Date of Hearing: April 6, 2021

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 1407 (Burke) – As Amended March 18, 2021

NOTE: This bill is double referred and, if passed by this Committee, will be referred to the Assembly Committee on Health.

SUBJECT: Nurses: implicit bias courses.

SUMMARY: Requires a nursing program or school to include implicit bias coursework, as specified, in its curriculum; requires the Board of Registered Nursing (BRN) to update its regulations in accordance with the new requirements; requires a registered nurse (RN) to complete one hour of implicit bias continuing education within the first two years of licensure; and requires a hospital to implement an evidence-based implicit bias program as part of any new graduate training program that trains new RNs.

EXISTING LAW:

1) Regulates the practice of nursing under the Nursing Practice Act and establishes the Board of Registered Nursing (BRN) to administer and enforce the act. (Business and Professions Code (BPC) §§ 2700-2838.4)

2) Requires the BRN to approve schools of nursing and nursing programs that offer a course of instruction leading to licensure as an RN, and prohibits the operation of a school of nursing unless approved by the board. (BPC §§ 2785-2759, 2798)

3) Requires the BRN to determine by regulation the required subjects of instruction to be completed in a nursing school or program and include the minimum units of theory and clinical experience necessary to achieve essential clinical competency at the entry-level of the RN. (BPC § 2786(c))

4) Requires the curriculum of a nursing school or programs to include, at a minimum, the following instructional content: critical thinking, personal hygiene, patient protection and safety, pain management, human sexuality, client abuse, cultural diversity, nutrition, pharmacology, patient advocacy, legal, social and ethical aspects of nursing, and nursing leadership and management. (California Code of Regulations (CCR), tit. 16, § 1426(d))

5) Requires licensed RNs to complete, every two years, 30 hours of continuing education (CE) that informs of the developments in the RN field or any other special area of practice engaged in by RNs identified by the BRN. (BPC § 2811.5(a); CCR, tit. 16, § 1451)

6) Requires the BRN to adopt regulations requiring that, on and after January 1, 2022, all CE courses for RN licensees contain a curriculum that includes the understanding of implicit bias. (BPC § 2736.5(a)(1))

7) Requires nursing CE providers, beginning January 1, 2023, to ensure compliance with implicit bias requirements beginning January 1, 2023. (BPC § 2736.5(a)(2))

8) Provides that a nursing CE course dedicated solely to research or other issues that does not include a direct patient care component is not required to contain a curriculum that includes implicit bias in the practice of nursing. (BPC § 2736.5(b))

9) Requires that CE courses address at least one of 1) examples of how implicit bias affects perceptions and treatment decisions of licensees, leading to disparities in health outcomes or 2) strategies to address how unintended biases in decision-making may contribute to health care disparities by shaping behavior and producing differences in medical treatment along lines of race, ethnicity, gender identity, sexual orientation, age, socioeconomic status, or other characteristics. (BPC § 2736.5(c))

10) Requires a general acute care hospital or a special hospital that provides perinatal care, and a licensed alternative birth center or a primary care clinic that provides alternative birth center services, to implement a mandatory implicit bias program for all health care providers involved in the perinatal care of patients within those facilities. (Health and Safety Code (HSC) § 123630.3)

11) Requires the healthcare providers in perinatal care settings, upon completion of the initial basic implicit bias training, to complete a refresher course every two years, or on a more frequent basis if deemed necessary by the facility, to keep current with changing racial, identity, and cultural trends and best practices in decreasing interpersonal and institutional implicit bias. (HSC § 123630.3(c)(2))

THIS BILL:

1) Requires all schools of nursing and nursing education programs to include within the curriculum implicit bias coursework that mirrors the existing requirements for specified perinatal care settings, which includes the following:

    a) Identification of previous or current unconscious biases and misinformation.

    b) Identification of personal, interpersonal, institutional, structural, and cultural barriers to inclusion.

    c) Corrective measures to decrease implicit bias at the interpersonal and institutional levels, including ongoing policies and practices for that purpose.

    d) Information on the effects, including, but not limited to, ongoing personal effects, of historical and contemporary exclusion and oppression of minority communities.

    e) Information about cultural identity across racial or ethnic groups.

    f) Information about communicating more effectively across identities, including racial, ethnic, religious, and gender identities.

    g) Discussion on power dynamics and organizational decision-making.

    h) Discussion on health inequities within the perinatal care field, including information on how implicit bias impacts maternal and infant health outcomes.

i) Perspectives of diverse, local constituency groups and experts on particular racial, identity, cultural, and provider-community relations issues in the community.

j) Information on reproductive justice.

