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Office of the Secretary of State**

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**Sarah Copeland Hanzas, Secretary of State
S. Lauren Hibbert, Deputy Secretary**

January 17, 2024

**To: Hon. Emilie Kornheiser, Chair
House Committee on Ways and Means**

From: S. Lauren Hibbert, Deputy Secretary of State

Re: Occupational Compacts: H. 247 - An act relating to Vermont's adoption of the Occupational Therapy Licensure Compact

Dear Committee,

Thank you for the opportunity to testify regarding the Occupational Therapy Licensure Compact.

Occupational Compacts Review

Compacts are effective tools in occupational licensure and good policy. They enable mobility for licensees, and they enable telehealth across state lines when both states are compact members.

Compacts generally reduce licensing revenues because they allow non-resident professionals from compact member states to practice without first purchasing a Vermont state license. Given Vermont's small geographic size and our highly populous neighbor states, when Vermont joins a compact, that profession's total state licensees decrease.

Compacts also affect the professional conduct enforcement process. Vermont retains jurisdiction over everyone who practices within their borders. Post-Dobbs, OPR is concerned by any compact provisions which require disciplinary reciprocity: however, Act 15 of 2023 took a step toward addressing this concern by requiring Vermont's delegates to seek Compact rule amendments permitting Vermont to choose not to take disciplinary action against compact licensees who have been disciplined elsewhere for providing gender-affirming or reproductive health care services.

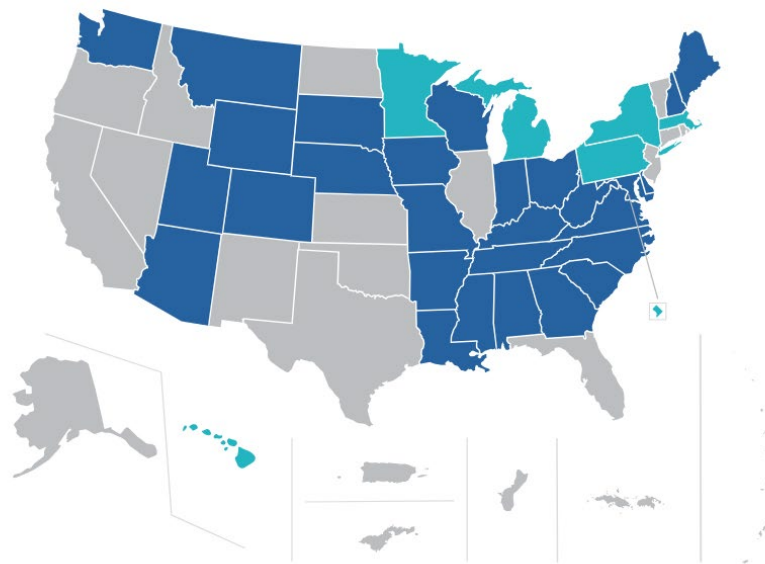
Compacts impact enforcement expenses. Because Vermont retains jurisdiction over everyone who is practicing in Vermont—either physically or via telehealth—OPR will be investigating and prosecuting professionals who are not Vermont licensees. OPR, and the in-state licensees, will incur the full expense of these investigations and prosecutions without having received those individuals' licensing revenue.

Compacts require expensive IT modifications. Upon joining a compact, OPR must pay for system modifications to accommodate compact licensure. Depending on compact requirements, accounting for a non-resident compact licensee can consume more resources than an in-state licensee.

Occupational Therapy Compact

Developed by the American Occupational Therapy Association (AOTA) and the National Board for Certification in Occupational Therapy (NBCOT) with support from the Council of State Governments (CSG). The Occupational Therapy Compact is in effect now because it has more than 10 participating states. The map below is slightly outdated because it does not reflect that Vermont has active legislation.

