



Legislative Inquiry Report

Nursing Education Oversight

January 2024

*Prepared in response to an inquiry submitted by
Representative Rosemary Lesser (10th House District)*

Context

Rep. Lesser asked the Office of Professional Licensure Review (OPLR) to conduct an independent review of a proposed amendment to the Nurse Practice Act (Utah Code 58-31b), which would restore Division of Professional Licensing (DOPL) oversight of nursing education programs in Utah with advice from the Board of Nursing. This oversight would include 1) developing minimum performance standards for nursing education programs; 2) approving or denying a program from operating in Utah, or revoking approval for a program; and 3) potentially surveying or developing curriculum requirements for nursing programs.

Since 2012, the state standard for nursing programs to obtain “approval” under the Nurse Practice Act is to have programmatic accreditation with a nurse education accreditor that is recognized by the United States Department of Education. This implies a school must also have institutional accreditation. DOPL may approve nursing education programs for a limited time that are seeking accreditation. DOPL’s Board of Nursing Advisory Peer Education Committee tracks state and program-level NCLEX pass rates and discusses results with schools.

This occurs within a broader environment of institutions beyond DOPL and accreditors that constrain nursing programs. For example, the Utah Division of Consumer Protection (DCP) and Federal Department of Education oversee consumer protection issues for nursing students. Market forces via healthcare provider networks influence programs through the allocation of clinical placements. Industry groups shape program size, content, and education practices.

The proposed Nurse Practice Act amendments stem from concerns within the nursing community about recent drops in pass rates for the Registered Nurse (RN) licensure exam (called NCLEX, administered by the National Council of State Boards of Nursing (NCSBN)). It also stems from concerns that Utah is unique among states in not requiring nursing programs to obtain approval from a state regulator (DOPL advised by the Board of Nursing) as a pre-requisite for operating, or continuing to operate, in the state.

OPLR conducted a short review of this topic (see Appendix – Section 5). The focus of OPLR’s review is Associates- and Bachelors-level RN nursing programs in Utah, which produce the majority of Utah-educated nurses in the state. Currently, DOPL tracks NCLEX-RN pass rates for 10 private (6 for-profit and 4 not-for-profit) and 8 public nursing schools in Utah (see Exhibit 1 and discussion in Appendix – Section 1). Based on OPLR’s mandate, this review focuses on the patient safety, licensure, and workforce needs of the state, rather than on considerations of consumer protections for students, which fall within the purview of the Division of Consumer Protection.¹

Findings: General

OPLR’s overall finding is that the current situation does not require radical changes to oversight of nursing programs.

¹ The Division of Consumer Protection (DCP) within the Department of Commerce registers and regulates private post-secondary education under the Utah Consumer Sales Protection Act (UCSPA).

Changes in NCLEX overall pass rates in Utah cannot be attributed easily to changes in DOPL oversight in 2012 and have bounced back since the challenges of the COVID-19 pandemic (see Exhibits 2 & 3 and discussion in Appendix – Section 2a). Utah has largely tracked the national average over time, including during and post-COVID.

A small number of programs (4 of 18) have had consistently lower NCLEX-RN pass rates, particularly at Nightingale College, Eagle Gate and Provo Colleges, and Snow College. This may reflect more complex factors and appears to be rectified, albeit more slowly than may be desired (see Exhibits 4–6 and discussion in Appendix – Section 2b).

Workforce shortages of RNs do not appear to be as urgent as some reports may indicate, though demand for nurses is expected to grow strongly in future (see discussion in Appendix – Section 2c).

Nursing's current requirement of accreditation as the primary consideration for DOPL approval of an education program, avoids duplication of activity (see discussion in Appendix – Section 2d).

In addition to accreditation and informal monitoring by DOPL's Education Committee, nursing schools are already overseen by state and federal regulators, particularly by DCP for state authorization and consumer protection matters. Industry groups and market forces influence program integrity and workforce issues (See Exhibit 7 and discussion in Appendix – Section 2e).

Findings: Access, Safety and Quality

Regulation of nursing programs should include considerations of access and safety for both nursing students and patients. Given OPLR's role, this report has focused mainly on the aspects related to occupational licensure and thus patient access and safety. Questions of potential student harm are the focus of DCP with its consumer protection mandate, and are outside the scope of OPLR's review.

The status quo regulation appears to—on balance—assist the growth of programs, and entry of new programs, to meet perceived needs in the state. Growth in student access expands access to nurse licensure and, subsequently, hospital and patient access to nursing resources. Based on NCLEX-RN candidate numbers, demand for RNs and bachelors-level qualifications has been met largely by growth in for-profit private programs (see Exhibits 8 & 9 and discussion in Appendix – Section 3a).

At the same time, the continuance of lower-performing programs has had a negative, though a smaller aggregate impact, on the number of students becoming licensed RNs through not meeting an 80% NCLEX-RN pass rate for first-time test-takers (see discussion in Appendix – Section 3a).

Evaluating access and which instances may justify intervention and/or closure becomes more complex when rural needs are included. Rural programs, such as at Snow College and the Blanding campus of Utah State University have had weaker NCLEX pass rates than their urban counterparts, but are considered important to maintain to support their communities.

The status quo regulation leaves the NCLEX exam as the main determinant for patient safety and enables market forces (such as provider networks' hiring decisions) to address education quality issues that touch on patient safety through direct feedback between healthcare networks and nurse education providers (see discussion in Appendix – Section 3b).

Other considerations about quality are related more to the question of potential student harm, which falls within the oversight of DCP and is outside the scope of OPLR's review (see discussion in Appendix – Section 3c).

Recommendations

There are several potential models that legislators could consider (see Exhibits 10–12 in Appendix – Section 4), which uses contrasting levels of additional state authority with additional DOPL resourcing required to illuminate tradeoffs. These models are not mutually exclusive nor collectively exhaustive, but are designed to structure the set of potential choices.

Regardless of the model of oversight chosen, OPLR recommends two actions. First, to reduce redundancy, OPLR recommends DOPL have access to and rely on communication between programs and their accreditors. This would minimize the need for additional reporting to DOPL by schools. Additionally, the measurement of NCLEX pass rate performance between DOPL and program accreditors should be completely aligned to reduce friction for schools caught between different reporting requirements. This would apply to all models.