2) Requires the BRN to update its regulations relating to curriculum content consistent with the requirements of this bill.

3) Requires licensees during the first two years immediately following their initial licensure in California or any other governmental jurisdiction to complete one hour of direct participation in an implicit bias course approved by the BRN that meets the same requirements outlined under this bill for prelicense education programs.

4) Requires a general acute care hospital to implement the same evidence-based implicit bias program that mirrors the existing requirements for specified perinatal care settings, as part of its new graduate training program that hires and trains new nursing program graduates.

5) Makes other technical changes.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the *California Nurses Association*. According to the author, "The prevalence of implicit bias in the health care setting must be addressed so that its negative impacts are mitigated to the greatest extent possible. Hospitals, health care facilities, and health care educators can do more towards this effort by providing additional tools to nurses that bring awareness to this problem in an effort to prevent this bias from manifesting itself in a clinical setting. Health care facilities and educators must continue to demonstrate their commitment to ending racial health disparities and working toward health equity by aggressively pursuing strategies that eliminate implicit bias within the health care system and in doing so will make strides toward addressing the health needs of our state's many diverse populations. This bill will help those in the health care system fulfill that commitment."

Background. In California, applicants for an RN license must complete a BRN-approved RN program and pass the National Council Licensure Examination for RNs (NCLEX-RN). Among other things, the BRN regulations require the curriculum of all approved programs to include, among other things, instructional content covering human sexuality, client abuse, cultural diversity, patient advocacy, legal, social and ethical aspects of nursing, and nursing leadership and management.

After the first two years of licensure, licensed RNs must also complete 30 hours of continuing education (CE) every two years. Under AB 241 (Kamlager-Dove), Chapter 417, Statutes of 2019, the BRN must adopt regulations by January 1, 2022, requiring all RN CE courses to contain a curriculum that includes the understanding of implicit bias in treatment, meaning each course taken to meet the 30-hour CE requirement must contain implicit bias training. By January 1, 2023, all CE providers must comply with the BRN's regulations.

In addition, all health care providers that provide perinatal care in specified settings, including RNs, must complete an evidence-based implicit bias program. After the completion of the initial implicit bias, the providers must complete a refresher course every two years, unless the perinatal care facility determines a higher level of frequency is necessary.

This bill would additionally require RN prelicense education programs to include specified implicit bias coursework in its curriculum, require one hour of direct participation in an implicit bias course approved by the BRN that meets the requirements imposed on prelicense education programs, and, for RNs that take part in new graduate training and residency programs, to complete an evidence-based implicit bias program that meets the requirements for the existing perinatal program.

Implicit Bias. Implicit bias is a bias or prejudice that is present but not consciously held or recognized.[1] Because implicit biases are held in an unconscious manner (people are unaware of them), "implicit biases are thought to be automatic not only in the sense that they are fast-acting, but also because they can operate without (1) intention (i.e., are involuntary and uncontrollable), and (2) conscious awareness."[2] The practical effect of an automatic and unconscious bias is that a person can act on those biases, whether positive or negative, even if they consciously attempt to act in an unbiased way.

In 2003, the Institute of Medicine established by the National Academy of Sciences found that health care disparities exist and the presence of bias and prejudice in healthcare can perpetuate those disparities, specifically finding that:

> Racial and ethnic disparities in healthcare exist and, because they are associated with worse outcomes in many cases, are unacceptable…. Bias, stereotyping, prejudice, and clinical uncertainty on the part of healthcare providers may contribute to racial and ethnic disparities in healthcare. While indirect evidence from several lines of research supports this statement, a greater understanding of the prevalence and influence of these processes is needed and should be sought through research.
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> Indirect evidence indicates that bias, stereotyping, prejudice, and clinical uncertainty on the part of healthcare providers may be contributory factors to racial and ethnic disparities in healthcare. Prejudice may stem from conscious bias, while stereotyping and biases may be conscious or unconscious, even among the well-intentioned. Ambiguities in the interpretation of clinical data, barriers to patient-provider communication, and gaps in evidence of the efficacy of clinical interventions contribute to uncertainty, and therefore may promote the activation of prejudice and stereotypes. However, few studies have attempted to assess these mechanisms, and therefore direct evidence bearing on the possible role of these factors, especially prejudice, is not yet available. The committee finds strong, but

