track.

⁴ Ten bachelor's degree programs have both a generic and 2nd degree track.

Source: OPPAGA analysis of the 2009 Annual Report and Workforce Survey of Nursing Programs, collected by the Florida Center for Nursing.

Exhibit 2

Florida's Nursing Programs Enrolled More Than 21,000 Students and Graduated More Than 11,000 Students



Source: OPPAGA analysis of the 2009 Annual Report and Workforce Survey of Nursing Programs, collected by the Florida Center for Nursing.

As of September 2009, more than 21,000 nursing students were enrolled in nursing education programs, with most students (49%) enrolled in associate degree in nursing programs (See Exhibit 2).⁶ In 2008-09, more than 11,000 students graduated from nursing programs, with 4,000 receiving a licensed practical nursing certificate, 5,600 students earning an associate degree in nursing, and more than 2,000 students earning a bachelor of science degree in nursing (See Exhibit 2).

Questions & Answers —

How has the nursing program approval and regulation process changed?

The 2009 Legislature modified the program approval process for nursing education programs (s. 464.019, *Florida Statutes*) by removing rulemaking authority from the Board

of Nursing and specifying the nursing education program approval process in statute. The Board of Nursing has taken several actions to implement the statutory changes. Applications from institutions seeking to establish new nursing programs have more than doubled from the previous year.

Statutory changes established new requirements for nursing programs and the Board of Nursing

Prior to the 2009 statutory changes, the Board of Nursing was required to adopt rules governing how new nursing education programs were approved and existing programs were monitored to ensure that the programs graduated nurses capable of competent practice. The 2009 statutory changes removed this rulemaking authority and specified requirements for the board's initial and continued approval of nursing education programs. See Appendix A for a list of actions the Board of Nursing has taken to implement the revised law.

⁶ This total includes all pre-licensure programs (licensed practical nursing, associate degree in nursing, and bachelor of science in nursing) and all curriculum tracks.

The program application and approval process is now delineated in statute. Section 464.019, *Florida Statutes*, now specifies application requirements for new nursing education programs, the criteria the board must use to approve or deny these applications, and the timeframe for this process. Applicants must now submit documentation to demonstrate that proposed programs meet standards for faculty qualifications, faculty to student ratios, curriculum content, clinical training sites, and clinical experiences for students. If programs meet the statutory criteria, the board must approve their application within 90 days after receipt.

In the past, programs were also required by the board to submit course syllabi, information on their facilities, and program effectiveness plans, and board staff would conduct site visits as part of the application review process. The board would also check for compliance with education standards it established by rule, and it followed the process outlined in the Administrative Procedure Act, which requires agencies to approve or deny completed applications within 90 days.

Statute now specifies how nursing programs are monitored by the Board of Nursing for continued approval. Chapter 2009-186, *Laws of Florida*, delineates two requirements nursing programs must meet for continued approval: maintaining a specified pass rate on the National Council Licensure Examination and submission of the annual report and affidavit. First, statute requires the board to place nursing programs on probationary status if the programs' average examination scores fall 10% below the national average for two consecutive calendar years. If placed on probation, programs have two years to improve their exam scores before the board is required to rescind program approval. Prior law required the Board of Nursing to review programs if their average examination scores fell 10 percentage points below the national average for two consecutive years. Also previously, the board had flexibility to extend a program's

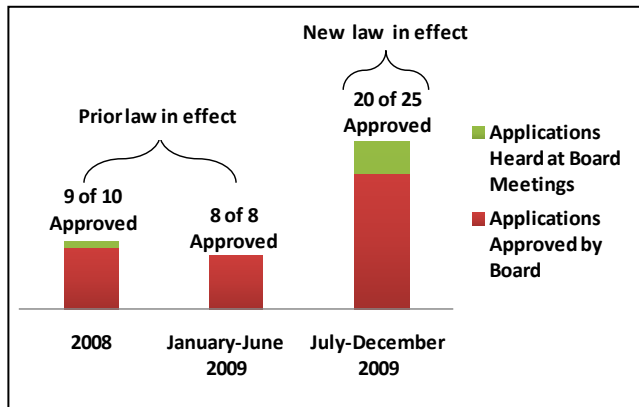
probationary status and assist programs in achieving compliance.

