A8472B (Woerner) **S8341A (Stavisky)**

Temporary Practice Authorization for Unlicensed Nurses and Physicians

MEMORANDUM IN OPPOSITION

The New York State Nurses Association represents more than 42,000 nurses for collective bargaining and is a leading advocate for safe patient care and maintaining nurse practice standards.

The proposed legislation would create a "temporary practice authorization program" allowing unlicensed RNs, LPNs and Physician to temporarily practice in New York for up to 180 days if they have filed a license application and a notice stating that they "intend to practice" in a county or facility that is federally designated as medically underserved. The legislation would also require that the applicant is not employed by an employment agency, states an intent to "live in" New York, and "commits" to remain employed with the employer for no less than three years.

NYSNA is opposed to the proposed temporary licensure program for the following reasons:

1. **There is no need for the legislation – the pool of nurses licensed in New York is large and growing**

The number of nurses licensed to practice in New York increased from 305,000 in 2018 to 454,000 in 2025, while the number of nurses employed in healthcare has remained flat at around 150,000 during the same period, according to RN licensure data from the Dept. of Education Office of Professions and RN employment data from the Bureau of Labor Statistics.

While the number of RNs licensed in NY has gone up by about **50% since 2018, the percentage of this growing pool of licensed RNs who are working in direct care positions has declined from more than 50% to less than 38% during that period.** We have more and more licensed nurses, but they are not working in healthcare jobs because of poor pay and bad working conditions. Given this dynamic, the proposed legislation will not address ongoing recruitment and retention problems or add to the pool of nurses available to work in medically underserved communities.

2. **Patient safety and quality of care will be negatively affected**

The legislation would allow out-of-state nurses who do not meet state licensing standards, who have been disciplined in other states, or who are facing pending charges or investigations to freely practice in New York.

This raises patient safety concerns and undermines state practice standards. The requirement in the legislation that the applicant and the employer "reasonably believe" the applicant to be qualified for licensure will not effectively protect New York patients from possible harm and substandard care.

The requirement that the nurse be "in good standing" in another state is not defined and would seem to allow nurses who have had one or more states revoke their license or start disciplinary cases against them to practice temporarily in New York so long as they remain in "good standing" in at least one state.

It should also be noted that the legislation would allow unqualified nurses to continue to practice for ten days **after** they are found to be unqualified by NY state licensing authorities. The law, for example, would allow an out-of-state nurse who has not completed a recognized nursing education program or who is not in fact licensed at all to work and provide nursing services to New York patients for 10 days after New York denies the license application.

3. The legislation will not require nurses to provide need care to underserved populations and can be gamed by employers, employment agencies and out-of-state applicants

The legislation requires that the applicant must take a position "in a county or facility designated by the federal government as medically underserved."

Federal designations of "medically underserved" areas, however, are not entirely county based – the federal designations may cover an entire county, but often only include parts of counties, specified towns and cities in whole or in part, and sometimes only apply to specified census tracts.

By not clearly defining what is meant by underserved areas, the legislation would seem to allow an applicant to practice without a license in parts of counties that are **not** medically underserved or to work in a designated underserved area but to provide services to residents who do not face provider shortages.

This would allow applicants and employers to hire unlicensed nurses to serve more profitable service lines or well-insured populations in or near the designated underserved area without providing any services to underserved communities in those areas. This will allow for-profit providers and large hospital systems to pursue higher revenues by using this legislation to hire unlicensed nurses without actually addressing the unmet needs of underserved communities.

The federal definition of "medically underserved area" is also specific to a limited range of services – designations of underserved areas and facilities are specifically limited to areas or facilities without enough **primary care, mental health and/or dentistry services**. The legislation, however, imposes no limitations to link the practice authorization of unlicensed applicants to the type of service that is lacking in an area or facility. For example, the law would permit any employer (including for-profit providers) in an area designated as medically underserved for **dentistry** to hire unlicensed nurses to provide high-profit ambulatory surgical or other services that are not part of the federal designation. This would not address the federally designated need in that geographic area – it would just give employers the opportunity to expand high revenue services to patients that

are not underserved and give them an advantage against competitors who are located outside of a designated county. This dynamic also applies to designated facilities. A facility may, for example, have the federal designation based on the need to provide primary care, but could use this law to hire unlicensed out-of-state nurses to beef up their highly paid specialty services. Again, this does nothing to address the needs of underserved populations.

