

- SUBJECT:** Nursing peer review and regulation of the practice of nursing.
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 8 ayes — Laubenberg, Jackson, Cohen, Coleman, Gonzales, S. King, Olivo, Truitt
- 0 nays
- 1 absent — Delisi
- WITNESSES:** For —Margie Dorman-O'Donnell, Texas Nurses Association; Debora Simmons, Texas Nurses Association; Elizabeth Sjoberg, Texas Hospital Association (*Registered, but did not testify*: Dan Finch, Texas Medical Association; Mazie M. Jamison, Children's Medical Center Dallas; Michele O'Brien, Christus Santa Rosa Healthcare; James H. Willmann, Texas Nurses Association; Lynda Woolbert, Coalition for Nurses in Advanced Practice)
- Against —None
- BACKGROUND:** The Nursing Practice Act, under Occupations Code, ch. 301, governs the practice of nursing. It also governs the reporting of nurses to the Board of Nurse Examiners when there are reports of conduct that could affect patient safety.
- DIGEST:** CSHB 2158 would amend the Nursing Practice Act to provide for nurses to report nurse conduct to nursing peer review committees and would establish standards for reporting.
- The bill would require the establishment of nursing peer review committees for vocational nurses if a person regularly hired or contracted for services of 10 or more nurses, and for professional nurses if the person hired 10 or more nurses, at least five of whom were registered nurses.
- A nurse would report to a nursing peer review committee or to the board if another nurse had engaged in conduct subject to reporting, which would be defined as conduct that:

- violated the nursing practice act or a board rule and contributed to the death or serious injury of a patient;
- caused a person to suspect that the nurse was practicing while impaired by drugs or alcohol;
- constituted abuse, exploitation, fraud or a violation of professional boundaries; or
- indicated that the nurse lacked, knowledge, skill, judgment, or conscientiousness and could reasonably be expected to pose a risk of harm to a patient.

A nursing peer review committee that received a report would determine whether or not a nurse had engaged in conduct that was subject to reporting to the board. A report would not be required if the nursing peer review committee determined that the conduct was a minor incident or that the nurse already had been reported to the board. A minor incident would be conduct by a nurse that did not indicate that the nurse's continued practice posed a risk of harm to a patient or another person.

If the nursing peer review committee determined the conduct was subject to reporting, the review committee would file with the board a written report that would include a recommendation on whether the board should take formal disciplinary action.

If a nursing peer review committee determined that deficiency in care was due to a factor beyond the nurse's control, the peer review committee would report the conduct to the facility's patient safety committee or to the registered nurse in charge of nursing services administration. The patient safety committee would evaluate the influence of those factors on the conduct of the nurse and on the practice of the other nurses in the same entity. The patient safety committee would report its findings to the nursing peer review committee.

The bill would authorize a state agency to report in writing to the Board of Nurse Examiners or to a nursing peer review committee a nurse that it had reason to believe had engaged in conduct subject to reporting. If the Board of Nurse Examiners determined, after investigation, that the nurse's deficiency in care was the result of a factor beyond the nurse's control, the board would report the determination to the facility's patient safety committee or to the registered nurse in charge of nursing services administration.

CSHB 2158 would authorize a nursing peer review committee to share information with a patient safety committee if the two were established by the same entity. A communication to or a determination made by the patient safety committee would not be subject to discovery nor admissible in any civil or administrative proceeding, even after it had been shared with the nursing peer review committee. This privilege could be waived only through a written waiver signed by the chair, vice chair, or secretary of the patient safety committee.

CSHB 2158 would eliminate some of the specific limitations on the board for requiring continuing nursing education but still would allow continuing education to consist of up to 20 hours of classroom education.

This bill would repeal:

- Sec. 301.303(d), relating to rules adopted by the Board of Nurse Examiners about continuing competency;
- Sec. 301.352(e) and Section 301.419(a), relating to duplicate definitions of minor incident;
- Sec. 301.402(a), relating to definitions of nursing educational program and nursing student;
- Sec. 301.405(d), (f)(g), and (h), relating to redundant rules about when an entity should report a nurses conduct; and
- Sec. 303.005(h), relating to redundant rules about when to report a registered nurse to a peer review committee

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, 2007.

**SUPPORTERS
SAY:**

CSHB 2158 would make the practice of nursing safer and better for nurses and for patients. It would streamline and clarify provisions on reporting to make it easier for nurses and the institutions in which they practice to know when to report. The bill also would allow the nursing peer review committee to communicate concerns about a nurse to the patient safety committee to improve nursing care. It would stipulate when information should be shared with the Board of Nurse Examiners. Sharing information is key because various entities may collect information about a nurse or efficacy of practice, but they are not able to share the information. This bill would allow these various bodies to share information.

Current provisions in the Nursing Practice Act concerning reporting of nurses encourage the over-reporting of nurses to the Board of Nurse Examiners to promote and improve patient safety. Recent studies by the Institute of Medicine have indicated that over-reporting of nurses, instead of promoting better patient care, in fact detracts from patient care and creates an environment where nurses do not report errors. The bill would help to foster an open atmosphere about disclosing nursing practice concerns, rather than encouraging nurses to go underground and not report concerns.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The substitute provides a more specific definition of a “patient safety committee” and specifies that communications to and records of a patient safety committee would not be subject to subpoena or discovery or admissible in a civil proceeding.

The companion bill, SB 993 by Nelson, passed the Senate on the Local and Uncontested Calendar on April 12 and was reported favorably, without amendment, by the House Public Health Committee on May 3, making it eligible to be considered in lieu of HB 2158.