Second, statute requires programs to submit an annual report to the Board of Nursing and a signed affidavit that certifies their continued compliance with the nursing program standards outlined in s. 464.019, *Florida Statutes*. The board is required to place programs on probation if they fail to submit an annual report or affidavit. Previously, programs could not be placed on probation for failure to submit annual reports and did not have to submit affidavits certifying compliance with standards. Programs' annual reports must specify the number of applications they received, the number of applicants deemed qualified, the number of applicants accepted, and the number of students who graduated. Programs also must submit information on their student retention rates, graduate passage rates on the national examination, and the program's accreditation status. Most of these data elements have been collected by the Board of Nursing and Florida Center for Nursing collectively for the last three years.

Applications for new nursing programs have more than doubled from the previous year.

New program applications submitted to the board have more than doubled in the six months since Ch. 2009-168, *Laws of Florida*, became effective compared to the previous year. As shown by Exhibit 3, since the new law went into effect, the board has considered 25 new applications for nursing programs, compared to 10 new applications considered in all of 2008.⁷ The board has approved 20 new nursing programs during this timeframe, compared to 9 new programs approved in 2008. In addition, the board has received seven new applications that will be considered at its February meeting.

⁷ In 2009, 8 of the 25 applications considered were submitted prior to the date the new law took effect, July 1, 2009, but were considered by the board after that date.

Exhibit 3**Since July 2009, the Board of Nursing Has Considered 25 Applications for New Nursing Programs and Approved 20 New Programs**

Note: The five applications not approved by the board in 2009 were rescheduled to the first meeting in 2010, because the applications were incomplete.

Source: Florida Board of Nursing.

What issues developed when the board implemented statutory changes?

We identified six issues associated with the Board of Nursing's implementation of Ch. 2009-168, *Laws of Florida*.

- The program application timeframe is inconsistent with the timeframe established in the Administrative Procedure Act.
- The board's application for new nursing programs is not yet finalized and includes requirements beyond those in statute.
- The board's method for placing programs on probation is not finalized.
- The board's instructions for the 2009 Annual Report and Workforce Survey did not specify which items programs must complete to comply with statute.
- The board's interactive website does not include all required elements.
- The board's process for communicating with nursing education programs needs improvement.

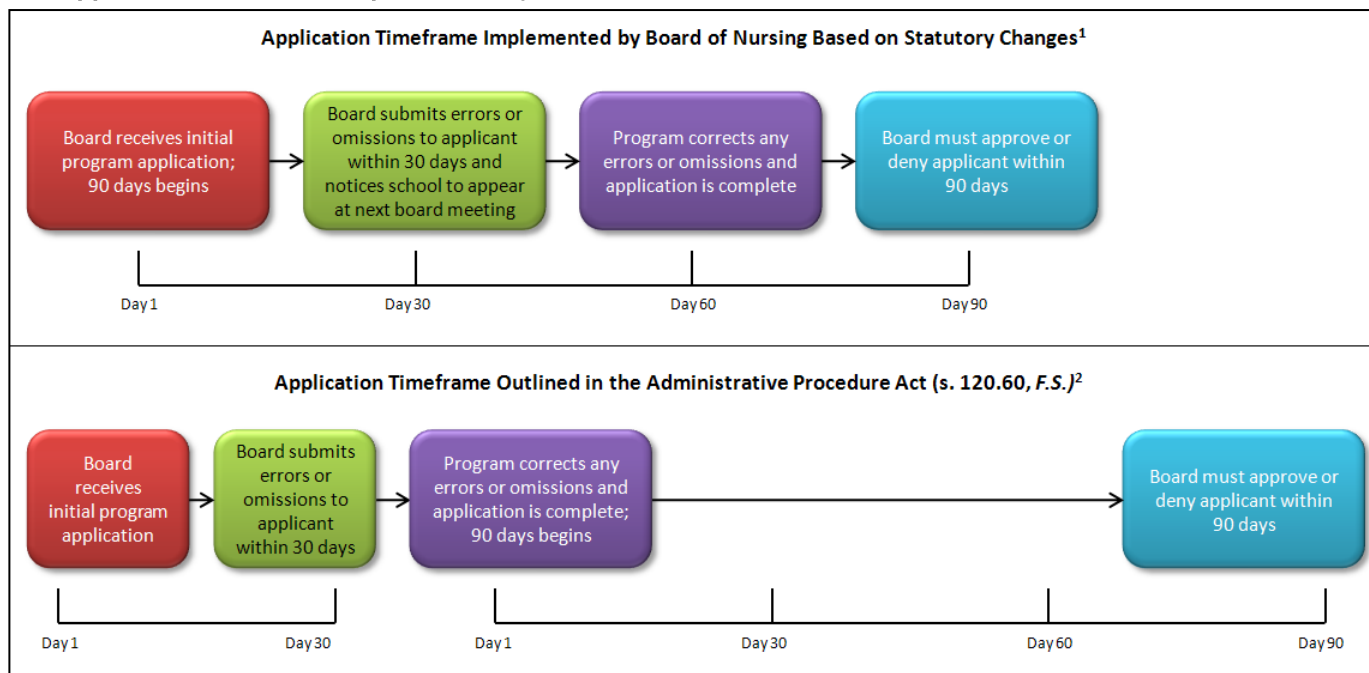
The Board of Nursing's implementation of the new application timeframe is not consistent with the Administrative Procedure Act (Ch. 120, *F.S.*). Chapter 2009-168, *Laws of Florida*, provides that the Board of Nursing must approve or deny nursing program applications within 90 days of receipt of an application and fee. The board must identify any errors or omissions with the application within 30 days of initial receipt. Under the board's implementation of this section, the 90-day period begins upon receipt of the initial application and fees because the revised statute does not include the word 'complete' before application. In practice, this interpretation can result in the board having relatively little time to review a completed application if the initial submission was incomplete, and the applicant is not timely in submitting additional information and correcting errors.