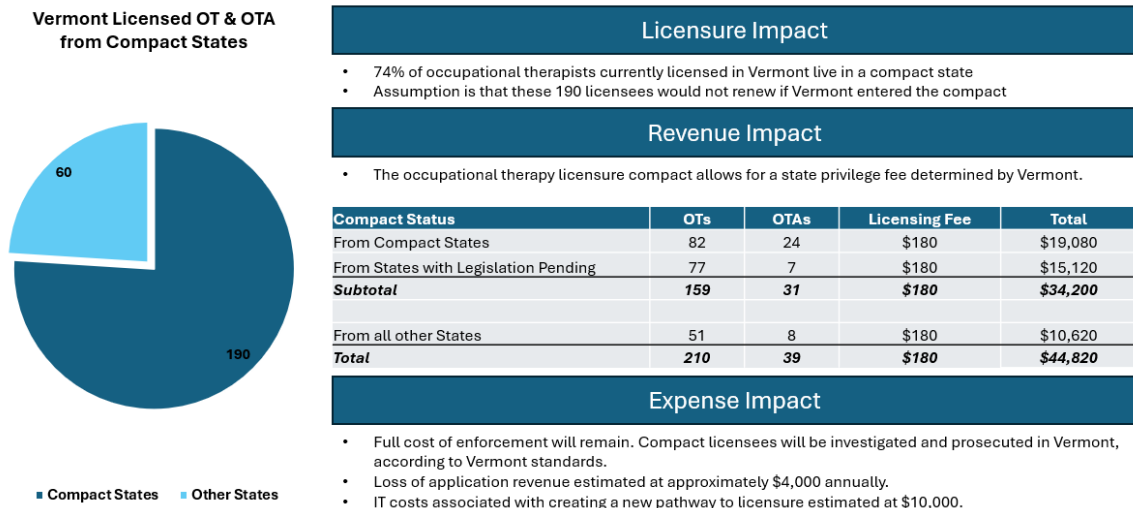
- Legislation Enacted
- Legislation Pending
- No Active Legislation



If enacted, Vermont will issue a home-state license for OTs and OTAs. OTs and OTAs will then be able to turn to the Compact Commission to seek privileges to practice in other member states. The Compact Commission will charge the licensee a flat Compact fee *and* a state privilege-to-practice fee (specific to each state). The Compact Commission will then remit the state-specific privilege fee to the member state where the licensee is practicing (e.g., NH sets a state-specific fee, the licensee pays this fee to the Compact Commission when asking for a privilege to practice in NH, and then the Commission remits the fee to NH). Similarly, Vermont is permitted to charge out-of-state compact licensees a fee for the privilege to practice in Vermont. The privilege fee would be paid into OPR's Special Fund. We are recommending that fee be set at \$50.

However, even with the compact privilege fee, we are anticipating revenue loss if we join the Occupational Therapy Compact. If all the states with pending legislation joined the compact, we would lose approximately \$26,000 biannually. Additionally, we will need to invest approximately \$10,000 in our IT system.

H.247 – Occupational Therapy Licensure Compact Analysis



Recommendation: Allocation Request and Funding Model Working Group

Because of the revenue loss from this compact, and others, we are asking for:

- A \$78,000 one-time appropriation for the implementation of this compact. This would cover two renewal cycles and our IT updates.
- The creation of a group that would consist of the Joint Fiscal Office, Legislative Counsel, and the Secretary of State’s Office to discuss OPR’s funding model.
 - This group should review the current funding model for OPR. OPR regulates 51 professions including over 80,000 licensees with a staff of 40. The OPR special fund consists of only licensee funds which enter the special fund and then are siloed by profession if a board exists or pooled if the profession is an advisor profession. With the enactment of compacts and telehealth licensure the revenue entering the fund has decreased. There is broad support for policies supporting greater access to out-of-state providers and allowing Vermont providers to continue to provide care to clients in other states. However, there is also a common understanding that increasing fees on Vermont licensees to subsidize policies that incentivize and allow out-of-state licensees to practice in Vermont without paying a fee in Vermont is disfavored. Further, any additional restrictions in OPR’s budget to subsidize out-of-state licensee will have a

negative impact on OPR's public protection mission. This working group should review how other similarly situated states are funded and organized and consider:

- Should OPR continue to be funded solely through licensee funds or should it be partially funded by the general fund?
- Should OPR continue to silo funds by board, or should all of the funds be pooled?
- Are there other sources of revenue that could support OPR's public protection model?

**VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION**

NLC Impact Assessment

Pursuant to Act 64 of 2021

January 12, 2024

Act 64 of 2021 requires the Office of Professional Regulation (OPR) to report to the House Committee on Health Care, the House Committee on Government Operations and Military Affairs, the Senate Committee on Health and Welfare, and the Senate Committee on Government Operations concerning the implementation of the Nurse Licensure Compact (NLC).

