FP 2021-79, Plc 800 Temporary Licensure of Health Care and Other Professionals
Summary of Comments on Initial Proposal with OPLC Responses
October 28, 2021

Background

Plc 801 and various sections in Plc 802 were adopted as Emergency rules to establish the process by which health care professionals who are licensed in another jurisdiction, as well as student nurses who are not yet licensed, could obtain a temporary license in New Hampshire, so they could practice in New Hampshire while a regular application for licensure was being processed. The rules were most recently adopted as Emergency rules effective June 11, 2021 (document #13213) to apply to health care professionals. The rules are now proposed to be readopted with amendments as regular rules to apply to health care and other professionals, to implement both RSA 310-A:1-f and RSA 332-G:14. The proposed amendments clarify how applications are to be submitted, clarify the information that must be submitted, revise the certification statement to be clearer about what law applies and what the consequences are, and clarify how the temporary licenses are issued. Also, the provision that converted emergency licenses to temporary licenses is proposed to be deleted.

Two members of the Board of Chiropractic Examiners attended the public hearing held on September 29, 2021, and written comments were received on behalf of the Board of Mental Health Practice. A summary of those comments and the OPLC’s responses are below, in numerical order. Written comments were received from the Office of Legislative Services, Administrative Rules office (OLS); those comments and the OPLC’s responses also are summarized below in numerical order.

Plc 800 generally

Comment 1: Can someone just keep applying for temporary licenses? What about a few years later?

Response 1: RSA 332-G:14, IV states “No more than one temporary license shall be issued to any individual.” Since there is no time limit in the statute, the OPLC believes that only one temporary license can be obtained under RSA 332-G:14. Note, though, that RSA 310-A:1-f does not currently contain the same language limiting persons to one temporary license. If a temporary licensee who qualified under RSA 310-A:1-f applied for another temporary license, the OPLC would have to consult with the Department of Justice about whether an additional temporary license could be issued.
Comment 2: The Board of Mental Health Practice has made a formal decision that it is not in favor of this proposed rule. The reason for this opposition lies in the Board’s charge to protect the public. While many applicants with out of state licenses are granted licensure upon review, a non-trivial number are found to be deficient and in need of additional coursework to meet NH standards. If these individuals are granted temporary licenses upon application, and then upon review to be found deficient, it would lead to them having to stop working with clients. This interruption of care is not in the best interest of clients and is a situation to be avoided at all costs according to the codes of ethics of the various professions regulated by this Board.

Response 2: One of the requirements for obtaining a temporary license is that the out-of-state license must be “equivalent” to New Hampshire’s (ref. RSA 332-G:14, III(a)). Revisions have been made to Plc 802.02(j) to require the verification of licensure to be from a jurisdiction whose licensing requirements are equivalent to or greater than those of New Hampshire. Revisions also have been made to Plc 802.03 (Plc 802.04(a) in the Final Proposal) to emphasize the equivalency requirement. Also, RSA 332-G:14, II precludes a temporary license from being issued to an applicant whose license is from a jurisdiction that a board has determined to not be equivalent, provided the determination has been published on the board’s website; this provision is now referenced in Plc 801.02. If the Board of Mental Health Practice follows the stated procedure, then no temporary licenses could be issued to applicants from the identified jurisdictions. It should be noted, however, that no one who is issued a license of any kind can ever guarantee that he or she will be capable of working with clients for longer than 120 days, even if that is the intent and expectation.

Plc 801.02 re: applicability

Comment 1: It looks like someone can apply for a temporary license without applying for a regular license. Should add “while applying for a regular license” to Plc 801.02.

Response 1: There is no statutory requirement for an application for a regular license to be filed when an application for a temporary license is filed, so no change has been made.

Comment 2: Can a current NH licensee who is also licensed in another state get a temporary license under these rules, for instance if they haven’t met NH’s continuing education requirements for renewal via the standard process? Do these rules offer a loophole?

Response 2: The OPLC believes that the temporary licensing processes established in RSA 310-A:1-f and RSA 332-G:14 were never intended to allow someone who already holds a New Hampshire license to circumvent any renewal requirements, and has added language to Plc 801.02 (new paragraph (c)) to explicitly state this.

Plc 802 re: applying for a temporary license

Comment: This heading is somewhat misleading, since the rules also cover issuing temporary licenses.

Response: The heading has been revised to eliminate the restriction to applying for a license.

