SUBJECT: Updating regulation and practice code for RNs and LVNs

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Capelo, Laubenberg, Truitt, Coleman, Dawson, McReynolds, Naishtat, Taylor, Zedler

0 nays

WITNESSES: For — Margie Dorman-O'Donnell, RN, Texas Nurses' Association and Texas Hospital Association

Against — None

BACKGROUND: The Board of Nurse Examiners (BNE) regulates registered nurses (RNs), and the Board of Vocational Nurse Examiners (BVNE) regulates licensed vocational nurses (LVNs). Occupations Code, chapters 301 to 303, governs nursing practice for RNs and LVNs and nursing peer review.

DIGEST: CSHB 2324 would allow the BNE to approve pilot programs for innovations in nursing, nursing regulation, reporting methods, and identification of system errors. The programs would have to protect health-care consumers adequately and could be required to provide remediation for RNs with skill deficiencies. The bill also would change references to continuing education to "continuing competency" and would add options for demonstrating such competency.

Professional identity. The bill would prohibit anyone but a licensed RN or LVN from using the title "nurse" or any other designation that would imply that the person was licensed to provide nursing care. A person could not use the title "nurse aide," "nurse assistant," "nurse technician," or any similar title unless practicing under the authority of a RN or unless otherwise authorized to do so by law. The bill would specify the contents of a RN's badge and would require a RN to wear the specified badge at all times when interacting with the public in a professional nursing role.

Workplace safety. The governing body of a hospital would have to adopt policies by January 1, 2004, to improve workplace safety, reduce the risk of

injury, occupational illness, and violence, and increase the use of ergonomic principles.

The bill would amend the "safe harbor" statute (Occupations Code, sec. 303.005), which now applies only to RNs, to include LVNs. If a LVN were asked to engage in conduct that the nurse believed would violate his or her duty to a patient, the LVN could request a peer-review determination on the matter.

Complaints and reporting. The bill would exempt minor incidents, as defined by Occupations Code, sec. 301.419, from the grounds for reporting a RN. It would allow a RN to report situations that could expose a patient to substantial risk of harm to the nurse's employer or to another entity at the facility in which the nurse was practicing.

The BNE would have to determine the extent to which deficient care given by a RN was the result of the nurse's own judgment, knowledge, and skill or of factors beyond the nurse's control. A peer review committee would have to consider the same issues in making its determinations.

In instances where a peer review committee found that a nurse's conduct did not have to be reported to the BNE, a committee member could not report a nurse to the BNE if the committee member had knowledge of the nurse's conduct only through the peer review. If the committee member had independent knowledge of a nurse's conduct or believed that the committee had made a bad-faith determination in the case, he or she could report the nurse to the BNE.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

SUPPORTERS SAY:

CSHB 2324 would give the BNE general authority, like that of the Pharmacy Board, to approve pilot programs that could lead to better regulation. Some existing reporting requirements make it difficult for innovative medical and research centers in Texas to conduct their work. The bill would authorize the BNE to exempt such programs from reporting requirements as long as the programs did not endanger the public health.

Changing continuing "education" to "competency" would give the BNE the flexibility to consider advances in a nurse's skill level, even when the advancement came from having earned a certificate, completed a training program, or delivered a paper at a conference rather than from an approved continuing education course. These alternatives to conventional continuing education demonstrate a nurse's commitment to his or her professional competency, yet are not recognized under existing law.

Professional identity. Current law allows caregivers other than RNs and LVNs to use the general title "nurse." Also, some facilities have staff called "nurse assistants," though they are not working under a nurse. Both situations allow those without adequate training to mislead the public into thinking that they are qualified to render nursing care. CSHB 2324 would help protect the public and would correct a gap in the accountability of care providers.

Requiring a RN to wear a badge that properly identifies the nurse would help protect the public, especially the elderly or those with poor eyesight, for whom cluttered nurse badges interfere with determining clearly who is providing their medical care.

Workplace safety. The University of Texas Health Science Center at San Antonio recently completed a study that identifies the reasons for Texas' nursing shortage: the nurse population is aging, few young people are entering the profession, and nurses have a high degree of job dissatisfaction. The 77th Legislature took action to encourage more students to enroll in nursing school. CSHB 2324 would address the job-satisfaction component of the nursing shortage by improving the workplace environment for nurses and by reducing their risk of violence or injury at work. The bill's provisions are critical to retaining and recruiting high-quality nurses.

When an employer assigns a nurse to an area outside his or her scope of practice without placing that nurse under the supervision of a more qualified practitioner, it puts the nurse and patients at risk. LVNs need "safe harbor" protection such as this bill would provide, just as do RNs, who already enjoy this protection under current law. Nurses would not seek to abuse this right or use it to evade assignments. Rather, they need this protection to avoid harming patients unintentionally.

Complaints and reporting. Statutory amendments made by the 76th Legislature to exempt facilities from reporting minor mistakes did not refer to the relevant section of the statute, so they were not implemented well. Attorneys have been advising their medical clients to continue reporting all errors, including minor ones. CSHB 2324 would clarify the statute to give medical facilities confidence in their decisions not to report minor errors. This clarification would allow nurses to feel safe that they would not be reported for minor errors from which no patient suffered.

CSHB 2324 also would give a nurse the flexibility to report safety concerns not only to the nurse's employer, but to other personnel within the facility at which nurse works. This provision is needed because current law protects nurses from retaliation when they report hazards to their employers, but it does not protect a nurse in a facility with multiple employers if the nurse reports a hazard to another entity.

It is not intended under the Nursing Act that nurses could be blamed for system errors, which are larger than any single health-care provider in the system. CSHB 2324 would require the BNE and peer review committees to consider system errors in evaluating nurse conduct and to hold a nurse accountable only for the nurse's level of skill and knowledge, not for system errors over which nurses have no control. However, the BNE and peer review committees would not tend to dismiss nurse misconduct under the cover of system errors, because doing so would harm the profession the reviewers are trying to protect.

To prevent individual nurses from circumventing the peer review committee system, the bill would prevent a committee member from disregarding a committee decision with which the member disagreed and filing a complaint on the member's own initiative.

OPPONENTS SAY:

Implementing the pilot programs proposed by this bill without compromising public safety could be difficult. The BNE would be challenged to ensure that exceptions to reporting requirements were granted only for legitimate research purposes that led to improved safety in medical institutions. However, the BNE must continue to deal with individual nurses found to be incompetent, even if their employers have an internal system of monitoring their work and protecting patients they serve.

Workplace safety. Safe harbor laws actually can be bad for nurses. By giving them the option to claim that a certain assignment was beyond their scope of practice, it could make nurses feel obligated to use the safe harbor any time they were asked to go outside their scope of practice. This could limit nurses' on-the-job training and their professional advancement by confining them to what they already know. Also, nurses could use safe harbor provisions to avoid unpleasant assignments.

Complaints and reporting. The bill could enable the BNE or peer review committees to excuse nurse misconduct in the name of system errors. Though the bill's requirement that the BNE and peer review committees consider the role of system errors when investigating a nurse's conduct is reasonable and though system errors sometimes are responsible for poor medical outcomes, a nurse's individual accountability should not be ignored.

NOTES:

As filed, HB 2324 would have required a hospital's safety plan to include the prompt reporting to law enforcement of crimes against hospital personnel. The committee substitute would limit this requirement to apply to crimes against nurses.

A similar bill, SB 718 by Madla, passed the Senate on April 22 and has been referred to the House Public Health Committee.