Second, to increase transparency and reduce the need for additional regulatory burden, OPLR recommends DOPL publish historical NCLEX pass rates by program more prominently so they can be more easily viewed by the public and potential nursing students (true for any model adopted). This aligns with recent changes to Utah's Postsecondary Schools Act, overseen by DCP, which emphasizes disclosure.

In terms of regulatory models, OPLR prefers the models requiring minimal additional DOPL resourcing (Models 1–3). OPLR's recommendation is to maintain the status quo (Model 1). The current regulatory model appears to be functioning as intended, providing additional access to students and patients via growth in private schools, and the situation does not appear to warrant additional regulatory oversight. The current system avoids duplication of activity and allows current levels of oversight, disclosures, and market forces to correct low program quality (albeit more slowly than other models might).

Model 3 involves defining minimum standards for a nursing education program to operate in Utah, and allowing for minimal additional DOPL resources to monitor, identify, and elevate

concerns about a program to that program's accreditor based on certain on-going performance criteria. Model 3 is OPLR's recommendation if legislators would like to propose adjustments to the status quo as it provides potentially faster remediation without duplication of effort with accreditors. Model 2 only contemplates minimum standards for a program's entry into Utah, and so Model 3 is preferred to this.

The models with partial resourcing (requiring additional staffing) and with either partial or full additional DOPL authority (models 5 and 6) could be considered, but are not preferred. This resourcing may be more than is needed given the criteria constraining decision-making and reliance on school communications with accreditors contemplated in these models. In the case of Model 6 (and this is also true for Model 3), focused work would be required to define the appropriate criteria to guide DOPL decision-making about new program applications and on-going program performance. Additionally, for Model 6, where workforce demand and supply considerations may be factored in with input from groups such as HWAC and/or UHA, OPLR is concerned that centralized planning of the workforce may be less efficient than market forces and private investment decisions in guiding the supply of nursing education in the state.

Models 4 and 7 are not being considered (see discussion in Appendix – Section 4).

Under any regulatory model, OPLR recommends a cautious approach to maintain the broad benefits created by the entrance and expansion of private schools, which have provided the bulk of additional nursing capacity since 2012 (Exhibit 8).

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1. Context

Currently, DOPL tracks NCLEX-RN pass rates for 10 private (6 for-profit and 4 not-for-profit) and 8 public nursing schools in Utah, some of which offer both Associates- and Bachelors-level nursing programs, and all of which vary in size. In contrast, in 2012 DOPL tracked results from 11 private (7 for-profit and 4 not-for-profit) schools and 7 public nursing schools. Over this time, 2 additional private and 1 public nursing school opened and 3 private schools closed. These counts don't include several new schools opening in Utah recently (Exhibit 1).

EXHIBIT 1: NURSING EDUCATION PROGRAMS IN UTAH

✓ Operating
 ✗ Not operating

	School	Accreditation			Status*	
		Institutional	Nursing	Programs*	2012	2022
Public	Salt Lake Community College	NWCCU	ACEN	Associates	✓	✓
	Snow College	NWCCU	ACEN	Associates	✗	✓
	Southern Utah University	NWCCU	CCNE	Bachelors	✓	✓
	University of Utah	NWCCU	CCNE	Bachelors	✓	✓
	Utah State University	NWCCU	ACEN	Associates, Bachelors (2019)	✓	✓
	Utah Tech University	NWCCU	ACEN	Associates, Bachelors (2020)	✓	✓
	Utah Valley University	NWCCU	ACEN	Associates	✓	✓
	Weber State University	NWCCU	ACEN	Associates	✓	✓
Private Not-For-Profit	Brigham Young University	NWCCU	CCNE	Bachelors	✓	✓
	Roseman University	NWCCU	CCNE	Bachelors	✓	✓
	Western Governors University	NWCCU	CCNE	Bachelors	✓	✓
	Westminster College	NWCCU	CCNE	Bachelors	✓	✓

* Based on appearance in NCLEX-pass rate reports from NCSBN, excludes bridge and master's entry programs
 Source: OPLR analysis using NCSBN data on historical NCLEX pass rates from Division of Professional Licensing (DOPL)

EXHIBIT 1 (continued): NURSING EDUCATION PROGRAMS IN UTAH

✓ Operating
 ✗ Not operating

	School	Accreditation			Status*		Comment
		Institutional	Nursing	Programs*	2012	2022	
Private For-Profit	Arizona College	ABHES	CCNE	Bachelors	✗	✓	New, on 2023 NCLEX report
	Broadview College	ACICS**		Associates	✓	✗	Now closed
	Charter College	ABHES	ACEN	Associates	✗	✗	New
	Eagle Gate College	ABHES	CCNE	Assoc. (discont.), Bach. (2017)	✓	✓	
	Everest College	ACICS**		Associates	✗	✗	Opened, then closed
	Fortis College	ACCSC	ACEN	Associates	✓	✓	
	Galen College	SACSCOCS	ACEN	Associates	✗	✗	New
	Grand Canyon University	HLC	CCNE	Bachelors	✗	✗	New
	Joyce University	NWCCU	ACEN/CCNE	Associates, Bachelors (2021)	✓	✓	
	Nightingale College	NWCCU	CCNE	Associates (discont.), Bach. (2020)	✓	✓	
	Provo College	ABHES	CCNE	Associates (discont.), Bach. (2017)	✓	✓	
	Stevens Henegar College	ACCSC		Associates	✓	✗	Now closed, on 2022 NCLEX report

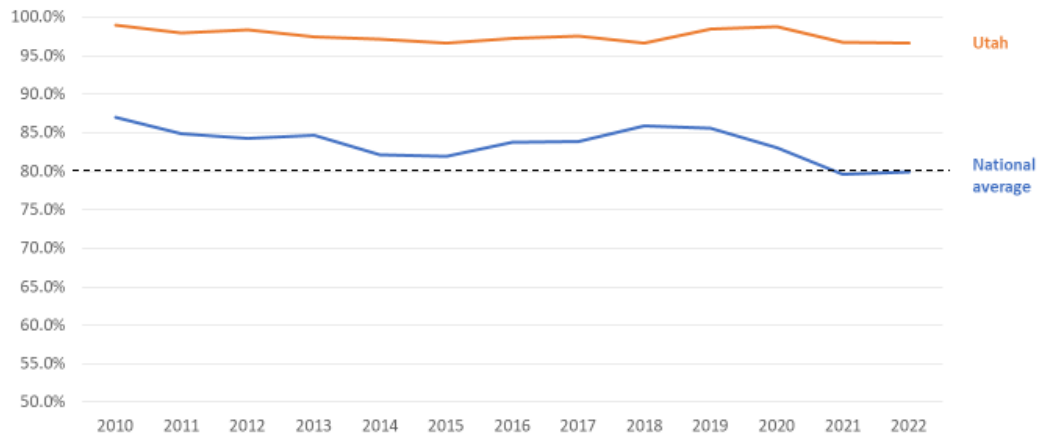
* Based on appearance in NCLEX-pass rate reports from NCSBN, excludes bridge and master's entry programs
 ** No longer an accreditor recognized by the Federal Department of Education
 Source: OPLR analysis using NCSBN data on historical NCLEX pass rates from Division of Professional Licensing (DOPL)

