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

As Passed HHC & HWM
Prepared by the Office of Legislative Counsel

Sec. 1. Adds 26 V.S.A. chapter 65, subchapter 2: Counseling Compact

§ 3275a. Purpose

- Lists the following Compact purposes in subsec. (a):
    - To facilitate interstate practice of licensed professional counselors to improve access to professional counseling services
    - Professional counseling occurs in state that client is located at the time of counseling
    - Compact states retain the regulatory authority to protect public health and safety through the existing system of state licensure
- Lists Compact objectives in subsec. (b)

§ 3275b. Definitions

- Contains numerous definitions, including:
    - "Commission": national administrative body whose membership consists of all states that have entered the Compact
    - "Encumbrance": revocation, suspension, or limitation on full and unrestricted practice of licensed professional counseling by the licensing board
    - "Licensed professional counselor": counselor licensed by a member state, regardless of title used by the state, to independently assess, diagnose, and treat behavioral health conditions
    - "Professional counseling": assessment, diagnosis, and treatment of behavioral health conditions by a licensed professional counselor

§ 3275c. State Participation in the Compact

- To participate in the Compact a state must:
    - License and regulate licensed professional counselors;
    - Require licensees to pass a national exam approved by the Commission;
    - Require licensees to have 60 semester-hour (or 90 quarter hour) master's degree in counseling or graduate course work in specified topic areas
    - Require licensees to complete a supervised postgraduate professional experience as defined by the Commission; and
    - Have a mechanism in place for receiving and investigating complaints about licensees
- Member states are required to:
    - Participate in the Commission's data system
    - Notify the Commission of any adverse action or the availability of investigative information about a licensee
    - Implement or utilize procedures for considering applicant's criminal history records
    - Comply with Commission rules
    - Require applicants to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal

  - Grant privilege to practice to a licensee holding a valid unencumbered license in another state in accordance with the Compact and its rules
  - Provide for attendance of the state's Commissioner at Counseling Compact Commission meetings
- Allows member states to charge a fee for granting privilege to practice
- Allows individuals not residing in a member state to be able to apply for a member state's single state license, but a single state license granted to these individuals shall not be recognized as granting privilege to practice professional counseling in any other member state
- Compact does not impact member state's ability to issue a single state license
- A license issued to the professional counselor by a home state to a resident in that state shall be recognized by member states as authorizing the licensed professional counselor to practice professional counseling in each member state

§ 3275d. Privilege To Practice

- To exercise the privilege of practicing in a remote state, a licensee shall:
  - Hold a license in the home state
  - Have a valid SSN or national practitioner ID
  - Be eligible for privilege to practice in a member state on the basis of certain criteria being met in this section
  - Not have any encumbrance or restriction against any license or privilege to practice in the preceding 2 years
  - Notify the Commission that the licensee is seeking privilege in a remote state(s)
  - Pay applicable fees, including state fees
  - Meet continuing competence and education requirements of the home state
  - Meet any jurisprudence requirements of the remote state or state(s) in which licensee is seeking privilege to practice
  - Report to the Commission any adverse action, encumbrance, or restriction on a license by a non-member state w/in 30 days of action
- Privilege to practice expires on expiration of home state license
- Licensees providing professional counseling in a remote state under the privilege to practice must follow the law of the remote state
- Licensees providing professional counseling in a remote state are subject to the remote state's regulatory authority, which may include removing licensees' privilege to practice for a period of time, imposing fines, or taking other action. Licensee may be ineligible for privilege to practice in other member states until time period has elapsed or fine is paid.
- If home state license is encumbered, licensee shall lose privilege to practice in a remote states until home state license is unencumbered the license has not had an encumbrance or restriction against a license or privilege to practice within the preceding 2 years
- A licensee may lose the privilege to practice in other remote states if the privilege to practice is removed from any other remote state until a period of time has elapsed, fines are paid, and licensee has not had an encumbrance or restriction against a license or privilege to practice within the preceding 2 years

§ 3275e. Obtaining a New Home State License Based on Privilege

- Licensed professional counselor can only have one home state at a time
- Details the process by which a licensed professional counselor changes state of residence from one member state to another member state
- If a licensed professional counselor changes state of residence by moving from a member to non-member state or vice versa, the state criteria shall apply for a single state license in the new state
- Compact does not prevent a licensee from holding multiple single state licenses, but for the purposes of the Compact there is only one home state
- Compact does not impact a member state's ability to issue a single state license or requirements related to the single state license

§ 3275f. Active Duty Military Personnel or Their Spouses

- Specifies what is considered licensed professional counselor's home state while counselor or counselor's spouse is on active duty

§ 3275g. Compact Privilege to Practice Telehealth

- Member states shall recognize right of professional licensed counselor to practice professional counseling in any member state via telehealth under privilege to practice
- Licensee providing professional counseling services in a remote state shall adhere to laws of remote state

