

HOUSE BILL REPORT

SHB 1069

As Passed House:
February 6, 2023

Title: An act relating to the mental health counselor compact.

Brief Description: Adopting the mental health counselor compact.

Sponsors: House Committee on Postsecondary Education & Workforce (originally sponsored by Representatives Leavitt, Harris, Riccelli, Simmons, Barkis, Slatter, Ryu, Bateman, Rude, Schmidt, Rule, Goodman, Ybarra, Callan, Doglio, Orwall, Macri, Caldier, Senn, Tharinger, Bronoske, Gregerson, Paul, Wylie, Stonier, Kloba, Ormsby and Farivar).

Brief History:

Committee Activity:

Postsecondary Education & Workforce: 1/13/23, 1/27/23 [DPS].

Floor Activity:

Passed House: 2/6/23, 93-0.

Brief Summary of Substitute Bill

- Enacts the Counseling Compact.

HOUSE COMMITTEE ON POSTSECONDARY EDUCATION & WORKFORCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Slatter, Chair; Entenman, Vice Chair; Reed, Vice Chair; Ybarra, Ranking Minority Member; Waters, Assistant Ranking Minority Member; Chandler, Hansen, Jacobsen, Klicker, Leavitt, McEntire, Paul, Pollet, Schmidt and Timmons.

Staff: Jim Morishima (786-7191).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Licensed mental health counselors are regulated by the Department of Health (DOH). A mental health counselor is authorized to apply principles of human development, learning theory, psychotherapy, group dynamics, and etiology of mental illness and dysfunctional behavior to individuals, couples, families, groups, and organizations, for the purpose of treatment of mental disorders and promoting optimal mental health and functionality. Mental health counseling also includes the assessment, diagnosis, and treatment of mental and emotional disorders, as well as the application of a wellness model of mental health.

To be licensed as a mental health counselor, an applicant must graduate from a master's or doctoral program in mental health counseling or a related discipline, pass an examination, and complete a supervised experience requirement. The DOH may license an applicant who is already licensed in another state that has equivalent licensing standards. Additionally, the DOH must establish a reciprocity program for applicants who have a credential in good standing from another state and no disciplinary record or disqualifying criminal history.

The Counseling Compact (Compact) is an agreement between states that allows the interstate practice of mental health counseling. As of January 1, 2023, 17 states have enacted the Compact.

Summary of Substitute Bill:

Compact Establishment.

The Counseling Compact (Compact) is established. The Compact allows a professional counselor residing in the counselor's home state to practice professional counseling in a remote state. "Licensed professional counselor" is defined as an individual licensed to independently assess, diagnose, and treat behavioral health conditions.

Compact Commission.

The Counseling Compact Commission (Commission) is a joint public agency established by the Compact's member states. The membership of the Commission consists of one delegate selected by each member state. The delegate must be either a current member of the state's licensing board or an administrator of the licensing board.

The Commission must meet at least once a year. Most meetings of the Commission and the executive committee must be open to the public. The Commission must keep minutes of its meetings. The Commission may close meetings to the public to discuss certain matters, including noncompliance by member states, employment matters, litigation, disclosure of trade secrets, law enforcement investigative records, and matters specifically exempt from disclosure by federal or state law.

The Commission's enumerated powers include:

- establishing bylaws;
- promulgating rules that are binding under the terms of the Compact;
- appointing committees, including standing committees composed of members, state regulators, state legislators, consumer representatives, and other interested persons; and
- performing other functions necessary or appropriate to achieve the purposes of the Compact consistent with the state regulation of professional counseling licensure and practice.

The Commission must establish an executive committee to act on behalf of the Commission consisting of seven voting Commission members and four nonvoting members representing recognized national professional counselor organizations. The executive committee's duties include recommending changes to rules or bylaws, preparing a recommended budget, monitoring Compact compliance, and other duties provided in the bylaws.

The Commission must promulgate rules to effectively and efficiently achieve the purpose of the Compact. At least 30 days prior to voting on a rule, the Commission must file a notice of proposed rulemaking and allow the submission of written input. The Commission must conduct a public hearing if such hearing is requested by at least 25 people, a state or federal subdivision or agency, or an association with at least 25 members. The Commission may enact emergency rules that must undergo the full rule-making process no later than 90 days after their effective dates. Rules adopted by the Commission may be rejected within four years of enactment by a majority of the legislatures of the Compact states through statute or resolution.

The Commission may levy an annual assessment on Compact states to cover the costs of operations and activities.

Other Compact provisions relating to the Commission include provisions relating to:

- judicial proceedings against the Commission;
- financing the Commission; and
- qualified immunity, defense, and indemnification of Commission members.

Data System.

The Commission must establish a database and reporting system containing information regarding licensure, adverse actions, and investigations on all licensed individuals in member states. Member states must submit a uniform data set to the data system. The Commission must notify all member states where a practitioner holds a practice privilege of any adverse action taken against the practitioner. Member states may designate information that may not be shared without the states' permission. Any information that is subsequently required to be expunged by the laws of a member state must be removed from the system.

State Membership Requirements.

The Compact becomes effective when enacted by at least 10 states. To be eligible for Compact membership, a state must:

- license professional counselors;
- require licensees to pass a nationally recognized exam approved by the Commission;
- require licensees to have a 60 semester-hour master's degree in counseling or 60 semester-hours of graduate coursework in specified topics;
- require licensees to complete a supervised postgraduate professional experience; and
- have a mechanism in place for receiving and investigating complaints about licensees.