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[1] Merriam-Webster, s.v. "implicit bias," accessed April 2, 2021, https://www.merriam-webster.com/.
[2] Rudman, Laurie, "Social Justice in Our Minds, Homes, and Society: The Nature, Causes, and Consequences of Implicit Bias," *Social Justice Research* 17, no.2 (June 2004): 133, https://doi.org/10.1023/B:SORE.0000027406.32604.f6.

> circumstantial evidence for the role of bias, stereotyping, prejudice, and clinical uncertainty from a range of sources, including studies of social cognition and "implicit" stereotyping, but urges more research to identify how and when these processes occur.[3]

In addition, according to the University of California San Francisco Office of Diversity and Outreach, "It is important to note that biases, conscious or unconscious, are not limited to ethnicity and race. Though racial bias and discrimination are well documented, biases may exist toward any social group. One's age, gender, gender identity physical abilities, religion, sexual orientation, weight, and many other characteristics are subject to bias."

A brief search of recent research suggests the causal links and mechanisms between implicit biases and patient outcomes are not clearly defined, but many studies acknowledge that implicit bias exists and can impact provider decision making,[4] although one did not find a correlation in emergency departments.[5]

Current Related Legislation. AB 948 (Holden), which is currently pending in this Committee, would require, among other things, 1) that an applicant for a real estate appraisers license complete 30 hours of prelicense education, and beginning on January 1, 2023; 2) those 30 hours to include at least one hour of cultural competency instruction, as defined; 3) to renew a license or restore a license to active status, 15 hours of approved continuing education courses to be completed every year, including 5 hours of elimination of bias training; 4) beginning January 1, 2023, complete at least one hour of instruction in cultural competency, as defined, every 3 years.

AB 1532 (Committee on Business and Professions), which is pending in this Committee, is the bill intended to carry out the statutory changes that result from the sunset review of the BRN.

Prior Related Legislation. AB 241 (Kamlager-Dove), Chapter 241, Statutes of 2019 requires, on and after January 1, 2022, all continuing medical education courses, all continuing education for registered nurses, and all continuing education for physician assistants, to contain a curriculum that includes the understanding of implicit bias and the promotion of bias-reducing strategies to address how unintended biases in decision-making may contribute to health care disparities by shaping behavior and producing differences in medical treatment along lines of race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics.

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[3] Institute of Medicine, *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care*. The National Academies Press (Washington, DC, 2003): 6, 178, https://doi.org/10.17226/12875.

[4] See generally Elizabeth N. Chapman et al., "Physicians and implicit bias: how doctors may unwittingly perpetuate health care disparities." *Journal of general internal medicine* 28, no. 11 (2013): 1504-10, https://doi.org/10.1007/s11606-013-2441-1; Y. Paradies et al., "Racism as a determinant of health: a protocol for conducting a systematic review and meta-analysis." *Systematic Review* 2, no. 85 (2013), https://doi.org/10.1186/2046-4053-2-85; Louis A. Penner, et al., "The Effects of Oncologist Implicit Racial Bias in Racially Discordant Oncology Interactions," Journal of Clinical Oncology 34, no. 24, (2016): 2874-2880, https://doi.org/10.1200/JCO.2015.66.3658; Tori DeAngelis, "How does implicit bias by physicians affect patients' health care?", *Monitor on Psychology* 50, no. 3 (American Psychological Association, March 2019): 22, https://www.apa.org/monitor/2019/03/ce-corner.

[5] Dehon E, Weiss N, Jones J, Faulconer W, Hinton E, Sterling S., "A Systematic Review of the Impact of Physician Implicit Racial Bias on Clinical Decision Making." *Academic Emergency Medicine* 24, no. 8, (August 24, 2017): 895-904. https://doi.org/10.1111/acem.13214.

SB 464 (Mitchell), Chapter 533, Statutes of 2019 required, among other things, hospitals, and alternative birth centers to implement an implicit bias program for all health care providers involved in the perinatal care of patients within those facilities, including requiring these healthcare providers to complete initial basic training through the implicit bias program and a refresher course every two years.