2. Findings: General

a. Overall NCLEX pass rates

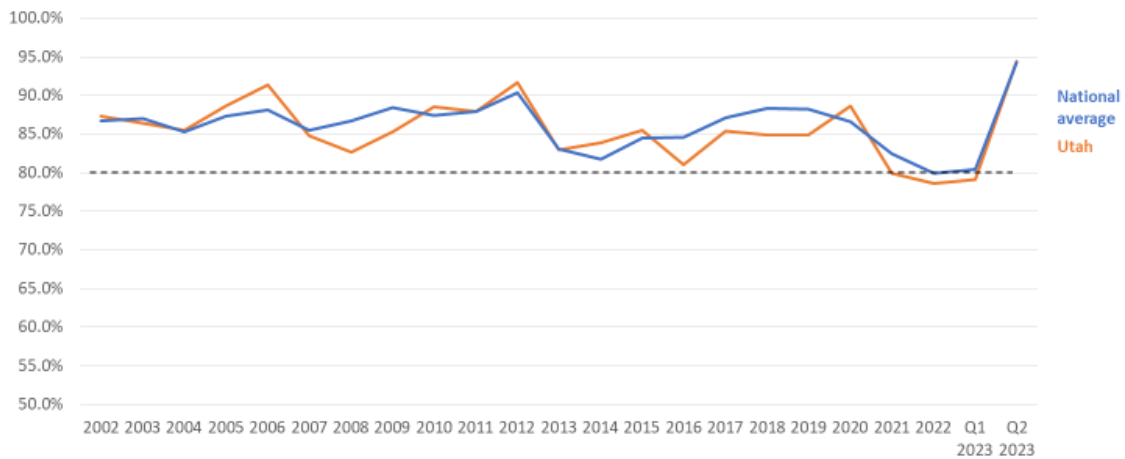
Changes in NCLEX overall pass rates in Utah cannot be attributed easily to changes in DOPL oversight in 2012 and have bounced back since the challenges of the COVID-19 pandemic. NCLEX Licensed Practical Nurse (LPN) pass rates have been consistently high over time, including during the pandemic (Exhibit 2). As a result, OPLR’s review focuses on NCLEX-RN pass rates (Exhibit 3).

EXHIBIT 2: FIRST-TIME US-EDUCATED NCLEX-LPN PASS RATES OVER TIME



Source: NCSBN data on NCLEX-LPN exam pass rates from Division of Professional Licensing (DOPL)

EXHIBIT 3: FIRST-TIME US-EDUCATED NCLEX-RN PASS RATES OVER TIME



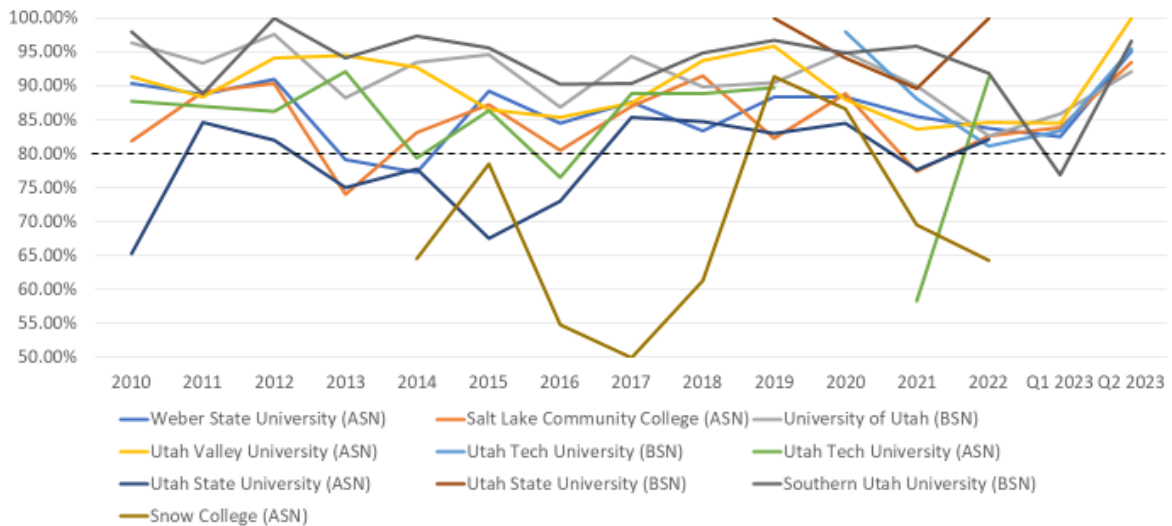
Source: NCSBN data on NCLEX-RN exam pass rates from Division of Professional Licensing (DOPL). Passing standard changed by NCSBN in 2004, 2007, 2010 and 2013. Q2 2023 results are from Next Generation NCLEX exam, a new version of the previous exam designed to better measure a candidate's clinical judgment and abilities.