4. **The legislation does not require RNs working with temporary authorization to actually move to and live in New York**

The legislation has been amended to add a requirement that the applicant must "live in" New York. This phrase does not actually create an obligation to become a New York resident, but merely to be physically present within the state for the period of their temporary practice authorization. The bill's use of the legally ambiguous phrase "live in" (as compared to the more precise status of being a "resident" or "domiciled in" New York) would allow employers and out-of-state applicants to manipulate the program and avoid moving to New York on a long-term basis. Applicants and employers could use the law to attract what amounts to temporary traveler nurses who can use the law to earn exorbitant temporary pay rates while they wait for their license to be issued, and then to promptly quit and move back to their home state.

5. **The requirement to "commit to" work for an eligible employer for "no less than three years" is also problematic**

On the one hand, the phrasing of the "commitment" to actually take a job with an eligible employer is legally unclear. It would seem to only require that the RN applicant's "commitment" exists at the time that the application is filed. After filing, hover, the applicant would be under no enforceable obligation to actually work at the job after the temporary practice authorization is granted. Applicants could immediately quit and take any other jobs with other non-eligible employers or even with employers located in non-shortage areas.

On the other hand, employers could use the "commitment" language to require applicants to sign three-year work contracts that include monetary or other penalties for breach of the minimum work agreement. This would subject some nurses to abusive work conditions and what amounts to indentured servitude.

6. **The legislation will expand the destabilizing role and revenues of temporary and travel nurse agencies in the healthcare system**

The bill seeks to limit the role of temporary nursing agencies by specifically prohibiting applicants from being employed by "an employment agency" as defined by General Business Law Section 171(2).

We first note that GBL Section 171(2) defines employment agencies differently from Public Health Law Section 2999-ii, which regulates the business practices of a wider range of temporary nursing service providers, and could be used to allow some agencies that are covered by the PHL language to directly employ unlicensed out-of-state applicants.

More importantly, the proposed legislation would greatly expand the current role and revenues of for-profit nursing agencies. Under current law, agencies can provide **nurses with valid New York licenses** to work as travel nurses or temps for New York employers at exorbitant rates that undermine employers' financial stability.

This law will now provide these agencies with a new market and more revenues and profits for providing a new "product" – charging exorbitant fees and payment rates for recruiting and referring **nurses who are not licensed to work in New York.** We expect that most employers will not be directly seeking out and recruiting out-of-state nurses who might be interested in the temporary authorization program, but will instead rely on nursing agencies to refer applicants to them for a fee.

New York is seeking to reduce reliance on temporary workers and employment agencies in the healthcare system, but this legislation will have the opposite effect of increasing the role and costs of this destructive practice.

7. Other areas of concern

We note that the program will be in effect for three years – far too long to be allowing employers to be using unlicensed nurses to provide care to our patients.

We also note that the annual report required by the legislation requires only that DOH tracks the number of applicants who received the temporary authorization and the number of applicants who ended up receiving New York licensure.

Given the serious ramifications of the proposed legislation with respect to patient safety and quality of care, further destabilization of the existing nurse workforce, the imperative to address unmet community health needs and address identified shortages, we believe that any review and reporting on the program should also require DOH to collect and analyzes data on the quality of care and patient safety, including incidents of patient harm or deaths associated with the program, incidents of improper nursing practice, errors in care, other failures to comply with the requirements of the temporary practice authorization law, the number of unqualified applicants who were allowed to practice in New York, the impact on the availability of health services in underserved areas and facilities, community and workforce impacts, health equity impact, the misuse of the law by for-profit providers to increase profitable service lines, changes in the types of services provided in affected communities, the impact on the wages, benefits and working conditions of the existing workforce, and other relevant factors.

The law is premised on the assumption that allowing unlicensed personnel to work in New will somehow improve access to care in shortage areas, and it should be analyzed from that perspective, and not simply counting how many people applied for the program and how many received NY RN licenses.

For the above reasons, NYSNA urges the legislature to reject this legislation.