The board's implementation of this section is not consistent with the Administrative Procedure Act, s. 120.60, *Florida Statutes*, which specifies that agencies must rule on licensure applications within 90 days of receipt of a complete application (meaning one that contains no errors or omissions). Exhibit 4 compares the process currently implemented by the board to the process outlined in the Administrative Procedure Act.

As a result of this practice and the timing of board meetings, staff must quickly review applications and notify programs to appear at the next board meeting, even when applications are incomplete. Since the board meets every other month, a program may only have one opportunity during the 90 day period to have their application go before the board; if all required documents are not yet filed the application will be denied unless the program waives the timeframe. If the applicant is denied, programs must submit a new application and begin the process anew.

Exhibit 4

The Application Timeframe Implemented by the Board Is Inconsistent with the Administrative Procedure Act



¹ The board meets at least once during 90 days.

² The board meets at least once after the program application is complete.

Source: OPPAGA analysis.

Board staff reports that many programs submit applications near the deadline to present materials for the next board meeting.⁸ For example, one program submitted an application near the November 4 deadline for the December board meeting. However, the application did not include all required signed clinical agreements, and the program was unable to submit the required documents by the deadline for the board meeting. The program had to waive the 90 day timeframe in order to avoid being denied by the board and having to reapply and pay another fee.

Since Ch. 2009-168, *Laws of Florida*, became effective on July 1, 2009, the board has noticed 25 programs to appear before it for a decision on program applications. Eight of these programs had deficient documents and waived their 90 day timeframe.⁹ Under the timeframe in the Administrative Procedure Act, these programs would be less likely to need to waive their

timeframe as the 90 days would not start until they had filed a complete application. While no applicants have been denied as a result of not meeting the requirements within the 90 day timeframe, this practice potentially lengthens the approval process if programs have to wait until the next board meeting for a decision, which is usually in 60 days.

The board has not yet finalized the application for new nursing programs, and it requires programs to submit materials and information not required by statute. In August, the Board of Nursing approved a revised program application to address the provisions of Ch. 2009-168, *Laws of Florida*. However, the board approved the revised application prior to receiving concerns raised by the Legislature's Joint Administrative Procedures Committee or input from stakeholders.¹⁰ In

⁸ The deadline for the board to receive materials for a board meeting is generally 30 days in advance of the meeting.

⁹ Section 120.60, F.S.

¹⁰ The Joint Administrative Procedures Committee submitted a letter regarding the program application to the board counsel and copied the board chair prior to the August 2009 meeting. Board staff received the letter prior to the board's August 2009 meeting, but did not provide this information to the board because they received the letter after the deadline to consider materials for the public agenda.

October, the board heard public comment on the application and directed counsel to make changes based on the Joint Administrative Procedures Committee's concerns. However, as of December 31, 2009, no changes had been made to the application, and new nursing education programs applying to the board must continue to use the application approved in August and available on the Board of Nursing's website. The board plans to discuss the application at its February 2010 meeting.