Particular concern about Utah’s lower NCLEX-RN pass rates over 2021-22 are likely attributable to the COVID–19 pandemic. Even programs with consistently higher pass rates showed a downward trend during this time, and the trend follows national NCLEX-RN results. Looking further back, Utah’s overall NCLEX-RN pass rates have stayed above the traditional 80% benchmark, showed variability prior to 2012 and have generally followed national trends. The very recent improvement in 2023 results suggest a bounce-back from pandemic-related disruptions, even with a major change in the NCLEX exam starting in Q2 2023.

b. NCLEX-RN pass rates by program

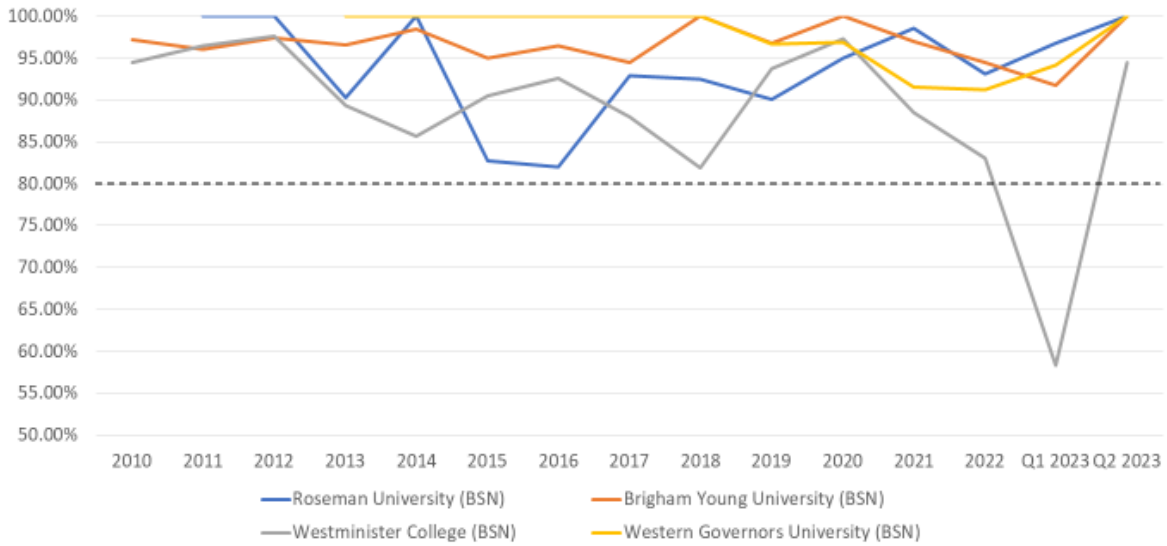
A handful of programs have had consistently lower NCLEX-RN pass rates, particularly at Nightingale College, Eagle Gate and Provo Colleges, and Snow College (refer to Exhibits 4–6). This may reflect more complex factors and appears to be rectified, albeit more slowly than may be desired.

EXHIBIT 4: FIRST-TIME US-EDUCATED NCLEX-RN PASS RATES BY PROGRAM – PUBLIC



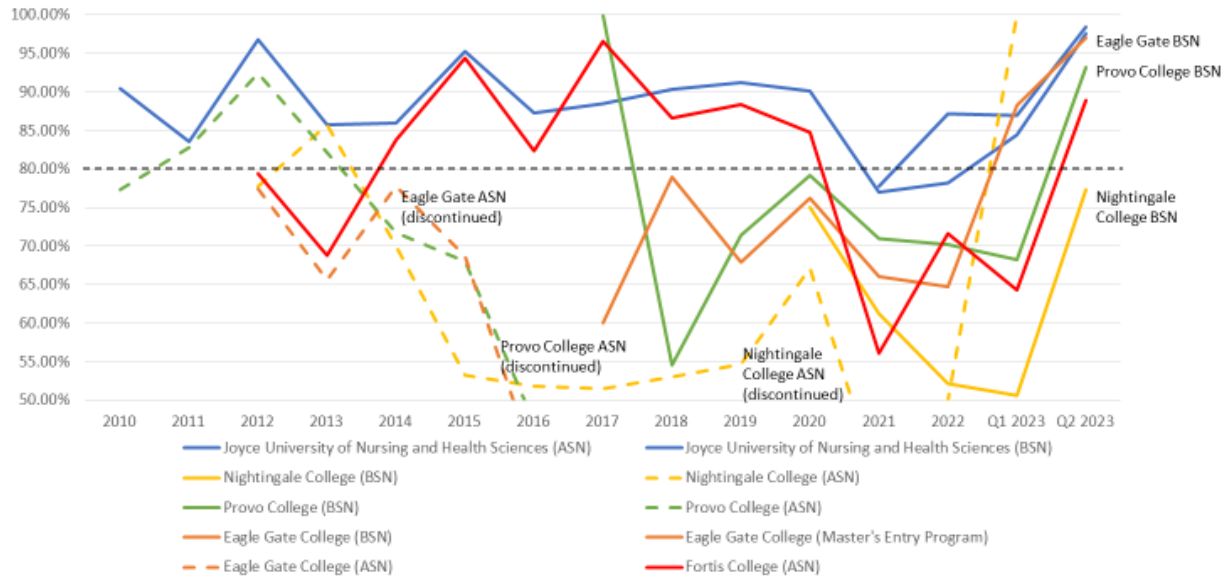
Source: OPLR analysis using NCSBN pass rate reports by year by program. Excludes data with zero or one candidate

EXHIBIT 5: FIRST-TIME US-EDUCATED NCLEX-RN PASS RATES BY PROGRAM – PRIVATE NOT-FOR-PROFIT



Source: OPLR analysis using NCSBN pass rate reports by year by program. Excludes data with zero or one candidate

EXHIBIT 6: FIRST-TIME US-EDUCATED NCLEX-RN PASS RATES BY PROGRAM – PRIVATE FOR-PROFIT



Source: OPLR analysis using NCSBN pass rate reports by year by program. Excludes data with zero or one candidate, Arizona College of Nursing as first results are in 2023, and closed programs.

The pass rates of lower-performing programs reflect a variety of factors, including significant growth in student numbers, a transition away from Associates-level programs to Bachelors-level programs, the composition of the student body attending these schools and, in the case of rural colleges such as Snow College, location.

While recent trends are hard to interpret due to the impact of the pandemic and change in NCLEX exam, all programs demonstrate significant improvement in results in 2023.

c. Nursing workforce

Workforce shortages of RNs do not appear to be as urgent as some reports may indicate, though demand for nurses is expected to grow in future.