§ 3275h. Adverse Actions

- Remote state has authority to take adverse action against licensed professional counselor's privilege to practice w/in that member state and issue subpoenas for hearings and investigations requiring attendance and testimony of witnesses and production of evidence
    - Only home state can take adverse action against a licensed professional counselor's license issued by the home state
- With regard to taking adverse action, a home state shall give same priority to reported conduct received from a member state as if the conduct occurred in the home state
- Home state completes any pending investigations of a licensed professional counselor who changes primary state of residence mid-investigation
    - Home state is authorized to take appropriate action and promptly report investigations to the administrator of the data system
    - Administrator of coordinated licensure IT system shall promptly notify the new home state of any adverse actions
- Member state can take adverse action based on factual findings of remote state
- Provides guidelines on joint investigations between member states
- If adverse action is taken by home state, the licensed professional counselor's privilege to practice in all member states will be deactivated until all encumbrances on home state license are removed
- Compact does not prohibit a member state to participate in an alternative program in lieu of adverse action

§ 3275i. Establishment of Counseling Compact Commission

- Creation of Counseling Compact Commission by member states
- Venue and judicial proceedings brought by or against Commission shall be brought where principal Commission's office is located
- Each member state has one delegate selected by state's licensing board who is either an administrator or member of the licensing board
- Commission meets at least once annually
- Commission duties:
    - Establish Commission fiscal year and bylaws
    - Maintain financial records
    - Take actions consistent with Compact and bylaws
    - Promulgate rules, which are binding as described by Compact
    - Handle legal proceedings in the name of the Commission
    - Purchase and maintain insurance and bonds
    - Borrow, accept, or contract for services
    - Hire employees, elect/appoint officers, fix compensation, etc.
    - Accept donations and grants
    - Lease, purchase, and accept gifts
    - Manage Commission property or acquisition/disposition or property
    - Establish a budget, make expenditures, borrow money
    - Appoint committees, including an executive committee
    - Provide and receive information and cooperate with law enforcement agencies
- Describes duties of executive committee in subsec. (d)
- Outlines requirements for Commission meetings in subsec. (e)
- Outlines how the Commission is financed in subsec. (f)
- Describes immunity from suit and liability for members, officers, employees in subsec. (g)

§ 3275j. Data System

- Commission shall provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system pertaining to licensure, adverse action, and investigation information on all licensed individuals in member states
- Member states are required to submit uniform data to data system
- Member states contributing information to the data system may designate information that may not be shared with the public without express permission
- Any data submitted that is subsequently required to be expunged by the laws of the member state shall be removed from the data system

§ 3275k. Rulemaking

- Authorizes the Commission to adopt rules and amendments to rules within the scope of the Compact's purposes, which are binding on members
- If a majority of the state legislatures of member states rejects a rule adopted by the Commission in the same manner it adopted the Compact, the rule shall not be in effect
- Describes the process for proposing/promulgating rules, incl. notice and opportunity to be heard
- Describes the process and criteria for promulgating emergency rules

§ 3275l. Oversight, Dispute Resolution, and Enforcement

- Directs the executive, legislative, and judicial branches of member states to enforce the Compact as it has the standing of statutory law
- If Commission finds a member state has defaulted in the performance of its duties under the Compact or rules, the Commission shall provide written notice to defaulting state and other member states of the nature of the default and proposal for curing the default and provide remedial training and technical assistance
- A state that fails to cure a default may be terminated from the Compact on the majority vote of member states
- Commission is not responsible for costs related to a state that is in default or has been terminated
- Defaulting state may appeal Commission action by petitioning U.S. District Court of D.C. or the federal district where it has its federal office
- Member state can request to attempt to resolve disputes with Commission via dispute resolution
- Commission enforces provisions of Compact

§ 3275m. Date of Implementation of the Counseling Compact Commission and Associated Rules, Withdrawal, and Amendment

- Compact in effect when 10th member signs; (Compact is currently in effect)
- Member states that join after Compact is in effect are subject to rules in effect when the state joins
- Member state may withdraw from Compact by repealing statute; withdrawal does not take effect until 6 months after enacting repealing statute during which time member state's professional counseling licensing board continue to comply investigative and adverse action reporting
- Compact does not prevent a cooperative arrangement between a member and non-member state

§ 3275n. Construction and Severability

- Compact is construed liberally to effectuate its purposes and severable if any provision is found invalid

§ 3275o. Binding Effect of Compact and Other Laws

- Licensee providing professional counseling services in a remote state under privilege to practice shall adhere to the remote state's laws and regulations
- Compact does not prevent enforcement of any other member state law that is not inconsistent with Compact
- Compact supersedes laws of a member state in conflict with the Compact
- If a Compact exceeds the constitution of a member state, the provision in question shall be ineffective

Sec. 2. Amends 3 V.S.A. § 123(j)(1) (Duties of OPR)

- Adds the following professions to the list of professions for whom OPR may inquire into the criminal background histories of applicants for initial licensure and for license renewal:
    - licensed clinical mental health counselors licensed under 26 V.S.A. chapter 65;
    - licensed marriage and family therapists licensed under 26 V.S.A. chapter 76; and

- individuals registered on the roster of psychotherapists who are nonlicensed and noncertified

Sec. 3. Amends 26 V.S.A. § 3270a (Clinical Mental Health Counselors; Fees)

- Requires a licensee of a remote state under the Counseling Compact to pay a biennial $50.00 privilege to practice fee

Sec. 4. Effective Date

- Secs. 2 & 4 effective 7/1/2023
- Secs. 1 & 3 effective 7/1/2024