The Joint Administrative Procedures Committee's and stakeholders' main concern is that the program application requires programs to submit items that are not required in statute, including curriculum vitae of faculty members, course descriptions, approval dates by the Department of Education, nursing program lengths, the number of students admitted, and the target date for admission. In addition, at the board's October 2009 meeting, stakeholders raised the concern that the application

instructs programs to use Florida Department of Education curriculum frameworks, which are not mandated by Ch. 2009-168, *Laws of Florida*, nor used by private institutions.¹¹ Board staff indicate that they have the statutory authority to collect this information and that legal counsel is currently reviewing these issues.

The board is using exam scores earned prior to the law change to determine program's probationary status and has not finalized other probation criteria. Stakeholders have identified three concerns with the board's implementation of probation provisions (see Exhibit 5). First, Ch. 2009-168, *Laws of Florida*, does not specify what timeframe the Board of Nursing should use to place programs on probation. At its October meeting, the board voted to place nursing programs on probation if they have examination scores below the national average for two consecutive calendar years beginning in January 2009. Programs have

¹¹ Section 1004.92, *F.S.*

Exhibit 5

The Board of Nursing Has Not Fully Established Criteria to Determine a Program's Probationary Status

| Probation Implementation | Statutory Language | Board's Implementation | Issue |
|--|---|---|---|
| Criteria to be placed on probation | <ul style="list-style-type: none"> National Council Licensure Examination scores 10% below the national average for two consecutive calendar years Failure to submit an annual report | <ul style="list-style-type: none"> Nursing programs will be placed on probation if they have average National Council Licensure Examination scores 10% below the national average. The board has not implemented the criteria in law to place programs on probation for failure to submit an annual report and affidavit. | <ul style="list-style-type: none"> None The board did not take timely action to implement this criteria. |
| Start date for two consecutive calendar years of National Council Licensure Examination Scores | Programs will be placed on probation based on National Council Licensure Examination scores from two consecutive calendar years. Statute does not specify a start date for this provision. | Nursing programs will be placed on probation if they have average National Council Licensure Examination scores 10% below the national average beginning in January 2009 for two consecutive calendar years. Programs will first be eligible for probation January 2011. | The timeframe includes months (January through June 2009) prior to when the law went into effect—July 1, 2009. |
| Criteria to be removed from probation | <ul style="list-style-type: none"> The program shall remain on probation until it achieves compliance with the graduate passage rate requirement; or submits annual report. | <ul style="list-style-type: none"> Not yet determined Not yet determined | <ul style="list-style-type: none"> Programs are concerned with how many quarters/years they have to demonstrate compliance with exam scores. Programs that submitted late annual reports and affidavits are unsure of their status and if they will be placed on probation. |

Source: OPPAGA analysis of Florida Board of Nursing implementation of Ch. 2009-168, *Laws of Florida*.

expressed concern that this date precedes the law's effective date, meaning that they will be held accountable for maintaining average exam scores for a time period when this criterion was not required for program compliance.

Second, the board has not yet determined how programs will be placed on probation for failure to submit an annual report and affidavit. In 2009, six nursing programs failed to submit an annual report by the November 1 deadline, but all submitted the report by the end of the calendar year. Board staff reported 58 programs failed to submit an affidavit by the deadline and all but 4 programs had submitted the affidavit by January 2010.¹² Board staff indicated this issue will be discussed at its February meeting.

Third, the board also has yet to determine how programs will be removed from probationary status. Statutory language states that programs shall remain on probation until they achieve compliance with the examination score requirement or submit their annual report. However, statutes do not specify the number of quarters that programs must maintain compliant scores before being removed from probation and the board has not yet addressed this issue. Currently, seven programs are on probation because they had low exam scores prior to the new law becoming effective.¹³ Since the board has not yet determined how programs will be removed from probation, it is unknown when these programs will be removed from this status.

The board's instructions for the 2009 Annual Report and Workforce Survey did not specify the items that must be completed to avoid probation. Chapter 2009-168, *Laws of Florida*, requires nursing programs to submit an annual report with specific data elements and an affidavit to the Board of Nursing each year, and it requires the board to place programs on probation if they fail to submit these documents by the required deadline. To implement this

section, the board worked with the Florida Center for Nursing to include the required data elements in an electronic survey (the 2009 Annual Report and Workforce Survey) and notified programs that they would be placed on probation if they failed to submit completed surveys by November 1.¹⁴

However, the 2009 Annual Report and Workforce Survey included items that were not required by statute. These items included data on student demographics, changes to programs, and faculty information, which are used by the Florida Center for Nursing to complete research reports (see Exhibit 6). However, the board's instructions did not clearly indicate that these data were not statutorily mandated, creating the impression that programs could be placed on probation if they failed to include these additional data elements in their survey responses.