National Health Resources & Services Administration (HRSA) data and Utah Medical Education Council (UMEC) estimates indicate that demand and supply of RNs is largely in balance, while Federal Bureau of Labor Statistics (BLS) estimates generally produce lower counts of RNs. HRSA estimates indicate Utah's supply relative to a national average level of nursing care is at 102% adequacy. UMEC's 2020 report on the supply of nurses in Utah appears to support this. It shows a meaningful uptick in active RN licenses issued per year in the prior five years, yielding a ratio of licensed RNs per 100,000 population in Utah higher than BLS estimates may indicate (837 RNs per 100,000 population estimated by UMEC compared with 664 RNs estimated by BLS). Comparing BLS estimates only in UMEC's 2020 report, Utah's ratio of RNs per population was somewhat higher than other Western states. UMEC's 2020 projected growth in RNs was estimated to exceed current ratios, even at slower ten-year growth rates. HRSA estimates for Utah RN coverage are not anticipated to decline significantly based on post-pandemic data.

Utah has a lower concentration of RNs than other states. This is due to a variety of factors, including Utah being the youngest and one of the healthiest states with lower demand for healthcare services. Recent UMEC reports indicate demand for RNs leveling off compared with the pandemic period. Despite this, factors such as strong population growth, a generally aging population, and recent large mismatches in RN turnover relative to new hires following the pandemic years suggests demand for nursing will continue.

Demand for LPNs has increased particularly due to changes in scope of practice, an aging population seeking services typically provided by LPNs, and competition for LPN employment with other settings within and outside healthcare, leading to larger gaps in supply for LPNs relative to RNs.

d. DOPL, Boards of Nursing, and Accreditors

Nursing's current structure, where accreditation is the primary consideration for DOPL approval of an education program, avoids duplication of activity.

Nursing program accreditors set clear requirements but also leave room for states to set minimum standards and administer approvals as a state deems appropriate. This may be due to the longevity of the nursing profession and its history of state-level control. However, the evolution of accreditation after established state control of nursing has led to duplication of activity between accreditors and nursing regulators. Both groups have historically conducted

their own sets of site visits, required annual reports and exception reporting from programs, and have held programs to slightly different standards, creating friction.

States with an accreditation requirement continue to do this to varying degrees, reserving the right to disallow a program based on state-specific criteria. Utah's reliance on accreditation appears unique, though some states appear to have adapted their model. For example, Idaho appears to use accreditation as its main criteria for program approval. Once a program is accredited and state approved, it must maintain that approval by publishing an annual report, including state board representatives in any site visits that may occur, and not allowing the NCLEX pass rate to drop below 80% for two consecutive calendar years.

Most state boards of nursing are independent statutory bodies, and not advisory bodies to a state licensing agency, as they are in Utah. Additionally, the allocation of consumer protection and education oversight responsibilities and approaches varies amongst states.

In Utah, the Board of Nursing is one of many DOPL licensing boards. These boards' primary focus is on licensing, but each board has the ability in statute to establish Advisory Peer Education Committees that advise DOPL on education issues as they relate to licensing. With the exception of massage (where curriculum standards are set by DOPL with advice from their board), other analogous DOPL boards in Utah involving undergraduate healthcare professions (e.g., dental hygiene, OT, radiologic tech, respiratory care) rely on accreditation to set educational standards in their respective professions.

The Utah Board of Nursing Advisory Peer Education Committee ("Education Committee") still meets to track state and program-level NCLEX pass rates and discuss results with schools, though it lacks the formal ability to recommend actions regarding programs to DOPL.

e. Oversight of nursing education in Utah

In addition to accreditation and informal monitoring by DOPL's Education Committee, nursing schools are already overseen by state and federal regulators, particularly by DCP for state authorization and consumer protection matters. Industry groups and market forces influence program integrity and workforce issues. (Exhibit 7)

EXHIBIT 7: ENTITIES OVERSEEING NURSING EDUCATION IN UTAH

	Regulators										
	Federal			State		Multi-state compacts		Industry groups		Market forces	
	Accreditors	Dept. of Ed.	DCP	DOPL	HWAC	NC-SARA	eNLC	UNOL	UHA	Providers	Competition
Program integrity (including outcomes)	✓	✓**	✗	✓***	✗	✓**	✗	✓	✓	✓	✓
Consumer (student) protection, including: <ul style="list-style-type: none"> • Prohibited acts • Student disclosures • School requirements • Financial stability 	✓*	✓	✓	✗	✗	✓	✗	✗	✗	✗	✓
State healthcare workforce issues, e.g., <ul style="list-style-type: none"> • Size • Quality 	✗	✗	✗	✗	✓	✗	✗	✓	✓	✓	✗

* Via accreditation standards and substantive change reporting requirements
 ** Via oversight of accreditors
 *** Via accreditation requirement and informal monitoring by DOPL's Advisory Peer Education Committee
 Source: OPLR analysis

The Utah Division of Consumer Protection (DCP) registers postsecondary schools (authorizing them to operate in Utah), prohibits certain conduct (such as misrepresentations, deceptive practices, falsely awarding credentials), requires disclosures to students (such as retention, graduation and licensure pass rates and complaint processes), sets requirements for schools (e.g., provision of transcripts, record-keeping, closure requirements), monitors school financial stability, investigates complaints and pursues actions against schools.

The Federal Department of Education monitors schools to protect against the repayment of federal student loans and requires consistent public reporting of outcomes, such as in the College Scorecard. They additionally oversee accreditation agencies.

In Utah, the Health Workforce Advisory Committee (HWAC) is a new statutory entity, tasked with providing information and recommendations to the legislature that strengthen and expand the state’s health workforce. HWAC oversees the Utah Medical Education Council (UMEC), referenced above, and the former Nursing Workforce Information Center (now the Utah Health Workforce Information Center (HWIC)), which conducts nursing workforce-related research. While the HWAC’s purview includes nursing workforce-related issues, its mandate appears broader in scope than specific education program oversight.

Nursing education quality is addressed informally through collaborative state-level groups. For example, the Utah Organization of Nurse Leaders (UONL) has an Academic Leadership and Workforce Development Committee comprising the programs in Utah. Their goal is to “foster nursing education and encourage coordination of academic nurse education issues”. The Utah Hospital Association (UHA) addresses workforce-related topics, such as needed workforce capacity, with nursing programs in the state.