OPR finds that the NLC has worked well facilitating interstate practice for nurses. However, the NLC has also resulted in a significant negative fiscal impact on the state. OPR is unable to mitigate or alleviate these fiscal impacts through administrative efficiencies or increased licensing fees. The Office welcomes further discussion about how to continue to support the NLC while addressing the fiscal impact on Vermont.

Act 64 (2021) Sec. 1a

On or before January 15, 2024, the Office of Professional Regulation shall report to the House Committees on Health Care and on Government Operations and to the Senate Committees on Health and Welfare and on Government Operations concerning the implementation of 26 V.S.A. chapter 28, subchapter 5, including:

(1) the number of compact licensees and single state licenses issued annually following the adoption of the Nurse Licensure Compact and noting how many of those license fees were paid by a licensee and how many were paid by an employer or other entity on behalf of a licensee;

(2) the resources necessary to implement the Nurse Licensure Compact;

(3) the fiscal impact on the Vermont State Board of Nursing's special fund; and

(4) if the Office of Professional Regulation determines that implementation of the Nurse Licensure Compact has resulted in a reduction of revenue available to the Vermont Board of Nursing, the Office shall include in its report:

(A) a proposal to manage the reduction through administrative efficiencies; and

(B) if the Office is not able to manage the reduction in revenue through administrative efficiencies, a proposal to address the reduction through an increase in the license fee for a compact multistate license only.

NLC Implementation: Licensing Trends and Fiscal Impact

As of February 1, 2022, the Office of Professional Regulation began offering multi-state compact licenses to Vermont resident registered nurses (RN) and licensed practical nurses (LPN). As of January 3, 2024, nearly two years later, OPR has 3,294 active multi-state licensees, and 6,517 single-state (Vermont only) licensees. OPR is unable to determine whether the fees for these licenses were paid by the individual professional or another entity (e.g., an employer) on the licensee’s behalf.

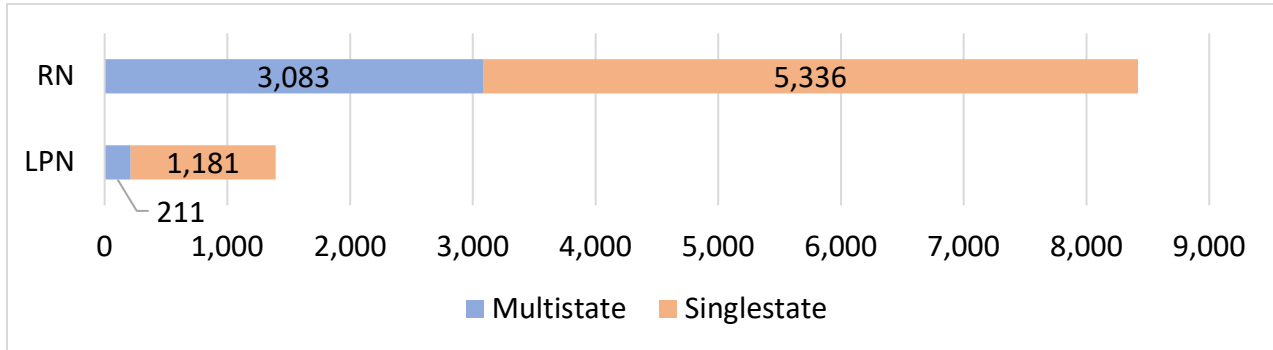


Figure 1: Credential counts of Vermont resident RN and LPN.

The implementation costs associated with the NLC totaled \$225,653. These costs of the NLC implementation were paid in full through a grant from the National Council of the State Boards of Nursing. Costs incurred to implement the NLC include, but are not limited to, software development for new compact license application workflows, data-transfer capabilities with the NURSYS database, the incorporation of FBI background check workflows, and licensing software data reporting functionality.

Nevertheless, enacting the NLC resulted in a significant fiscal impact on the Vermont State Board of Nursing’s due to lost revenue without a corresponding decrease in operating expenses. In accordance with NLC Rules, nurses with active multistate licenses from other compact member states may not maintain a Vermont single state license. Consequently, 8,630 Vermont state licenses belonging to non-resident nurses expired. OPR estimates the further loss of 283 LPN licensees during the January 2024 LPN renewal period. (See LPN from NLC member states who renewed their Vermont licenses prior to learning about the NLC; Appendix A.) The loss of these 8,913 nursing licenses totals an ongoing \$1,689,295 decrease in biennial revenue from licensing fees.