Exhibit 6

The 2009 Annual Report and Workforce Survey Included Items Not Required in Statute for the Annual Report

| Data Items Included in the Annual Report | Type of Requirement |
|--|---|
| Affidavit | Statutory requirement for annual report |
| Number of applications received, qualified applicants, accepted applicants | Statutory requirement for annual report |
| Number of program graduates | Statutory requirement for annual report |
| Graduate passage rate on NCLEX | Statutory requirement for annual report |
| Program's retention rate | Statutory requirement for annual report |
| Accreditation status (accrediting body) | Statutory requirement for annual report |
| Job placement of graduates | Other statutory requirement |
| Student demographics | Florida Center for Nursing |
| Faculty information | Florida Center for Nursing |
| Changes to program | Board of Nursing |

Source: 2009 Annual Report and Workforce Survey for Nursing Programs and Ch. 2009-168, *Laws of Florida*.

¹² In addition, two programs did not submit annual reports or affidavits because their nursing programs are no longer in operation.

¹³ Section 464.019 (2)(a), *F.S.*

¹⁴ Programs had to submit an electronic survey to the Florida Center for Nursing, which then provided the required data elements to the Board of Nursing. The affidavit was also included in the survey, but institutions had to print this out, have it notarized, and then mail it to the Board.

The board's website does not include all required elements and allow for interactive program comparison. Chapter 2009-168, *Laws of Florida*, required the Board of Nursing to create an interactive website that enables the public to compare nursing programs using data points such as the program's approval status, retention, and examination scores. As shown in Exhibit 7, the board has not provided complete, accurate information for two of the data elements as required by law. Specifically, retention rates of students do not appear anywhere on the board's website, while the accreditation status has not been provided by all nursing programs.

While the board has provided complete information for six required data elements on its website, the information appears in multiple locations (See Exhibit 7). As a result, the required data elements do not appear in a single comprehensive interactive format, thus, users are not able to readily compare all required data elements across programs. In contrast, other state agency websites provide databases that allow users to conduct searches and comparisons. For example, the Florida Board of Governors' website allows users to conduct

searches of state universities based on data elements such as enrollment and graduates, and it provides results in a comparison table that displays results for each state university. Board staff indicated that they plan to merge the two websites in March 2010 so that all required information will appear in one location.

The board's process for communicating with nursing education programs needs improvement. The board's communication with nursing programs needs improvement. Even though the board has not established its process for placing programs on probation, it has on two occasions issued notices that required specific programs to appear before the board to discuss placing them on probation, only to determine prior to these meetings that the schools did not need to be present. In August 2009, the board issued notices to appear to 20 programs because their examination scores from 2007 and 2008 were 10% below the national average and the board was considering placing them on probation. However, the board decided at its Wednesday evening meeting (the night before the programs scheduled appearance) that it could not use this criterion for probation and it tabled the discussion to its October meeting. A similar situation occurred at

Exhibit 7

The Board Has Not Fully Implemented Required Data Elements into an Interactive Website

| Required Data Point | Location of Data Element on Board Website | Implementation Status |
|---|--|-------------------------|
| Program application documents | Department of Health's License Verification website | Complete |
| Program affidavit | Department of Health's License Verification website | Complete |
| A list of all practical and professional nursing programs | Department of Health's License Verification website; Excel spreadsheet on board website. | Complete |
| Program accreditation status | Excel spreadsheet on board website. | Incomplete ¹ |
| Program approval or probationary status | Department of Health's License Verification website; Excel spreadsheet on board website. | Complete |
| Each program's graduate passage rate on the National Council of State Boards of Nursing Licensing Examination | Excel spreadsheet on board website. | Complete |
| The national average for passage rates on the National Council of State Boards of Nursing Licensing Examination | Excel spreadsheet on board website. | Complete |
| Program retention rates of students | Not provided. | Not provided |

¹ Board staff reports that the accreditation status was not provided by all nursing programs.

Source: OPPAGA analysis of required data elements for the Board of Nursing website (January 2010).

the December meeting where more than 60 programs were issued notices to appear as a result of a clerical error. Staff contacted every school, but some attended the meeting unaware they were no longer required to be present. This practice is burdensome and costly to the nursing programs that must make travel arrangements for staff and counsels to attend board meetings.