Nurse training and practice is also affected by multi-state consortia. NC-SARA sets standards for provision of distance education, affecting schools outside the state enrolling Utah students as well as the provision of distance education by Utah-based schools. The Enhanced Nurse Licensure Compact (eNLC) doesn't affect programs so much as open Utah to out-of-state nurses. In January 2023, a month that doesn't tend to include locally-educated recent graduates, two-thirds of RN licenses issued by DOPL were licenses by endorsement for nurses coming to Utah from other states. Market influences are discussed below.

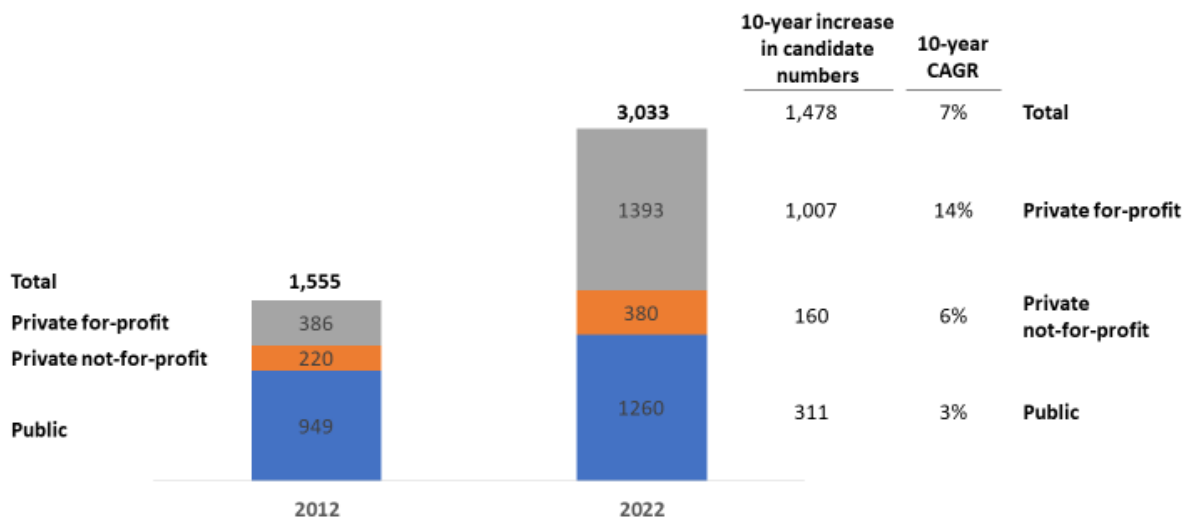
3. Findings: Access, Safety and Quality

Regulation of nursing programs should include considerations of access and safety for both nursing students and patients. Given OPLR's role, this report has focused mainly on the aspects related to occupational licensure and thus patient access and safety. Questions of potential student harm, are the focus of DCP with their consumer protection mandate, and are outside the scope of OPLR's review.

a. Access

The status quo regulation appears to—on balance—assist the growth of programs, and entry of new programs, to meet perceived needs in the state. Growth in student access expands access to licensure and, subsequently, hospital and patient access to nursing resources. Based on NCLEX-RN candidate numbers, demand for RNs has been met largely by growth in for-profit private programs (Exhibit 8).

EXHIBIT 8: GROWTH IN NCLEX-RN CANDIDATES BY SCHOOL TYPE

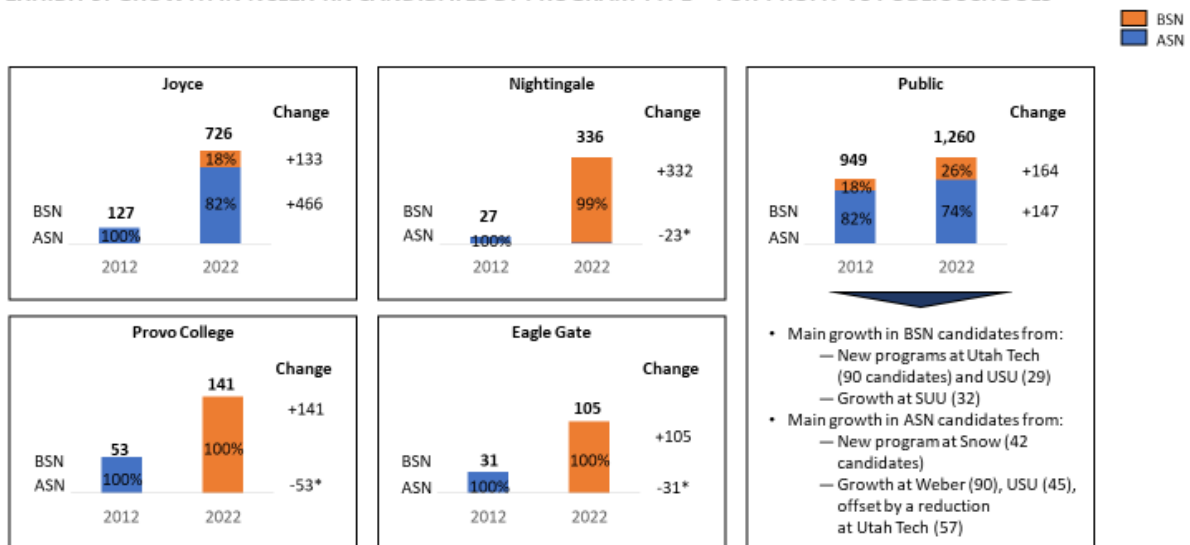


Source: NCSBN pass rate reports by year by program from Division of Professional Licensing (DOPL)

This trend has continued with the recent introduction of several new for-profit programs, such as Galen College and Grand Canyon University.

A similar example is re-tooling within schools to emphasize bachelors (BSN) programs in response to industry calls for a predominantly BSN-level nursing workforce. Based on NCLEX-RN candidate numbers, this transition to BSN programs has been more pronounced in for-profit programs relative to public programs (Exhibit 9).

EXHIBIT 9: GROWTH IN NCLEX-RN CANDIDATES BY PROGRAM TYPE – FOR-PROFIT VS PUBLIC SCHOOLS



* 2012–2022, Nightingale’s ASN candidates peaked at 234 in 2019 before the program was phased out. Provo College’s ASN candidates peaked at 56 in 2013 and Eagle Gate’s at 51 in 2015 before phase-out.
Source: OPLR analysis using NCSBN pass rate reports by year by program from Division of Professional Licensing (DOPL)

Additionally, competition typically encourages choice and innovation, such as the growth in online/hybrid programs catering to working adults. Growth in private programs doesn’t preclude the state from expanding publicly-funded nursing programs, should it choose to do so.

