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Office of the Secretary of State**

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January 31, 2023

**To: Hon. Lori Houghton, Chair
House Health Committee on Health Care**

**From: S. Lauren Hibbert, Deputy Secretary of State
Lauren Layman, General Counsel, Office of Professional Regulation**

Re: H.62 An act relating to the interstate Counseling Compact

Dear Committee,

Thank you for the opportunity to testify about the Interstate Counseling Compact.

Since this is our first opportunity to testify in your committee this session we thought it would be a good idea to provide high-level background on the Office of Professional Regulation and the concept of occupational compacts before jumping into the details of the Counseling Compact.

The Office of Professional Regulation

The Office of Professional Regulation (OPR) oversees 51 professions – including multiple healthcare professions. OPR establishes qualifications by statute and administrative rules. OPR also receives complaints about licensee conduct. Those complaints are screened, investigated, and ultimately prosecuted if warranted. OPR's core mission is to protect the public. We also in recent years have been on the forefront of responding to workforce needs, adapting during Covid, and pursuing progressive occupational licensure policy.

Occupational Compacts

Compacts are an agreement or contract between states. There are many compacts in our lives. An example of a compact is driving licenses. In the driver's compact a driver from one state is allowed to drive in all other states because of the compact. Most compacts have the concept of a "home state." This is the state where the licensee lives, votes, etc. After someone has a compact license in their home state they are either immediately authorized to practice in all other compact states or they have to ask the compact commission for the authority to practice in another state. This can sometimes be accompanied by an additional fee. If a licensee moves to a new state then they have to apply for a new compact licensee in their new home state.

Compacts are effective tools in occupational licensure. They solve some of the mobility challenges to having a license because they allow someone to practice in a state that they don't live in or immediately when they move to a new state. They also enable telehealth across state lines when both states are members of the compact.

Compacts almost always have a revenue impact because it removes the requirement for an out of state practitioner to get a Vermont license. This is a relevant factor when you are a small state where people can easily travel across state lines to work.

Compacts also affect the enforcement process. Vermont retains jurisdiction over everyone who is practicing in Vermont – physically or via telehealth. This means that under a compact we could be investigating and prosecuting a person who is not a Vermont licensee. Post-Dobbs OPR has also been focused on any provision in a compact that mandates reciprocal discipline. We do not want to be forced to discipline a Vermont licensee because they provided an abortion or gender-affirming care in another state.

Counseling Compact

Background

- Developed by the Council of State Governments and its National Center for Interstate Compacts.
 - CSG also developed the Audiology/SLP compact, OT compact, and PsyPact.
- Adopted by 16 states so far, including New Hampshire and Maine.
 - Adoption by 10 states triggered the creation of the centralized Counseling Compact Commission.
 - The commission is expected to be offering Counseling Compact privileges starting in late 2023 or early 2024.

Features

- Like all interstate licensure compacts, the Counseling Compact establishes uniform requirements for obtaining a “compact license”. This license would be an additional licensing option for counselors. Applicants who do not qualify for or do not want the compact license would still be able to apply for a single-state, Vermont license.
- Compact States
 - To qualify as a compact state, a state must
 - Share required data with the Compact Commission;
 - Have a mechanism in place for receiving and investigating complaints about licensees
 - Require applicants for an LCMHC license to complete a 60-hour master's degree containing 9 areas of study, pass a national examination, and complete supervised practice post-graduation;

- Share investigatory and discipline data with the Compact Commission
 - Give the effect of state law to all rules adopted by the Compact Commission and
 - Adopt a criminal history background check process for compact license applicants, including the collection of fingerprints or other biometric-based information for collecting criminal history information from the FBI.
 - OPR would need authorization to conduct background checks for these professions. This authorization needs to be expressly added in 3 V.S.A. §123(j)(1).
 - Member states may collect a portion of the fee for offering compact licensees the privilege to practice in the member state.
 - OPR can meet these requirements of the Compact.
- Applicants
- An applicant would need to obtain a “home state” license in a compact member state.
 - Once the home-state license is obtained, the licensee may obtain a “privilege to practice” in other compact member states by notifying the Compact Commission about which state the licensee wishes to work in and paying a fee (part of which would go to the state and part of which would stay with the Compact).
 - The applicant will also need to provide a SSN or NPI, have an unrestricted license for the previous two years, complete the continuing education requirements in the home state, and complete the jurisprudence examination in the privilege state.

Impacts of Implementation of the Compact

- Benefits
- Mobility in the professional counselor field is very challenging. Not all education programs in this field are accredited and, in turn, the programs vary. States, then, have varied requirements for licensure. This makes moving between states challenging, as there is no guarantee that the applicant’s education will qualify them for licensure in that new state and law-based reciprocity policies are not effective (because of the variation in law). The compact would solve this challenge for licensed clinical mental health counselors who are able to obtain a license in Vermont.
- Potential Benefits
- May bring in more clinical mental health counselors to Vermont and improve access. Of course, the compact could also facilitate LCMHCs leaving Vermont.
 - Because the state may collect from out-of-state compact licensees a portion of the fee for the privilege to practice in Vermont, the Compact will not have as significant an impact on OPR’s budget as some other compacts do.

- Concerns

- The disciplinary provisions of the compact require remote compact member states (i.e., those states where a compact licensee has a privilege to practice) to remove a licensee's privilege to practice in the remote state if the licensee's home state license is disciplined. To do this, OPR would need to follow our state due process requirements for revoking someone's license.
- This is problematic when other state's laws that are the basis for disciplining a licensee are inconsistent with Vermont's laws and values.
- In counseling, the concern would be states that have laws barring providers from providing gender-conforming mental health care to minors. If a compact licensee held their home-state license in a state that barred such care and the licensee was disciplined in that home state for providing gender-confirming care to a minor, Vermont's OPR would then need to prosecute that licensee to remove their privilege to practice in Vermont, even though Vermont law permits and supports the provision of gender-conforming care to minors.
- The compact commission has promised to consider this issue and address it through rulemaking. The IMLC encountered a similar "reciprocal discipline" issue and addressed it through rules earlier this year.