Ongoing Fiscal Impact of NLC

Biennial Revenue Loss:
\$1,689,295

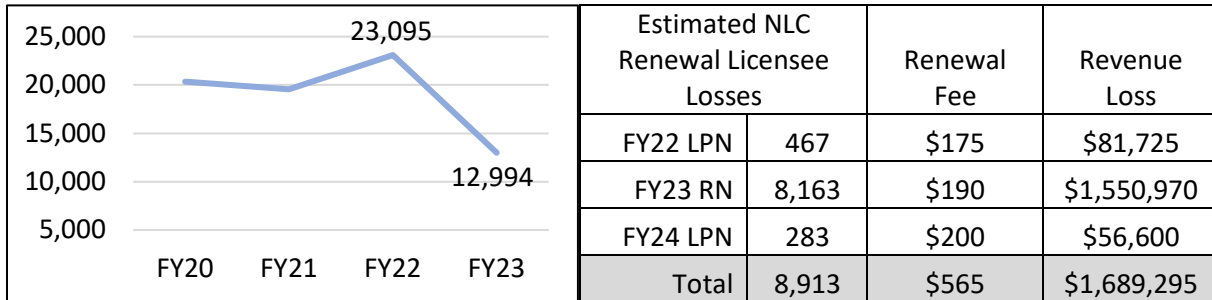


Figure 2: Total RN and LPN licensure by fiscal year and estimated biennial revenue loss due to NLC.

At the same time, Vermont licensees and OPR remain responsible for all costs associated with regulating nurses practicing in Vermont through the NLC. The 8,913 non-resident nurses who hold a multi-state license from their home state (and no longer hold a Vermont license) can still practice in Vermont and Vermont is responsible for regulating the practice of those nurses. If, for example, an NLC nurse engages in unprofessional conduct in Vermont, OPR incurs all enforcement costs associated with addressing the complaint.

OPR is a special fund agency meaning its operating expenses are covered by revenues from fees and fines. OPR’s revenues come from the licensees, in this case Vermont nurses. See 3 V.S.A. § 124(a). Yet, the fee increase necessary to offset the reduction of revenue due to the NLC would be excessive and contrary to the State’s efforts to reduce barriers to nursing.

Given the fiscal impact of the NLC among other factors, the Board of Nursing’s special fund has been destabilized and is projecting a -\$3.5 million deficit by FY2026.