Recommendations —————

Legislative options

To clarify statutory requirements and ensure that the Board of Nursing's implementation of Ch. 2009-168, *Laws of Florida*, is consistent with legislative intent, the Legislature should amend s. 464.019, *Florida Statutes*, to

- clarify the timeframe the board should follow to consider applications for nursing programs to ensure the board's practice is consistent with the Administrative Procedure Act (s. 120.60, *Florida Statutes*) and
- delineate the criteria and timeframe the board should use to place nursing education programs on probation and remove programs from probation.

Agency Recommendations

To fully comply with the provisions of Ch. 2009-168, *Laws of Florida*, we recommend the Board of Nursing take the following actions.

- Finalize and publish a nursing program application consistent with statute. The board should ensure that it addresses all concerns raised by the Joint Administrative Procedures Committee, and it should make its revised application available to nursing program applicants by posting the application on the board's website. The current application available on its website during January 2010 is not consistent with the statutory requirements.

- Clarify the directions for submitting the annual report and affidavit. The board should modify its instructions for programs to submit the annual report and specify which questions are statutorily required for programs to remain compliant with statute and avoid probation.
- Modify its interactive website to include all required data elements and allow users to compare data points across nursing programs. The board should incorporate all required data elements into one database that enables users to conduct interactive searches to compare required data elements across nursing programs.

Agency Response —————

In accordance with the provision s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Department of Health for review and response. The Department of Health's written response has been reproduced in Appendix B followed by OPPAGA comments. In addition, the Department of Education and Board of Governors reviewed a draft of our report and provided comments which were considered in the final version of the report.

Appendix A

The Board of Nursing Has Taken Several Actions to Implement Legislative Changes

Since July 1, 2009, the Board of Nursing has met three times and taken several actions to implement the provisions of Ch. 2009-168, *Laws of Florida*. These actions include: repealing rules on nursing education programs, adopting a new application format, requiring programs to submit an annual report and affidavit, classifying all programs as fully approved, and developing an interactive website with nursing data. Table A-1 lists the actions the Board of Nursing has taken to implement the law since July 1, 2009, and the date of each action.

Table A-1

The Board of Nursing Has Taken Actions to Meet the Statutory Requirements

| Statutory Requirement | Board Action | Date of Action |
|--|---|---|
| Repeal Board of Nursing rules related to nursing education programs. | The Board of Nursing repealed the rules related to nursing education programs (rules in section 64.B9-2). The board is currently following the process and standards in statute for approving nursing education programs. | October 2009 (Initiated) January 2010 (Repealed) |
| Adopt a format for a new program application. | Statute required the board to adopt a revised program application. In October, the board held a public workshop about the changes and voted to allow counsel to make technical changes. | August 2009 |
| Require programs to submit an affidavit and annual report. | The Board of Nursing worked with the Florida Center for Nursing to collect the statutorily required information for the annual report and program affidavits. All approved nursing programs were required to submit an annual report and affidavit by November 1, 2009. | October-November 2009 |
| Classify all nursing programs as fully approved as of July 1, 2009 and place programs on probation for specified criteria. | Statute required that all nursing programs would have an approved status as of July 1, 2009. The board took action in accordance with this section in October 2009. The board voted to use NCLEX exam scores starting in January 1, 2009 through January 1, 2011, as the first timeframe to determine if programs should be placed on probation. | October 2009 |
| Develop an interactive website. | Statute required the board to publish data on nursing education programs in a manner that allows for interactive searches and comparisons. The department has started this process by listing all approved nursing education programs and almost all required data elements. | Ongoing |

Source: Florida Board of Nursing.

Appendix B



Charlie Crist
Governor

Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General

January 26, 2010

Mr. Gary R. VanLandingham, Director
Office of Program Policy Analysis
and Government Accountability
Claude Pepper Building – Room 312
111 West Madison Street
Tallahassee, Florida 32399-1475

Re: Board of Nursing Approval of Nursing Education Program

Dear Director VanLandingham:

The Department of Health (Department) and the Florida Board of Nursing (Board) are charged with the regulation of the nursing profession. House Bill 1209 (2009), which amends section 464.019, Florida Statutes, charged the Department and the Board with approving and regulating nursing education programs operating in Florida. In order to effectively carry out our responsibilities as the regulating agencies, it is essential that this bill and the implementation of it be clearly defined, and the duties are properly delineated in this report. To this end, the Department requests the following comments and suggested edits to the Office of Program Policy Analysis and Government Accountability (OPPAGA) report regarding nursing education programs be considered.

