



State of Vermont
Office of the Secretary of State
Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402
sos.vermont.gov

Sarah Copeland Hanzas, Secretary of State
S. Lauren Hibbert, Deputy Secretary
Kevin A. Rushing, Director

March 20, 2024

To: Sen. Virginia Lyons, Chair
Senate Committee on Health and Welfare

From: Lauren Layman, General Counsel, Office of Professional Regulation

Re: H. 247 – Occupational Therapy Licensure Compact

Dear Committee,

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

The Office of Professional Regulation

As you may recall from last session, the Office of Professional Regulation (OPR) oversees 51 professions, from nurses to mixed martial arts contestants, and about 80,000 licensees. OPR issues licenses based on qualifications established in statutes and rules. OPR also receives complaints about licensee conduct and, when warranted, investigates and prosecutes licensees for unprofessional conduct.

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 emergencies like this summer's floods, and pursuing progressive occupational licensure policy, such as occupational licensure compacts.

Occupational Licensure Compacts

Compacts are contracts between states. There are many compacts in our lives. An example familiar to all of us is the Driver License Compact. Per this compact, a driver from one state is allowed to drive in all other states without first obtaining a separate driver license in that state.

Most compacts have the concept of a "home state." This is the state where the licensee lives, votes, etc. When someone has a license in their home state, they are eligible to practice in all other states that are members of that compact. Some compacts immediately allow any licensee from member states to practice in all other member states. Other compacts require licensees from a member state to apply for a privilege or license to practice in other member states. This latter construction can sometimes be accompanied by an additional licensing fee.

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 to begin practice 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. 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. Act 15 of 2023 addressed this concern by requiring Vermont’s occupational compact delegates to seek amendments and exceptions to rules, directives, bylaws, and agreements so as to permit 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. OPR takes this obligation seriously and has emphasized this concern in compact commission meetings.

Occupational Therapy Licensure Compact

OPR’s Position

As with most occupational licensing compacts, OPR generally supports adoption of the Occupational Therapy Licensure Compact. We have long endorsed policies that facilitate interstate mobility for licensees and reduce barriers to all seeking to provide qualified, safe care to Vermonters.

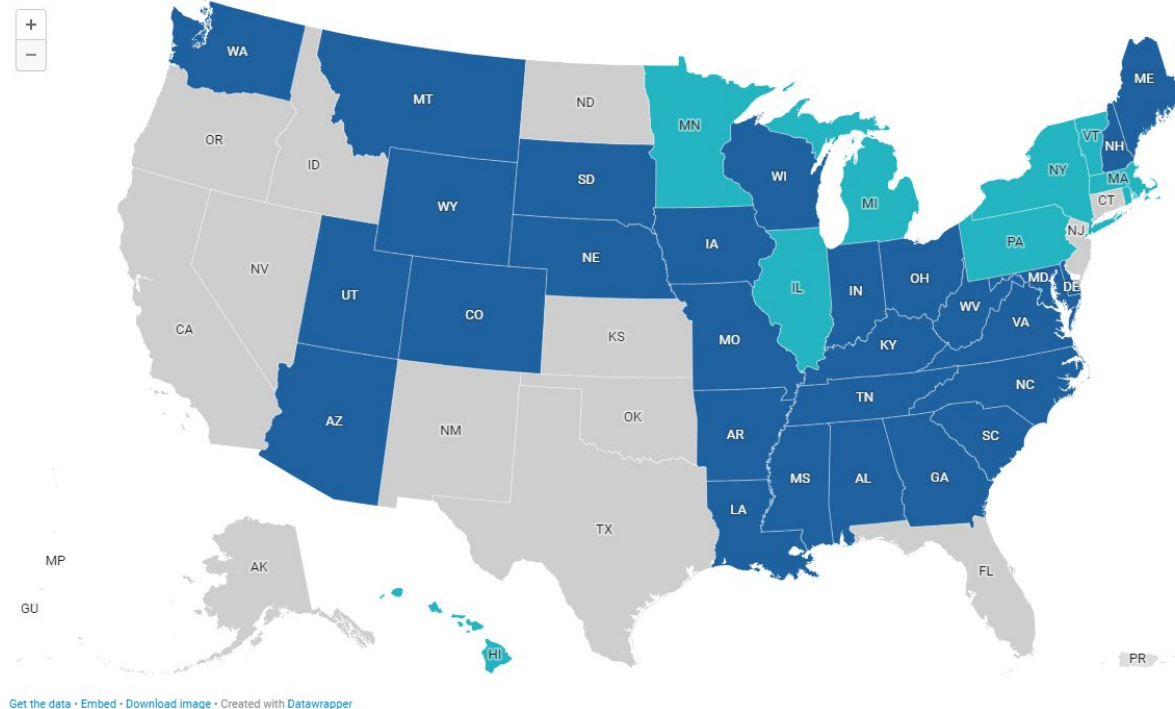
At the same time, the funding impact of adopting multiple licensing compacts is significant. OPR is hopeful that we can find a path forward on the funding so that it does not become an impediment to adopting good policy that benefits professionals and patients.

