



“All who nurse for hire”: Nursing and the mixed legacy of legislative victories

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ABSTRACT

Sustained support of policy initiatives by nursing has resulted in significant legislative victories. One victory, the passage of the 1938 New York State Todd-Feld Act, which underwent legislative debate at a time when the nurse labor market was in disarray, during an economic depression, and before U.S. entry into World War II, reinforces our understanding that nursing must be a strong shepherd for policies beneficial for health care delivery. Designed to correct serious deficiencies in the nursing workforce, the act successfully required licensing for those working as registered and practical nurses. Yet, its provisions failed to stop all unlicensed nurse workers from practicing. Rapid changes occurring in the nurse labor market against the backdrop of growing hospital power over the employment of all nurse workers minimized the act's effectiveness. Policy implications include the need to focus on the complex nature of health care policy initiatives, flexibility in the face of changing circumstances, and acceptance of political realities.

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The American Academy of Nursing's advocacy for legislation affecting the provision of health care and health care services, demonstrated most recently by its strong endorsement of the Patient Protection and Affordable Care Act (ACA) combined with the leadership it has taken to insure the delivery of safe, accessible health care to the American public, is commendable and historically consistent (American Academy of Nursing, 2013). Policy positions endorsed by the academy echo those of previous generations of nurses who took on the job of using public policy initiatives to create positive change in the ways Americans access and receive health care. In its

advocacy for the ACA, the academy continued a strong tradition of nurse activism in promoting policies that result in legislative action. This article examines a previous point in nursing's history when nurses exercised their power to affect policy change through the passage of the 1938 New York State Todd-Feld Act, the first state nurse practice act that required a license in order to work as a nurse.

At the beginning of the 20th century, the profession advanced legislation that enabled nurses to assume new roles and ensured access to professional nursing services to a larger number of constituencies. On a federal level, nurses achieved a significant victory as

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early as 1901 when the Associated Alumnae of the United States, the forerunner of the American Nurses Association, effectively promoted the establishment of the Army Nurse Corps (Sarnecky, 1999). Subsequent efforts at legislating laws favorable to nursing and the public concentrated on the passage of early state nurse registration acts. These early registration acts centered on the idea that the public good demanded nurses who were clearly identified through a registration system as possessing basic education and skills in caring for the sick and met specific criteria and standards as promulgated by the state. Nurses claimed triumph in regulating nursing practice when by 1923 all states in the Union at the time had some form of nurse licensing (White, 1980). Yet, although political activity and policy making consumed a considerable amount of professional nursing's time and effort, it has not always received significant historical attention, analysis, or acknowledgement.

The Todd-Feld Act, the first of the mid-20th century nurse registration acts that required state licensing for "all who nurse for hire" and was intended to build on and strengthen the initial registration acts, is an example of one piece of nurse-supported legislation receiving little scrutiny. Although successful at achieving a long-held goal of nurses (i.e., the passage of a nurse practice act mandating that anyone working as a nurse must be licensed), the act failed to achieve one of its most important aims, that of conclusively defining and strictly regulating who may and may not practice nursing, and, subsequently, permitted a group of unlicensed nurse workers to flourish.

I argue that nurses sought mandatory nurse practice acts as a way to correct serious employment problems in the nurse labor market and to protect the public from unlicensed nurse workers. Hospital administrators initially supported nursing's efforts but ultimately manipulated government-required nurse licensing for their own purposes. Unique conditions in the nurse labor market that first created a demand for state intervention in regulating nursing practice and later threatened the full implementation of the act weakened the act's effectiveness overall. The 1938 Todd-Feld Act is a compelling example of how effectively the nursing profession can attain legislative victories intended to promote safe patient care. At the same time, as we contemplate how the health care system will change pending the full implementation of the ACA, this analysis provides a meaningful historical lesson in demonstrating the dangers in either predicting the outcomes of government mandates or relying extensively on them.

Early Nurse Practice Acts

Efforts to obtain government regulation of nursing practice date back to the early 20th century when nurses chose securing state licensing as a major

strategy to promote the use of professional nurses by the sick public. (In this article, the term professional nurse indicates a graduate of a school of nursing. Registered nurse indicates a professional nurse who holds a state license.) In 1903, the New York State Nurses Association (NYSNA), a leader in the initial licensing movement, successfully lobbied for one of the strongest nurse practice acts (Andrews, 1903). Pride in this accomplishment was tempered by the knowledge that as a voluntary statute the 1903 act possessed an inherent weakness; the provisions of the act, as did all state nurse practice acts of the time, applied only to those using the title registered nurse, not to all who actually worked as nurses (Tomes, 1983). Individuals could hire out as nurses as long as they did not claim to be a registered nurse. Undeterred, in 1913, the NYSNA began to work toward more restrictive legislation in the form of a mandatory licensing law stipulating that only those licensed by the state could work as nurses. This effort failed, and in 1920 a weaker nurse practice act replaced the 1903 version (Tomes, 1983; Pavri, 2000).

Historian Nancy Tomes (1983) identified two important factors that undermined the effectiveness of both the 1903 and the 1920 acts. First, voluntary acts depended on the compliance of eligible nurses to seek registration. For a number of reasons, many did not. Second, most nurses found the possession of a license to be of questionable value in their daily working lives. The majority of early 20th century professional nurses were private-duty nurses who worked as independent contractors hired by individual patients for the delivery of care. Because the patients for whom nurses worked were under no obligation to check credentials, many professional nurses simply did not obtain a state license. Although effective at establishing and improving nursing education standards, the initial nurse registration movement failed to attain a nursing workforce composed entirely of nurses who met the minimum criteria of graduation from a school of nursing (Pavri, 2000; Tomes, 1983).

Multiple Types of Nurses

Further hindering professional nursing's efforts to achieve control and predominance over nursing practice was the presence of large numbers of untrained nurses in the nurse workforce. In 1920 and 1930, the U.S. census classified approximately 150,000 persons as "nurses, not trained" (Department of Commerce, 1930). This group of workers, often referred to as subsidiary workers, were a disparate collection of semi-trained and untrained workers who competed with professional private-duty nurses for patients yet were out of reach of state regulation. Many in this group demonstrated proficiencies similar to professional nurses; others were less skilled and helpful only with the mildly ill. Although professional nurses hoped that licensing laws would guide patients in distinguishing

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