



**What Nurse  
Case Managers**

**Need to  
Know**

About the

**Nurse Licensure Compact**

*Kristin Hellquist, MS*

**I**n the late 1990s, the National Council of State Boards of Nursing (NCSBN) began exploring several nurse-licensing models that would simplify government processes and remove regulatory barriers, while increasing access to safe nursing care. The NCSBN decided on the mutual-recognition model (similar to that used for state driver's licenses), which allows a nurse to practice in states other than the one in which the license was issued, usually the state of residency, as long as that individual acknowledges that he or she is subject to each state's practice laws and discipline. Like the driver's license model, nursing practice across state lines is allowed, whether physical or electronic, unless the nurse is under discipline or a monitoring agreement that restricts practice across state lines.

At very bottom, a compact is a legal contract between states. The Nurse Licensure Compact (NLC) enables nurses to practice across state lines. In each state that adopts the NLC, the compact serves as an additional statutory layer above the individual state's Nurse Practice Act, which remains in place. To date, 21 states have passed legislation or adopted the NLC through regulation. States that actively participate in the NLC include Arizona, Arkansas, Delaware, Idaho, Iowa, Maine, Maryland, Mississippi, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin. New Jersey has passed legislation but not implemented it yet. The Center for Interstate Compacts in Lexington, KY,

## SUPPORTING THE NURSE LICENSURE COMPACT

There are many good reasons why you should support the NLC. Some include:

The NLC clarifies the authority to practice for many nurses currently engaged in telenursing or interstate practice.

The NLC increases the mobility for nurses.

The NLC improves access to licensed nurses during a disaster or other time of great need for qualified nursing services and overall access to care.

The NLC is a tool for better public protection by enhanced discipline and information-sharing among participating NLC states.

## The Real Threat of Litigation

The case of *Smelik v. Humana* is not a licensure case. It is, however, a case in which a jury said that case management negligence contributed to a woman's death and caused \$7.4 million in compensatory damages. Without doubt, it illustrates that case management can no longer fly below the malpractice radar screen. This verdict should grab the attention of all the stakeholders in the multistate licensure debate, including case managers, disease managers, their employers, potential plaintiffs and defendants, plaintiff and defense attorneys, managed care organizations, and insurance carriers. As a plaintiff's attorney with 20 years of experience in insurance loss control and health care risk management behind me, I'll tell you why.

In 1999, I made the first of many presentations at the Case Management Society of America annual meeting. Doing research for my topic, "Case Law Update," proved challenging. Why? At that time, very few lawsuits involved case managers—as plaintiffs, defendants, experts, or even witnesses—and certainly no reported jury verdicts. I've made a presentation on legal issues at every CMSA annual meeting since then, and over the years, preparing my presentation has become much easier. The number of cases involving allegations of negligent case management and defendant-case managers has grown every year. Last year, I had choices about which cases to present, and with *Smelik* breaking new ground as the first multimillion-dollar verdict in a case management suit, I am confident that the trend will continue.

The next time an attorney is confronted with a claim of possible case management negligence in a death case, he or she will know that there is a \$7.4 million jury verdict on record. Just because licensure was not an issue in *Smelik* doesn't mean the next case won't involve an element of interstate case management or a nurse in another setting speaking to patients across state borders. This practice is routine in the delivery of case management services, as well as disease management and telehealth, and it would be ludicrous to think that serious patient harm will not result from the service provided at

an affiliate of the Council of State Governments, said on its Web site, "Modern compacts are a reinvigoration of our federalist system in which states may only be able to preserve their sovereign authority over interstate problems to the extent that they share their sovereignty and work together cooperatively through interstate compacts."<sup>1</sup> The Web site went on to note, "Today, states are facing issues that are not confined to geographical boundaries or jurisdictional lines. As we become more integrated socially, culturally, and economically, the volume of these issues will only increase, making federal preemption in certain policy areas an ever more likely response. Interstate compacts may well prove to be an apt mechanism for developing state-based solutions to supra-state problems while preserving the states' authority and freedoms."<sup>1</sup>

What determines primary residency for licensure purposes in the NLC? Primary residency is defined in the rules and regulations. Sources used to verify a nurse's primary residency for the NLC may include, but are not limited to, driver's license, federal income tax return, or voter registration. The concept of one license for each NLC nurse resident reduces the barriers to interstate practice, improves tracking of nurses for discipline purposes, is cost effective and simplifies the licensure processes, facilitates interstate commerce, and provides an unduplicated listing of

nurses to aid in disaster preparedness and workforce planning needs.