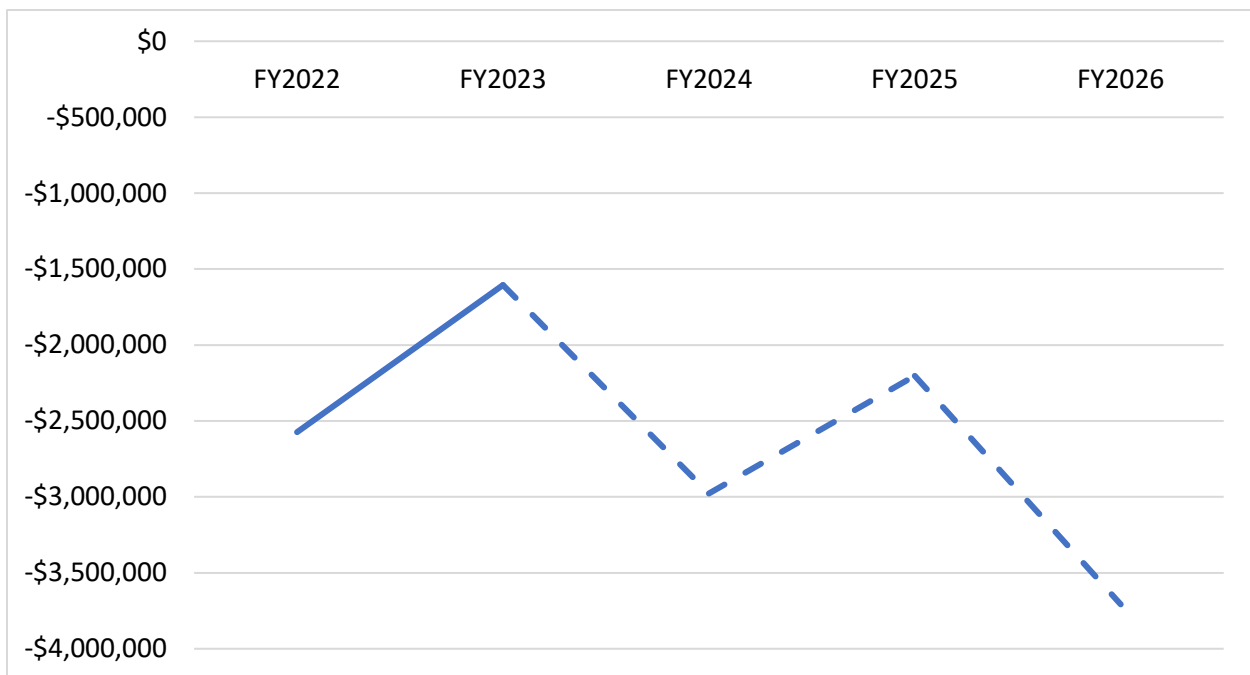


Figure 3: Vermont Board of Nursing’s projected fund balance (Revenue – Operating Expenses).

Budget Sustainability

Act 64 (cont.)

* * *

If OPR determines that implementation of the NLC has resulted in a reduction of revenue, Act 64 of 2021 requires this report to include a proposal to manage the reduction through:

- a) Administrative efficiencies, and*
- b) Fee increase for compact multistate licenses.*

It is not possible for the Office of Professional Regulation to manage this revenue loss through administrative efficiencies, or through an additional fee increase solely on multistate licenses. OPR continuously reviews its administrative efficiency to ensure fiscal responsibility and has always been a cost-efficient agency. Information technology projects are regularly reviewed and streamlined. With a staff of only 40, OPR regulates and oversees approximately 80,000 licensees and 51 licensing programs. Any additional funding reductions will compromise OPR's ability to maintain its statutory public protection duties. OPR will continue to focus on efficient and lean management of its fiscal resources. However, it is not possible by 2026 to achieve \$1.69 million in savings through administrative efficiencies.

Additionally, OPR does not recommend offsetting the loss in nurse licensing revenue with a fee increase on nurses. If OPR were to only raise fees on the Vermonters who hold a multi-state license, the necessary fee increase would make the multi-state license unobtainable for most professionals: raising biennial renewal fees to over \$700. Alternatively, OPR could distribute the cost of the compact onto all multi-state and single-state RN and LPN licenses, at the cost of almost doubling current renewal fees. However, raising Vermont nurses' fees to compensate for revenue lost to the NLC will unfairly burden Vermont's resident nurses with the regulatory costs of their non-resident peers. Moreover, doing so would put Vermont's RN and LPN licensing fees significantly above those of our sister states.

Table 1: NLC costs applied solely to multi-state licenses ("Multi-State Only NLC Cost") and NLC Costs allocated among all Vermont and Multi-State RN and LPN Licenses ("Shared NLC Cost").

Credential Type	Count	Current Renewal Fee	Multi-State Only NLC Cost	Shared NLC Cost
Single-state RN	5,336	\$220	\$220	\$397
Multi-state RN	3,083	\$220	\$733	\$397
Single-state LPN	898	\$200	\$200	\$377
Multi-state LPN	211	\$200	\$713	\$377

Conclusion

The NLC is a good public health policy. It achieves its goal of reducing barriers for nurses to work in Vermont and for Vermont nurses to work in other member states. However, implementation of the NLC has resulted in a significant financial loss for the state. OPR has and will continue to focus on lean and efficient management of its financial resources. Unfortunately, administrative efficiencies and increased licensing fees for multi-state licensees will not address the full financial impact of the NLC. OPR looks forward to continuing to work with the Vermont General Assembly to find ways to support the policies of the NLC while mitigating the financial impacts on the state and Vermont licensees.

Appendix A: NLC RN and LPN renewal losses by nurse state of primary residence

Table 1: Estimated credential renewal losses by member state.

State	LPN	RN
AL	4	99
AR	10	78
AZ	10	331
CO	5	165
DE	4	38
FL	121	1,042
GA	39	365
IA	1	50
ID	0	22
IN	10	102
KS	5	58
KY	6	137
LA	50	67
MD	5	118
ME	10	156
MI	13	84
MO	13	405
MS	37	94
MT	2	24
NC	30	826
ND	0	17
NE	0	34
NH	125	698
NJ	15	113
NM	3	24
OH	48	478
OK	7	33
SC	13	113
SD	1	88
TN	31	315
TX	99	1,506
UT	1	73
VA	10	196
WA	6	51
WI	1	91
WV	14	63
WY	1	9
Total	750	8,163

