Anticipated Process for Rulemaking by the Commission

Introduction

• The eNLC, much like the current NLC, will develop rules to facilitate its administration and operation.
• In the eNLC, rulemaking powers are exercised by the governing body, the Commission, made up of a representative from each member state who is the executive director of the state board of nursing (BON) or designee of the party state.
• Each member state has a seat on the Commission and therefore has a voice and a vote in the rulemaking process.
• This process is very similar to the rulemaking process that most state BONs have in place today (see more details of the process outlined on page 2). The eNLC Rulemaking Procedures are consistent with provisions of the Model State Administrative Procedures Act (APA), which is the basis for most existing State APAs.
• The eNLC rules are dependent on the statute(s) they purport to implement. Therefore, each rule must be premised on corresponding compact statute(s). As such, the Commission cannot draft rules related to other areas of a state's Nurse Practice Act (NPA) as it would be outside of the Commission's scope of authority. For example, the rulemaking authority of the eNLC, the Commission, could not promulgate a rule pertaining to scope of practice, since the eNLC does not address scope of practice in the statute.
• The rules are administrative in nature and seek to clarify and give further definition to the statutes.
• The rules are related to the operations and implementation of the eNLC. As examples, the Model Rules of the current NLC can be viewed online at https://www.ncsbn.org/NLC_Model_Rules.pdf.
• Final rules will ultimately be adopted by the Commission after the eNLC becomes effective. Some examples of potential rules for the enhanced NLC may include the following:
  1. A multistate license shall not be issued by a party state to any individual whose primary state of residence is another party state.
  2. A license issued by a party state authorizing practice only in that state and not authorizing practice in other party states (a single state license) shall be clearly identified as valid only in the state of issuance. The license will be identified in Nursys, the national licensure database, as a single state license.
  3. Before a multistate license is issued:
     a. That party state shall query Nursys to determine current licensure status, current or previous disciplinary action, and any current significant investigative information.
     b. If an applicant is found to be under investigation in another party state, the new home state shall contact the investigating state to determine eligibility for licensure.
• In fact, many of the policies of the current NLC will be suggested as eNLC rules. Those policies can be viewed online at https://www.ncsbn.org/Policies_per_081315.pdf.

Why is rulemaking being done this way?

• In making comprehensive enhancements to the NLC (adopted May 2015), one goal was to bring the current NLC up to common, modern interstate compact standards. Rulemaking by the governing Commission is standard practice among modern interstate compacts and necessary for efficiency, consistency and clarity.
• Traditional rulemaking processes have proven to be inefficient for interstate commissions. In the current NLC's 17-year history, a state-by-state staggered rule promulgation process has hindered rule consistency across member states. For example, in 2012, the Nurse Licensure Compact Administrators (NLCA) voted to amend a rule, which then needed to be implemented via each state's rulemaking processes. As of 2017, three states still have not implemented the amended rule. Rulemaking processes by the Commission in the eNLC eliminates this type of problem and allows for the adoption of rules and amendments to rules to occur simultaneously among member states.
NCSBN’s Role

• On May 5, 2015, NCSBN’s Delegate Assembly voted to adopt the model language of the eNLC legislation. In August of 2015, NCSBN’s Board of Directors appointed a work group to do the preliminary work of drafting proposed rules for the eNLC. This work group consisted of executive directors of six member boards as well as an attorney and NCSBN staff. The work group has met regularly since its inception.

• Since only the future Commission has the authority to draft, amend or adopt eNLC rules, the final version of proposed eNLC rules developed by the work group will be forwarded to the future Commission as recommendations for consideration. The recommendations of the work group are not binding on the Commission. Upon commencement of the Commission, it is anticipated that rulemaking will be among its initial priorities. The Commission may choose to accept, reject or accept with revisions the recommendations of the work group.

• Prior to forwarding the work group’s recommendations to the Commission, NCSBN will disseminate the recommendations to its member boards and key stakeholders for comment. This does not preclude the public comment period that the Commission will post as a procedure of its rulemaking process, as defined in eNLC statute. It is anticipated the distribution of the work group recommendations will take place in the spring of 2017. Recommended rules and comments received will be forwarded to the Commission upon the eNLC’s effective date.

The Commission’s Rulemaking Process

1. The Commission files notice of proposed rulemaking at least 60 days prior to meeting:
   a. On the Commission website; and
   b. On each member board website (or state publication for publishing of proposed rules).

2. The notice of proposed rulemaking includes:
   a. The time, date and location of the meeting;
   b. The text of the proposed rule or amendment (with the reason for the rule);
   c. A request for public comments; and
   d. A process for public to attend meeting or submit comments.

3. Commission schedules public hearing before it adopts a rule or amendment.
   a. The place, time and date of hearing is published.
   b. Anyone may have the opportunity to comment orally or in writing.
   c. The Commission gives consideration to all written and oral comments received.

4. Rules and/or amendments to the rules are voted on and adopted at Commission meetings.

Summary

1. The rules the Commission promulgates only pertain to operations and implementation of the eNLC. The rules help to operationalize the eNLC and to bring clarity where needed. Rules do not pertain to other areas of a state’s NPA, such as scope of practice, grounds for discipline, etc.

2. Citizens of each eNLC state will still be provided with notice about a proposed rule and will have the ability to comment on a rule or amendment.

3. Rulemaking by the Commission is not new to any state. State legislatures in 50 states have already enacted three interstate compacts which include rulemaking by the Commissions of those compacts.

   The three interstate compacts are:
   a. Interstate Compact for Adult Offender Supervision;
   b. Interstate Compact for Juveniles; and
   c. Interstate Compact for the Education of Military Children.

For more information about the NLC, visit nursecompact.com or email nursecompact@ncsbn.org.