Just like drivers who have a license in one state but must follow the rules of the road in whatever state they are driving in, nurses governed by the NLC provisions are held accountable for complying with the nursing practice laws and other regulations in the state where the patient is present at the time care is rendered. In fact, all nurses are accountable in this situation; the condition is not unique to the NLC.

If a nurse breaks "a rule of the road," how does discipline occur? As provided in the NLC, both the state of licensure (home/residency state) and state where the patient is present at the time the incident occurred (remote/other NLC state) may take disciplinary action against the nurse. The NLC allows the compact states to directly address the behavior of the nurse licensed through the NLC. Therefore, the NLC actually enhances the state of residency's ability to discipline; through ready exchange of investigatory information, the state of residency has the most current and accurate information to better determine the appropriate course of action in disciplinary cases. Complaints concerning a nurse practicing on the "privilege to practice" (practicing in an NLC state that is not the state of legal residency or where the nurse is licensed) would be processed in the state where the violation was reported to have occurred, and the action taken would also be reported to the state of residency.

some point. The attorney representing a patient or family in a case like this will look for ways to highlight flaws in the defendant's business practices, citing anything that may have impacted the case management services given. Whether the defendant employed qualified, licensed nurse case managers would be on my list. After all, hospitals, nursing homes, and home health agencies are expected to ensure that employed and contracted nurses are properly trained and licensed. The law requires it. Juries understand and expect this and will have no trouble sending the message that HMOs, case management, disease management, and utilization review providers should adhere to the law as well.

I want you to understand how we would likely pursue this aspect of the case in my firm. We would take depositions of involved case managers. We would first determine the states in which each case manager is licensed, which is easy to do by searching the Internet. We would ask each case manager in detail about his or her license, when it was activated, last renewed, and whether disciplinary action was ever taken. We would ask the case manager whether she was aware that there was a licensure requirement for each state in which services are rendered. Was the case manager aware of the penalties for practicing in that state without a license? Was the issue ever discussed at work? With whom was it discussed and what was the content of the discussion? Were the discussions verbal or by email? Were there any meetings about the subject? Were minutes kept? What was decided?

Next, we would take the depositions of the responsible administrators or CEO. The questions regarding nursing licensure would continue along the lines of what that person knew to be legal with regard to health care professionals' licenses and multistate practice. What is the cost of obtaining a nursing license for each of your registered nurse case managers in each state where they practice? What is the cost to your company of not doing so? Why did the company choose to have its nurses' practice illegally? Does the widespread practice in your industry make it the right thing to do?

In egregious cases, my firm also reports negligent health care entities to appropriate state agencies, includ-

For example, the state of practice may issue a cease and desist order against the privilege, and the state of residency may also take disciplinary action against the nurse's license. Many states choose to investigate the complaint in the state in which the incident occurred and transfer that information to the licensing board for action, so action is taken only once against the licensee.

Additionally, the NCSBN has developed a coordinated licensure information system called Nursys to enable information sharing. All information involving any action or investigation is accessible to all NLC states. Additional information in Nursys is available also to participating noncompact states. Final actions on nurse licensure that are publicly available by all participating states in Nursys are available to the public for a small fee. For more information, visit [www.ncsbn.org](http://www.ncsbn.org) in the license verification section. All NLC states must report disciplinary actions taken against a participating nurse, and this is accomplished by reporting to Nursys. But all NLC states share information regarding whom to contact for information regarding significant investigative information relevant to a current investigation.

The group charged with administering the NLC—the Nurse Licensure Compact Administrators (NLCA)—is a separate body composed of the participating state board of nursing administrators in charge of that state's compact operations. The NLCA develops rules and regulations to administer the compact, and then individual state boards of nursing in the NLC adopt the rules. If an individual state refuses to adopt the rules the NLCA develops, that state would be in violation of the contract and thus could lose the right to belong to the NLC.

An individual RN or LPN/LVN residing in an NLC state can practice in all the party states by virtue of the multistate privilege to practice, unless there is some restriction placed on the license that prevents granting the multistate privilege. The individual RN or LPN/LVN residing in a non-NLC state will continue to be licensed in individ-

ual state(s). If a nurse lives in an NLC state, it is permissible to seek a license from a non-NLC state. The license from the NLC state where the nurse resides allows the nurse to practice in all states party to the NLC, but the license obtained from the non-NLC state allows practice in just that state.

A frequently asked question is how will an employer know a nurse's NLC license is valid? The burden is on the employer, as it is under single-state licensure models, to verify licensure at all significant times of change in status of nurses they employ. Under the NLC, these significant times include any time a nurse changes state of residency. In addition, they can check Nursys at [www.nursys.com](http://www.nursys.com).