ARGUMENTS IN SUPPORT:

The *California Nurses Association* (sponsor) writes in support:

> The prevalence of implicit bias in the health care setting is reflective of inadequacies within the health care system and structure. Hospitals, health care facilities, and health care educators offer very little, if anything, to bring awareness to or address this phenomenon and problem. Even structural characteristics such as an institution's physical space project how welcoming an institution might be to minority patients. Too often, facilities fail to look at the communities they serve, those communities' needs, and the resources facilities need to tap to fill those needs.
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> [This bill] recognizes that awareness and education is the first step towards eliminating implicit bias. Educating the future health care workforce so that they are cognitive about the impact of implicit bias to the patients they serve is paramount to bringing this phenomenon to an end.

The *County Health Executives Association of California* writes in support:

> According to the National Academy of Sciences, Engineering, and Medicine (NASEM), racial and ethnic minorities tend to receive a lower quality of health care than non-minorities and often experience inappropriate or inadequate health services. One of the contributing factors in disparate health care experiences, according to NASEM, is health care personnel bias toward patients of racial, ethnic, or cultural minorities. A wealth of research has demonstrated that implicit biases among health care personnel are associated with negative impacts on patient care, including inadequate patient assessments, inappropriate diagnoses and treatment decisions, less time involved in patient care, and patient discharges with insufficient follow-up.
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> Taken together, unsatisfactory care received by racial, ethnic, and cultural minorities can result in continued health inequities, lack of engagement in health care, and worsening health statuses. To ensure positive health outcomes among patients, implicit bias and racial discrimination in health and health care should be better understood, assessed, and corrected. One such approach to addressing potential sources of implicit bias, according to the Joint Commission, is the implementation of multi-disciplinary and cross-cultural training and education among health care personnel. Fostering the development of implicit bias-reducing skills, such as perspective-taking, emotional regulation, and partnership building, among health care personnel has the potential to reduce the effect of biases on the quality of patient care provided. Through expanded health care provider training

> and increased awareness of bias and barriers, [this bill] offers a potentially promising step toward reducing California's health and health care disparities.

ARGUMENTS IN OPPOSITION:

None on file

POLICY ISSUES FOR CONSIDERATION:

Reciprocity. To the extent this bill creates additional differences between California requirements and out-of-state requirements, it may impact the ability of out-of-state applicants to qualify for a license in California. For an RN licensed out of state to qualify for a license in California, the RN must meet the California educational standards, including curriculum content. According to BRN staff, all nursing programs that meet the National Council of State Boards of Nursing (NCSBN) requirements incorporate cultural diversity. However, it is not specified that cultural diversity training must cover implicit bias.

While the BRN provides opportunities to make up deficiencies, this bill requires programs to include an undefined amount of implicit bias training covering certain topics. As a result, unless the bill is amended to allow post-licensure training, some out-of-state licensed RNs may be unable to move to California without going back to school. If this bill passes this Committee, the author may wish to amend the bill to reduce distinctions between states or provide for a mechanism for out-of-state applicants to make up deficiencies.

IMPLEMENTATION ISSUES:

Lack of Delayed Implementation Date. This bill currently requires the BRN to update its regulations to match the new requirements for RN prelicense programs. In addition, the bill is silent on the amount (hours/units) of implicit bias training is required, which the BRN would have to determine. The BRN would also need time to approve the one-hour CE course required within the first two years of licensure.

According to BRN staff, the regulatory process would take a minimum of one year. To the extent that prelicense education programs are not currently offering implicit bias training that meets the requirements of this bill, they may also need time to come into compliance. If this bill passes this Committee, the author may wish to amend the bill to establish a delayed implementation date.

Post-License CE. This bill requires that all RNs, within the first two years of initial licensure, complete 1 hour of direct participation in an implicit bias CE course that meets the requirements for prelicense RN education programs. However, the BRN's regulations for CE require that "Learning experiences are expected to enhance the knowledge of the Registered Nurse at a level above that required for licensure." (CCR, tit. 16, § 1456). Therefore, RNs will be required to take a CE course that does not count as CE under the BRN's regulations.

According to BRN staff, one possible solution to this conflict would be to specify that this course is not CE but is meant to meet the prelicensure nursing education requirement for those that did not receive it, excluding it from the BRN's current CE regulations. This could also be used to

resolve deficiencies related to out-of-state applicants as noted above. If this bill passes this Committee, the author may wish to consider amending the bill to resolve this discrepancy.