At the same time, the continuance of lower-performing programs has had a negative, though a smaller aggregate impact, on the number of students becoming licensed RNs through not meeting an 80% NCLEX-RN pass rate for first-time test-takers. Nightingale College contributed three-quarters of the students across programs that would have obtained licensure if their programs had performed at an 80% pass rate benchmark during 2017–Q2 2023 (355 out of 470 candidates). It isn’t known how this would have differed with intervention versus enabling the programs to remediate themselves, as has happened over time – the assumption is results would have improved more quickly. Accreditation cycles are long (8–10 years), albeit with ongoing reporting (particularly for substantive changes such as program outcomes not meeting benchmark, which can trigger a site visit). Programs can have up to four years before their accreditation is revoked. State oversight is more responsive and has regulatory force (which

accreditors don't have), but can introduce other issues, such as locally-driven motives and preferences (e.g., concerns about competition for clinical placements from new programs). OPLR can't estimate within the scope of this review to what extent access is reduced by dual scrutiny of programs by state regulators and accreditors.

Evaluating access and which instances justify intervention and/or closure becomes more complex when rural needs are included. Rural programs, such as at Snow College and the Blanding campus of Utah State University have had weaker NCLEX pass rates than their urban counterparts, but are considered important to maintain to support their communities.

b. Safety

The status quo regulation leaves the NCLEX exam as the main determinant for patient safety and enables market forces to address education quality issues that touch on patient safety through direct feedback between healthcare provider networks and nurse education providers. NCLEX tests the competency of nursing graduates and is the main determinant of whether a graduate is deemed safe and competent to practice in their field. Market influences also help set standards for patient safety. An example of this is the data-driven allocation of clinical placements by healthcare organizations, which spur schools to improve and maintain access to placements based on the quality of their graduates. If there are genuine public safety concerns, a healthcare organization is in a position to deny placements to certain nursing programs. There are costs to healthcare provider networks that may need to replace/retrain students unable to pass NCLEX exams, but this also compels those organizations to give feedback to programs where this may be an issue.

There is also the consideration of which group is best placed to assist a school to improve. Performance issues can be complex involving both program issues and student behavior. If the state chooses to impose on-going performance criteria, such as NCLEX pass rates, to bolster student access to successful licensure, it doesn't necessarily imply that DOPL must assist with remediation.

c. Quality

Other considerations about quality are related more to the question of potential student harm, which falls within the oversight of DCP and is outside the scope of OPLR's review.

One concern is that accreditation alone is not enough to prevent low-quality or potentially fraudulent schools from being established in Utah and, therefore, additional state minimum standards are needed. Schools that closed recently and created dislocation for students, such as Broadview University and Stevens-Henager College, were programs approved prior to 2012. Stevens-Henager College's situation may have not been evident looking purely at their nursing program, as NCLEX-RN first-time pass rates ranged from the high 70s to low 90's for seven of the ten years between 2010–2020. In the case of fraud, this is handled typically by DCP through

the postsecondary school act it administers (Utah Code 13-34) and the Consumer Sales Protection Act (13-11).

A further concern is that private nursing programs are costly compared with subsidized public programs and, if students are not successful at lower-performing institutions, they are left with the cost of their education but without their licensure qualification. This issue is anticipated through the oversight of DCP which registers schools and imposes requirements, such as disclosure of information prior to a student enrolling, as well as student outcomes. If students believe their school has made misrepresentations, DCP can investigate and initiate actions as appropriate. Few complaints have been filed about private nursing programs in Utah (though this may not accurately reflect overall complaints). Only one complaint to DCP resulted in an action and it was not related to nursing. Separately, the Federal Department of Education publishes information about nursing program costs and outcomes to facilitate comparisons by prospective students.

Another type of student harm is that students from some schools are not able to transfer their credits or undertake further study at other, potentially more selective institutions, though accepting institutions are required to evaluate students' prior studies on an objective case-by-case basis. UMEC estimated approximately 15% of the RN workforce had postgraduate qualifications in 2020 (similar to the level in 2015). The state could mandate certain accreditation types, such as institutional accreditation by NWCCU (or equivalent), if it is thought this sets a higher quality or compliance bar to deter potentially lower-quality or fraudulent programs from entering the state. However, nursing is one of other health science programs at many schools and this may be too onerous a requirement. This issue could also be addressed through adequate disclosures about credit transferability to students prior to them enrolling.

A final concern is that, as Utah is more open to new programs, this will place too much pressure on clinical placements and, as a result, students will have reduced access to these experiences or need to travel for out-of-state placements. It is not clear that this issue needs to be solved through DOPL oversight. Healthcare systems may adjust (potentially with incentives offered by the state), or this constraint may make it less attractive for new programs to enter or existing programs to expand. Further, if programs are transparent with potential students about the location of clinical placements, this enables students to make an informed choice. Finally, it may be in Utah's interest to be a net exporter of nursing students if programs are of a sufficient standard.

4. Recommendations

There are several potential models that legislators could consider (see Exhibit 10, which uses contrasting levels of additional state authority with additional DOPL resourcing required to illuminate trade-offs). These models are not mutually exclusive nor collectively exhaustive, but are designed to structure the set of potential choices.

EXHIBIT 10: POTENTIAL MODELS FOR DOPL OVERSIGHT OF NURSING EDUCATION IN UTAH

Additional DOPL activity/resourcing	Additional state "authority" (Legislature and/or DOPL)		
	None	Partial	Full
Full	[Blue Box]		7 Pre-2012 model "State activist"
Partial	4 Co-operative model "State-funded advice"	5 Deference model "Conditional activist"	6 Streamlined activity model "Streamlined activist"
Minimal	1 Status quo model "Bully pulpit"	2 Entry standards model "Bolster quality floor"	3 Defined criteria model "Elevate to accreditor"

Legend: Preferred Other options

Source: OPLR analysis

In OPLR's view, the models requiring minimal additional DOPL resourcing are preferred (Models 1–3, see Exhibit 11 for more detail). OPLR's recommendation is to maintain the status quo (Model 1). The status quo appears to be functioning as intended, and does not appear to warrant additional regulatory oversight. It avoids duplication of activity and allows current levels of oversight, disclosures, and market forces to correct low program quality.