All NLC states and boards of nursing recognize the importance of nurses having access to state practice act information. This can be obtained through the individual boards of nursing in their residency/licensure state. The information on how to contact the boards can be found at [www.ncsbn.org](http://www.ncsbn.org). Making current and timely information regarding nursing practice available to nurses is an ongoing challenge. Many boards use technology to maintain Web sites and post practice-related information, including board policies. Boards of nursing also use newsletters and other communication activities. Members of the NLCA have committed to making practice-related information readily available on their state Web sites and would welcome input on how to improve this information-sharing process.

Knowledge of the nurses practicing in any state is important for a variety of public policy reasons, notably emergency preparedness efforts and workforce data collection. Once 100% participation has been achieved in the NLC, member boards and the NCSBN will have the first-ever unduplicated count of active nurse licenses. Lack of reliable information about nurses practicing in a state is neither created nor solved by the NLC. A non-NLC state does not have a complete accounting of all nurses practicing in its jurisdiction; it has informa-

---

Knowledge of the  
nurses practicing in  
any state is  
important for a  
variety of public  
policy reasons,  
notably workforce  
data collection.

---

tion on only those nurses licensed in its jurisdiction.

If your state is exploring joining the NLC, it is important that the model legislation be followed for consistency, the rule-making processes to implement the NLC be clearly spelled out in the legislation and that proposed implementation regulations be developed simultaneously with that legislation. The NLCA has drafted model rules that have been adopted through each NLC state's open and public rule-making processes, as set forth in each state's Administrative Procedures Act. States should plan 6 months to 1 year between legislation passing and fully implementing the NLC.

Support for the NLCA has come from a variety of sources. They include:

- Case Management Society of America
- Case Management Leadership Coalition
- Many state nursing associations
- The American Organization of Nurse Executives
- Several state hospital associations
- The American Association of Occupational Health Nurses
- U.S. Department of Commerce, which supported the NLC in speech to the American Telemedicine Association in 2003 and formally recognized NLC in its report to Congress titled "Innovation, Demand and Investment in Telehealth (February 2004)
- The Center for Telemedicine Law
- The Telehealth Leadership Council
- Citizens Advocacy Center

- The Nephrology Nurses Association
- American Telemedicine Association and their special interest group on nursing

If you are interested in supporting the NLC or working to get it passed in your state, please contact Kristin Hellquist, NCSBN director of policy and government relations, at [khellquist@ncsbn.org](mailto:khellquist@ncsbn.org), or call (312) 525-3665. □

#### Reference

1. National Center for Interstate Compacts. Council of State Governments. Available from: [www.csg.org/CSG/Programs/National+Center+for+Interstate+Compacts/default.htm](http://www.csg.org/CSG/Programs/National+Center+for+Interstate+Compacts/default.htm). Accessed Oct 27, 2005.

*Kristin Hellquist, MS, is the director of policy and government relations for the National Council of State Boards of Nursing.*

Reprint orders: E-mail [authorsupport@elsevier.com](mailto:authorsupport@elsevier.com) or phone (toll free) 1-888-834-7287; reprint no. **YMCM 353**  
doi:10.1016/j.casemgr.2005.11.001

ing the Department of Health, the Department of Insurance, and the Attorney General's Office for investigation. One reason we do this is because these agencies will often investigate and have access to witnesses, documents, and information that we do not. Of course, these agencies do not issue jury verdicts, but they do come to your office to review records and interview staff, and they issue deficiencies and citations, restrict licensure and practice, assess fines, and make their findings public.

Do not take comfort in the fact that such an investigation has not yet taken place or the fact that unlicensed multistate case management practice is widespread. Most of us can think of at least one person who was made an example of, either through discipline or termination, for doing something that everyone else was doing. Corporate executives have been subject to the same, sometimes facing serious personal and professional repercussions. Rest assured that when the patient harm is significant, the stakes become high. Reports to appropriate agencies will be made, and it's been my experience that these agencies pay attention and take action.

Here is some advice from someone with years of loss control and risk management experience who reviews hundreds of potential malpractice and negligence claims and whose firm litigates many serious malpractice cases each year. The right factual scenario for all of the things I've suggested will occur, if it hasn't already, and you don't want to be on the receiving end of any of them! Relying on an industry practice that puts those who practice nursing across state borders in a position of doing so illegally is foolish for the company that takes this path and leaves the nurse who works for this company vulnerable. Wake up! Join in the efforts to address the situation now, before you or your company becomes the target of this disingenuous, unprincipled, and illegal practice.

*Gayle Sullivan, RN, JD, is president of Quality Assurance Associates, Inc., in Fairfield, Conn., and legal counsel with Sinoway, McEnery & Messey, PC, in North Haven, Conn. She also writes the legal column "Courtside" for The Case Manager.*