Training vs. Curriculum. This bill currently requires that the implicit bias coursework for RN education programs be incorporated into the program curriculum. However, some RN programs have expressed that, while some implicit bias training is already included in their curriculum, it may be easier to require that students receive a specified amount of training rather than incorporating the requirements into the curriculum. As noted above having a training component, rather than a curriculum requirement, could also create flexibility allowing applicants who received education out of state or currently licensed RNs who did not obtain the specific implicit bias training under this bill to take a training course rather than having to go back to school.

Overlapping Requirements. As directed by the Joint Legislative Audit Committee, the State Auditor conducted an audit of the BRN to assess its oversight of prelicense nursing educational programs. The State Auditor found that some of BRN's requirements for nursing programs overlap with standards imposed by national nursing program accreditors. The State Auditor recommended, as part of the Legislature's 2021 review of the BRN, it could consider the appropriateness of restructuring the BRN's oversight to leverage portions of the accreditors' review to reduce duplication and more efficiently use state resources. Specifically, the State Auditor recommended that:

> As part of BRN's sunset review in 2021, the Legislature should consider whether the State would be better served by having BRN revise its regulations to leverage portions of the accreditors' reviews to reduce duplication and more efficiently use state resources. For example, it could consider restructuring continuing approval requirements for nursing programs that are accredited and maintain certain high performance standards for consecutive years (for example, licensure exam pass rates, program completion rates, and job placement rates). Additionally, the Legislature should consider whether and how BRN could coordinate its reviews with accreditors to increase efficiency.

This Committee, along with the Senate Committee on Business, Professions and Economic Development are currently in the process of reviewing the BRN as part of Sunset Review and are looking at potential overlaps. For example, all but one of the 20 California State University (CSU) Schools of Nursing are nationally accredited by the Commission on Collegiate Nursing Education, with its newest CSU nursing program currently seeking approval.

As a result, all of the CSU programs function under the guiding framework for baccalaureate nursing programmatic evaluation, the Essentials document of the American Association of Colleges of Nursing (AACN). The newest draft of the Essentials document will require implicit bias and the responsibility of nursing educators to address this issue in baccalaureate nursing coursework. As a result, the CSU is generally concerned about duplicative BRN oversight. If this bill passes this Committee, the author may wish to consider amending the bill to reduce the amount of approval and review duplication between accreditors and the BRN, including whether the curriculum requirement can be changed into a training requirement.

Focus on Perinatal Care. The implicit bias requirements under this bill for prelicense RN education, the CE in the first two years of licensure, and the new graduate residency were copied

from the existing requirements for perinatal care settings, and there are some requirements specific to perinatal care (the period of time immediately before and after birth), including:

1) Discussion on health inequities within the perinatal care field, including information on how implicit bias impacts maternal and infant health outcomes.

2) Information on reproductive justice.

To the extent that there are implicit biases specific to different types of care, the author may wish to amend the bill to reduce the focus on perinatal care, or at least specify that other common aspects of nursing care may be included, such as medical-surgical nursing, pediatric nursing, psychiatric-mental health nursing, and geriatric nursing.

Duplicative Requirements. Under this bill, a nurse who graduates from an approved program in 2023 who joins a new graduate residency program and provides perinatal care would receive the following implicit bias training:

1) Prelicense implicit bias coursework as part of the RN education program curriculum (unclear how much).

2) One hour of post-license implicit bias CE that meets the prelicense requirements within the first two years post-licensure.

3) An evidence-based implicit bias program during their new graduate residency.

4) An evidence-based implicit bias program while providing perinatal care.

5) Implicit bias training incorporated in every course as part of the 30 hour CE requirement every two years (unless focused on research or there is no direct patient care component).

6) An implicit bias refresher course every two years while providing perinatal care.

If this bill passes this Committee, the author may wish to consider streamlining the requirements or allowing for the application of some training to apply for other training requirements, such as allowing a certificate for the new graduate residency to qualify for the perinatal care implicit bias training.

REGISTERED SUPPORT:

California Nurses Association (sponsor)
Consumer Attorneys of California
County Health Executives of California

REGISTERED OPPOSITION:

None on file

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