Plc 802.01 re: applications for temporary license

Comment: Is there an application fee? Is it applied to the application fee for a regular license?

Response: As noted in Plc 802.01, the application must include the temporary license application fee established in Plc 1001, which currently is $25 per application. This fee is just for the temporary license application, and is not applied to the fee for a regular license.
Plc 802.02 re: information and verification required to apply for a temporary license

**Comment 1:** The information required does not appear to include any background information -- do you really not ask for any?

**Response 1:** Applicants are required to show that they have a current equivalent license in good standing from another jurisdiction and to state whether they have committed any acts or omissions that are grounds for disciplinary action in another jurisdiction. If they have, they must explain. Under RSA 332-G:14, III, the Executive Director could simply deny the license if the applicant has committed any “acts or omissions [that] are grounds for disciplinary action in another jurisdiction”. However, in view of both the State’s strong interest in ensuring that professional licensing is not a barrier to working in New Hampshire and the on-going pandemic, OPLC has been requesting additional information instead of denying the application. Language has been added to Plc 802.03 (Plc 802.04 in the Final Proposal) to clarify this.

**Comment 2:** Is the information requested in Plc 802.02 the only information required? Or is it in addition to the information required for a regular license?

**Response 2:** RSA 332-G:14, III identifies the information that must be submitted to apply for a temporary license; this is reflected in the rules.

**Comment 3:** Is there really no criminal background check? Or questions about substance abuse?

**Response 3:** As noted, RSA 332-G:14, III identifies the information that must be submitted. In the time that the OPLC has been issuing emergency and temporary licenses, over 20,000 emergency and temporary licenses have been issued and none have resulted in a complaint or investigation. The OPLC thus believes that the process is sufficient.

Plc 802.03 (FP 802.04) re: processing of applications

**Comment 1:** Does OPLC really have to grant a license if an applicant provides the information? Shouldn’t the rule say the director “may issue” a license?

**Response 1:** RSA 332-G:14, IV states that the Executive Director “shall issue a license” after verifying the completeness of the application and the information submitted, so there is no discretion to not issue a license if the statutory requirements are met. However, language has been added to what is now paragraph (a) to emphasize that the out-of-state license must be equivalent to a New Hampshire license and that the applicant has committed no acts or omissions that are grounds for disciplinary action in another jurisdiction. Language also has been added as paragraphs (b) and (c) to clarify that the license is denied if the information submitted shows that the applicant does not qualify for the license, and that additional information will be requested if the information submitted is insufficient to allow a decision to issue or deny to be made.

**Comment 2:** Who reviews the information submitted?

**Response 2:** The information is reviewed the same way that all applications are reviewed in the OPLC’s Division of Licensing and Board Administration. If anything raises a red flag, the Director of the Division and the Executive Director get involved.

**Comment 3:** Does OPLC notify a board when a temporary license has been issued?

**Response 3:** The boards receive information about temporary licensing the same as for regular licensing.
Comment 4: Does OPLC notify the temporary licensee when the temporary license is expiring or has expired?
Response 4: The OPLC notes the length of time the temporary license is valid on the license that is issued, and then each temporary licensee is responsible for knowing when his or her license expires.

Comment 5: Who monitors temporary licensees to make sure they stop working if a regular license isn’t issued?
Response 5: A temporary licensee becomes subject to board jurisdiction as soon as the license is issued, so this would be the same as any other licensee whose license lapses.

OLS Comments
Plc 802.01 re: applications for temporary license
Plc 802.02 intro re: information and verification required to apply for a temporary license

Comment: “Unclear. Is the portal at https://forms.nh.gov/license/login.aspx meant? Also, is there a general form for temporary licensure that is applicable to all temporary licensees? Or must the applicant submit the information required in Plc 802.02 with the applicable license application? If there’s a standard form, please submit a copy along with the final proposal for OLS review so that it can be confirmed that the required information on the form is the same as in the rule. Screen shots are sufficient.” (Bold in original.)

Response: The URL provided in the rules is correct. Applicants have to create an account, after which the temporary license application becomes available. Screen shots of the existing application are being filed with the FP. Note that the language of the current form does not match the language in the FP, because changes cannot be made to the actual form until the rule is adopted. Changes will be made to match the rule as adopted before the rules become effective.

Edits made: Plc 801.01; 802.01; 802.02(i) [FP 802.02(g)] & (k) [FP 802.03(a)]