OPPAGA's report identified five issues. The first two recommendations are legislative options, and the following three are agency recommendations. The Department concurs with the two legislation recommendations, which follow below.

- **Issue:** The program's application timeframe is inconsistent with the timeframe established in the Administrative Procedures Act.
- **Recommendation:** The Legislature clarify the timeframe the board should follow to consider applications for nursing programs to ensure the board's practice is consistent with the Administrative Procedures Act (s. 120.60, Florida Statutes)

Agency Comments:

Section 120.60(1), Florida Statutes, requires agencies to approve or deny an application within 90 days after an application has been **deemed complete**. HB 1209 (2009) requires the Board to approve or deny an application with 90 days of **receipt** of application.

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- **Issue:** The Board's method for placing programs on probation is not finalized.
- **Recommendation:** The Legislature delineates the criteria and timeframe the board should use to place nursing education programs on probation and remove programs from probation.

Agency Comments:

HB 1209 (2009) does not identify which two calendar years of scores the Board is to take into consideration when deciding to place a program on probation. However, page seven of the report portrays the Board using exam scores earned prior to the law change, which the Board has not used nor implemented any action against nursing education programs to date.

As to OPPAGA's three recommendations for the agency, we concur in part and would offer clarification in the areas where we do not concur.

- **Issue:** The Board's application for new nursing programs is not yet finalized and includes requirements beyond those in statute.
- **Recommendation:** Finalize and publish a nursing program application consistent with statute. The board should ensure that it addresses all concerns raised by the Joint Administrative Procedures Committee, and it should make its revised application available to nursing program applicants by posting the application on the board's website. The current application available on its website is not consistent with the statutory requirements.

Agency Response:

The Department does not concur with the statement that the Board failed to consider the letter of the Joint Administrative Procedures Committee (JAPC) and the input of stakeholders. The Board held a rules workshop in conjunction with its October 2009 Board meeting and took comments from the public, including those offered by nursing education programs present and those from stakeholders. Based on public comments and the recommendations from JAPC and Board Counsel, the Board instructed the Board's Counsel to make technical changes consistent with the authority in the statute, which might not already be in the form. Technical changes by Board Counsel are undergoing the rule promulgation process, which may take up to six months. The revised application is on the February 2010 agenda for the Board's review and consideration of the recent JAPC letters and response from Board Counsel.

- **Issue:** The Board's instructions for the 2009 Annual Report and Workforce Survey did not specify which items programs must complete to comply with statute.
- **Recommendation:** Clarify the directions for submitting the annual report and affidavit. The board should modify its instructions for programs to submit the annual report and specify which questions are statutorily required for programs to remain compliant with statute and avoid probation.

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Agency Response:

Although no statutory requirement has been overlooked, the Department does concur with the recommendation of clarifying the directions for the completion of the joint Annual Report and Workforce Survey collected collectively with the Florida Center for Nursing. Communication efforts of Board staff included participation on a conference call conducted by the nursing education program Dean's and Director's group. Board staff advised the association of the requirements in section 464.019, Florida Statutes, which would be included in the 2009 Annual Report. The group was advised that the Board would continue to collaborate and work with the Florida Center for Nursing to obtain the information required on the Annual Report.

- **Issue:** The Board's interactive website does not include all required elements.
- **Recommendation:** Modify its interactive website to include all required data elements and allow users to compare data points across nursing programs. The board should incorporate all required data elements into one database that enables users to conduct interactive searches to compare required data elements across nursing programs.

Agency Response:

The Department does not concur with the statement made in the report citing the website's inability to support interactive searches. Currently the nursing program data elements are provided on our website to the public in a Microsoft Excel document allowing for manipulation of the data elements. School specific application documents and affidavit/summary of compliance are available for public review accessible through our website's license verification feature. In addition, the Department is working on a data base system enhancement to add a tab to the basic licensure verification screen to include the data elements which compose the Annual Report. The affidavit/summary of compliance as well as the nursing program application documents if applicable will remain on the initial license verification screen. These system enhancements will be operational in March 2010.

The Department does concur that student retention rates are not available on the website. The Board collaborated with the Florida Center for Nursing (FCN) and OPPAGA on the development of the Annual Report to ensure the inclusion of the data elements required by all parties.