Background

- Facilitates interstate practice for occupational therapists (OTs) and occupational therapy assistants (OTAs).
 - OTAs must practice under the supervision of an OT in the state in which they are practicing or an OT with a Compact privilege to practice in that state.
- Developed by the American Occupational Therapy Association (AOTA) and the National Board for Certification in Occupational Therapy (NBCOT) in conjunction with the Council of State Governments (CSG).
- Adopted by 28 states so far, including New Hampshire and Maine.
- This Compact allows licensees who hold a “home state” license in a member state to apply to the Compact Commission for a “privilege” to practice in another member state.
 - This structure allows states to be aware of who is practicing in their state and to charge a fee for the privilege to practice in the state.
- The establishment of the Compact Commission was triggered after 10 states adopted the compact. However, the commission is not yet issuing “privileges” to practice. The commission anticipates it will be ready to issue privileges in mid-2024. If H. 247 is adopted, the effective date will be July 1, 2025.

OT Compact Map

■ Legislation Enacted - Compact Member ■ Legislation Filed ■ No Active Legislation



Features

Like all interstate licensure compacts, the Occupational Therapy Licensure Compact establishes uniform requirements for obtaining a “Compact privilege” to practice in other member states. 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
 - License OTs and OTAs;
 - Share required data with the Compact Commission;
 - Have a mechanism in place for receiving and investigating complaints about licensees;
 - Share investigatory and discipline data with the Compact Commission;
 - Give the effect of state law to all rules adopted by the Compact Commission;
 - Use only a recognized national examination as a requirement for home-state licensure (as established by the Compact Commission);
 - Require continuing education/continued competency as a condition of renewal of home-state licenses; 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 needs authorization to conduct background checks for these professions. H. 247 addresses this by amending 3 V.S.A. §123(j)(1) to permit OPR to conduct background checks for all social workers licensed in Vermont.
 - Member states may collect a portion of the fee for offering Compact licensees the privilege to practice in that member state.
 - OPR can meet these requirements of the Compact.
 - Applicants/Licensees
 - Licensing Structure:
 - To obtain a privilege to practice in other member states, an applicant would need to obtain a “home state” OT or OTA license in a Compact member state.
 - Once the home-state license is obtained, the applicant/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 by paying a fee (part of which would go to the state and part of which would stay with the Compact).
 - Fees: A licensee must first pay a fee to obtain a home-state license. Then the licensee must pay a fee to the Compact Commission for privileges to practice in other states. (This fee has yet to be set.) To obtain the privilege(s), the licensee must also pay a state-specific fee. Vermont can set this state-specific fee at the level it deems necessary.
 - Qualifications: To obtain the privilege to practice under the compact, the applicant/licensee also needs to
 - Provide a SSN or NPI;
 - Have an unencumbered license for the previous two years; and
 - If required, complete any jurisprudence requirements (e.g., state law exams) in the privilege state.

Impacts of Implementation of the Compact

- Benefits
 - Mobility is a key benefit for this compact. For OTs and OTAs, licensing requirements in all states can be redundant and renewal of licenses can require duplicative and costly continued competence work. The Compact reduces this barrier.
 - The data reporting mechanisms built into the Compact may facilitate greater sharing of disciplinary information across state lines, allowing for greater protection of the public.
- Costs
 - As with other compacts, it is not clear whether licensees will flow in or flow out. There is potential to improve access but the increased mobility facilitated by the Compact may result in professionals moving to other member states.
 - Out-of-state professionals living in other member states will no longer be required to pay OPR a license fee to practice in Vermont. This will result in a significant loss of revenue to OPR over time. The ability to charge a fee for the privilege to practice in Vermont should offset some of this loss.

- OPR will also have some costs, approximately \$10,000, to modify our licensing system to accommodate this new pathway to licensure.
- States must also pay an annual fee to participate in the Compact. The fee is set annually by the Compact Commission. No fees have been charged yet for this Compact. |