Model 3 involves defining minimum standards for a nursing education program to operate in Utah, and allowing for minimal additional DOPL resources to monitor, identify, and elevate concerns about a program to that program's accreditor based on certain on-going performance criteria. Model 3 is OPLR's recommendation if legislators would like to propose adjustments to the status quo as it provides potentially faster remediation without duplication of effort with accreditors. Model 2 only contemplates minimum standards for a program's entry into Utah, and so Model 3 is preferred to this.

EXHIBIT 11: POTENTIAL MODELS 1–3: MINIMAL ADDITIONAL DOPL RESOURCING

 Preferred

	1 Status quo model “Bully pulpit”	2 Entry standards model “Bolster quality floor”	3 Defined criteria model “Elevate to accreditors”
Parameters cover	<ul style="list-style-type: none"> Approval 	<ul style="list-style-type: none"> Approval/Denial 	<ul style="list-style-type: none"> Approval/Denial Revocation
Criteria	<ul style="list-style-type: none"> Accreditation 	<ul style="list-style-type: none"> Accreditation Minimum standards to enter Utah 	<ul style="list-style-type: none"> Accreditation Minimum standards to <ul style="list-style-type: none"> Enter Utah Continue operating (without DOPL complaint)
Example criteria	<ul style="list-style-type: none"> Accreditation 	<ul style="list-style-type: none"> For entry approval: <ul style="list-style-type: none"> Accreditation Program director qualifications Maximum % simulation hours Student entrance requirements 	<ul style="list-style-type: none"> Same as 2 To trigger DOPL complaint over performance: <ul style="list-style-type: none"> NCLEX pass rates over [3] years More than 3 program directors in 5 years
DOPL Relationship with accreditors/ others	<ul style="list-style-type: none"> DOPL to publicize historical NCLEX pass rates by program prominently Align NCLEX pass rate measurement with accreditors (for informal monitoring) 	<ul style="list-style-type: none"> Same as 1 	<ul style="list-style-type: none"> Same as 1 DOPL to formalize complaint to accreditor if performance not met Access school reporting to accreditor?

Source: OPLR analysis

The models with partial resourcing (requiring additional staffing) and with either partial or full additional DOPL authority (models 5 and 6) could be considered, but are not preferred (see Exhibit 12 for more detail). This resourcing may be more than is needed given the criteria constraining decision-making and reliance on school communications with accreditors contemplated in these models. In the case of Model 6 (and this is true for Model 3), focused work would be required to define the appropriate criteria to guide DOPL decision-making about new program applications and on-going program performance. Additionally, for Model 6, where workforce demand and supply considerations may be factored in with input from groups such as HWAC and/or UHA, OPLR is concerned that centralized planning of the workforce may be less efficient than market forces and private investment decisions in guiding the supply of nursing education in the state.

EXHIBIT 12: POTENTIAL MODELS 4–6: ADDITIONAL DOPL RESOURCING

Other options

	4 Co-operative model “State-funded advice”	5 Deference model “Conditional activist”	6 Streamlined activity model “Streamlined activist”
Parameters cover	<ul style="list-style-type: none"> Approval Advice (no authority to revoke) 	<ul style="list-style-type: none"> Approval Advice/Revocation 	<ul style="list-style-type: none"> Approval/Denial Advice/Revocation
Criteria	<ul style="list-style-type: none"> Accreditation NCLEX pass rates (to trigger program advice) 	<ul style="list-style-type: none"> Accreditation (for entry) NCLEX pass rates (to trigger program advice and any potential recommendation to DOPL to revoke) 	<ul style="list-style-type: none"> Accreditation Minimum standards to <ul style="list-style-type: none"> Enter Utah Continue operating Workforce needs (for denial)
Example criteria	<ul style="list-style-type: none"> Accreditation NCLEX pass rates over [3] years 	<ul style="list-style-type: none"> Accreditation NCLEX pass rates over [3] years 	<ul style="list-style-type: none"> Accreditation Minimum standards to enter Utah from model 2 Performance standards from model 3 Workforce metrics from HWIC?
DOPL Relationship with accreditors/ others	<ul style="list-style-type: none"> DOPL to publicize historical NCLEX pass rates by program prominently Align NCLEX pass rate measurement with accreditors DOPL to raise issues informally with accreditors and/or DCP (as needed) 	<ul style="list-style-type: none"> DOPL to publicize historical NCLEX pass rates by program prominently Align NCLEX pass rate measurement with accreditors Access school reporting to accreditor DOPL to advise accreditors/DCP of pending revocation (as needed) 	<ul style="list-style-type: none"> Same as 5

Source: OPLR analysis

Models 4 and 7 are not being considered. Model 4 involves funding a position at DOPL to assist nursing programs, but does not involve any additional DOPL authority over those programs. Model 7 (not depicted in an exhibit) represents the situation prior to 2012 of dual DOPL and accreditor oversight and activity levels, which creates redundancy in annual reporting, monitoring metrics and site visits for programs.

To reduce redundancy, OPLR recommends DOPL have access to and rely on communication between programs and their accreditors, contemplated in Models 5 and 6 (and potentially Model 3). This would minimize the need for additional reporting to DOPL by schools. Additionally, the measurement of NCLEX pass rate performance between DOPL and program accreditors should be completely aligned to reduce friction for schools caught between different reporting requirements. This would apply to all models.

Finally, to increase transparency and reduce the need for additional regulatory burden, OPLR recommends DOPL publish historical NCLEX pass rates by program more prominently so they can be more easily viewed by the public and potential nursing students (true for any model adopted). This aligns with recent changes to Utah’s Postsecondary Schools Act, overseen by DCP, which emphasizes disclosure.

5. References

OPLR conducted a short review of this nursing education oversight. Analysis included:

- Evaluating historical NCLEX-RN pass rates (overall and by program), candidate numbers by program, and program accreditation
- Reviewing literature regarding factors affecting NCLEX pass rate performance
- Reviewing reports on Utah’s nursing workforce
- Comparing DOPL’s role in education between nursing and other undergraduate healthcare professions in Utah
- Reviewing accreditation standards and other state approaches to nursing regulation
- Mapping the oversight of nursing education in Utah, including reviewing Utah code and rules
- Interviewing stakeholders in the nursing profession, healthcare systems, nursing workforce analytics, and nursing education oversight

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