The public's input including nursing education programs, stakeholders concerns and the historical methods employed by OPPAGA were taken into consideration when developing the formula to calculate retention rate. However the data elements captured do not allow for the statistical determination of actual retention rates as required by the statute rather allow us to report only the percent of students still enrolled in a given program for a particular year.

The Board may seek public comment to be afforded input in the process of arriving at a definition of retention rates, which will not pose an undue burden on nursing education programs. Nursing education programs informed the Board staff at the onset of the amendment to section 464.019, *Florida Statutes*, that retention rate is not tracked in the method required in the statute.

Mr. Gary R. VanLandingham
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- **Issue:** The Board's processes for communicating with nursing education programs and tracking program applications needs improvement.
- **Recommendation:** No recommendation provided by OPPAGA.

Agency Response:

The Administrative Procedures Act requires licensees to be afforded due process. Therefore, on two occasions notice was provided to nursing education programs in one instance and to applicants in another where the issue of probation was to be considered. Due to the complexity of this issue and evolving legal advice, those noticed programs and applicants were not considered.

If you have questions concerning this matter, please contact James Boyd, Inspector General, at 850-245-4141, or by email at Jim_Boyd@doh.state.fl.us.

Sincerely,



Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General

AVR/kr

OPPAGA Comments to Agency Response

OPPAGA Comment 1:

Regarding agency comments: "HB 1209 (2009) does not identify which two calendar years of scores the Board is to take into consideration when deciding to place a program on probation. However, page seven of the report portrays the Board using exam scores earned prior to the law change, which the Board has not used nor implemented any action against nursing education programs to date."

Our report states on page 7 that: "The board is using exam scores earned prior to the law change to determine program's probationary status... At its October meeting the board voted to place nursing programs on probation if they have examination scores below the national average for two consecutive years beginning in January 2009".

At its October 2009 meeting, the board voted on the time frame it would use to place nursing programs on probation; it decided to use January 2009 as its beginning timeframe. The audio transcripts of this discussion and vote can be found on the board's website at the following link:

[October 7, 2009 Evening Committee Meetings](#)

(See minute 58:30)

OPPAGA is in agreement with the department that the board has not implemented any action against nursing programs to date because programs must have two consecutive years of low scores to be placed on probation and the law has only been in effect for six months.

OPPAGA Comment 2:

Regarding agency comments: "The department does not concur with the statement the Board failed to consider the letter of the Joint Administrative Procedures Committee (JAPC) and input of stakeholders. The Board held a rules workshop in conjunction with its October 2009 Board meeting and took comments from the public, including those offered by nursing education programs present and those from stakeholders."

The board approved an application for new nursing programs in August 2009, two months prior to its October 2009 meeting referenced in the board's response. Since that time the board has had the August 2009 application on its website and new programs have had to apply using the application that raised concerns by the Joint Administrative Procedures Committee (JAPC) and stakeholders.

OPPAGA Comment 3:

Regarding agency comments: "The Department does concur that student retention rates are not available on the website. The Board collaborated with the Florida Center for Nursing (FCN) and OPPAGA on the development of the Annual Report to ensure the inclusion of the data elements required by all parties.

The public's input including nursing education programs, stakeholders concerns and the historical methods employed by OPPAGA were taken into consideration when developing the formula to calculate retention rate. However the data elements captured do not allow for the statistical determination of actual retention rates as required by the statute rather allow us to report only the percent of students still enrolled in a given program for a particular year."

The Board of Nursing was authorized to collect retention rates as part of the annual report required from nursing programs in s. 464.019 (2)(c)4, *Florida Statutes*. The board was required to provide this information on its website by December 31, 2009, in s. 464.019, (4)(h), *Florida Statutes*.

OPPAGA is also required to collect retention data for nursing programs in s. 464.019, (9)(a)4, *Florida Statutes*, and report findings on these and other measures by January 30, 2011. To establish a baseline year of data, OPPAGA worked with the Florida Center for Nursing to incorporate questions on program retention in the 2009 Annual Report and Workforce Survey. The information included in the survey will allow the calculation of a retention rate for cohorts of students beginning with the 2005-06 academic year similar to that calculated for other education programs. The information collected will allow us to provide information on the entering cohort for each year (2005-06 to 2008-09 for the baseline) and how many students dropped out, remained enrolled, and graduated by fall of each year.

The Florida Legislature

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