A member state must:

- recognize a license to practice issued in another state as authorizing a licensed professional counselor to practice in each member state under a privilege to practice;
- recognize the right of a professional counselor to practice in any member state via telemedicine, in which case the counselor must adhere to the rules and regulations of the remote state;
- participate in the Commission's data system;
- notify the Commission of any adverse action or the availability of investigative information regarding a licensee;
- implement or use procedures for considering the criminal history records of applicants for an initial privilege to practice, including criminal background checks—information received by the Federal Bureau of Investigation (FBI) may not be communicated between member states, the Commission, or among member states;
- comply with the rules of the Commission;
- require an applicant to obtain or retain a license in the applicant's home state and meet the home state's qualifications for licensure or renewal of licensure, as well as all other state laws;
- grant the privilege to practice to a licensee holding an unencumbered license in another member state in accordance with the Compact and its rules; and
- attend Commission meetings.

The Compact does not affect the requirements of a member state for the issuance of a single-state license.

Exercising Compact Privilege.

To exercise the privilege to practice in another compact state, a licensee must:

- reside and hold a license in the home state;
- have a Social Security Number or National Practitioner Identifier;
- have no encumbrances or restrictions against any license or privilege to practice within the last two years;
- notify the Commission of the licensee's intention to practice in another state;
- pay applicable fees;
- meet any continuing competence or education requirements of the home state;

- meet any jurisprudence (knowledge of practice laws and rules) established by the remote state; and
- report to the Commission any adverse action, encumbrance, or restriction on the licensee's license taken by any non-member state within 30 days of the action.

A licensee exercising the privilege to practice in another state may hold only one home state license at a time. A licensee may hold licenses in multiple states, but must designate one state as the home state. If a licensee moves to a new state of residence, the licensee must apply for a home state license in the new home state. The new home state may use the Compact's data system to verify that the licensee meets Compact qualifications except for FBI and other criminal background checks and completion of requisite jurisprudential requirements of the new home state. If the licensee does not meet the Compact requirements, the new home state may apply its requirements for a new single-state license.

Active duty military personnel or their spouses must designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. The home state may only be changed by licensure in the new state or through the process specified by the Compact.

The Compact privilege expires upon the expiration of the home state license.

Discipline.

A licensee practicing in a member state must adhere to the laws and regulations of the remote state. The licensee is subject to the state's regulatory authority. A member state may, in accordance with due process and the state's laws, remove the licensee's Compact privileges, impose fines, or take any other action necessary to protect the health and safety of its citizens. The licensee may be ineligible for the Compact privilege until the specific time for removal has passed and all fines are paid.

Only the practitioner's home state may take action against the practitioner's license, but any member state may take adverse action against a licensee in that state. States may participate in joint investigations and the home state may take actions based on the investigations and factual findings of another member state. If adverse action is taken by the home state, the licensee loses Compact privileges in all other states until all encumbrances have been removed. A disciplinary order must include a statement that the practitioner's privilege to practice is deactivated in all member states during the pendency of the order.

If the home state license is encumbered, the Compact privilege may be restored only if the home state license is no longer encumbered and there have been no encumbrances or restrictions within the previous two years. If the Compact privilege is removed in any remote state, the Compact privilege may be restored only if the specific period of time for which the privilege was removed has ended, all fines have been paid, and there have been

no encumbrances or restrictions within the previous two years.

The Compact does not override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

Oversight and Enforcement.

The Commission must attempt to resolve disputes between Compact states and adopt rules regarding mediation and binding arbitration. The Commission and the executive, legislative, and judicial branches of the member states must enforce the Compact. If the Commission determines a state is in default, it must provide written notice to that state and provide it with remedial training and specific technical assistance regarding the default. In addition, the Commission may bring a legal action in federal court to enforce the Compact. After all other means of securing compliance have been exhausted, a defaulting state may be terminated from the Compact through a vote of the majority of member states.

Joining and Withdrawing.

The Compact comes into effect on the date when the tenth state joins. States may join the Compact by enacting the Compact's provisions into law. States that join after the Compact has been established are subject to the rules in place at the time. The Compact may be amended by enactments in all member states. A state may withdraw from the Compact by repealing its enacting statute, but the withdrawal is not effective until six months after the statute's repeal.

Conflict of Laws.

State laws in conflict with the Compact are superseded to the extent of the Compact. The Compact does not prevent the enforcement of any other law of a member state that is not inconsistent with the Compact. Lawful actions of the Commission, and permissible agreements between the Commission and the member states, are binding. If the Compact conflicts with the constitution of a member state, the Compact is ineffective to the extent of that conflict.

State Licensing Requirements.

Consistent with the Compact, a counseling program from which an applicant for a Washington mental health counselor license must consist of at least 60 semester hours or 90 quarter hours, or include at least 60 semester hours or 90 quarter hours of specified topic areas.

An applicant who graduates from a master's or doctoral level program in a related discipline may continue to be licensed as a mental health counselor, but does not qualify for the Compact privilege unless the educational program meets the minimum Compact standards

for counseling programs.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 31, 2023.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There is a critical need in Washington for behavioral health services. Behavioral health needs have been exacerbated by the COVID-19 pandemic. Suicide rates are high in the LGBTQ community. There is currently a workforce shortage, however. Employers are struggling to hire qualified counselors.

Students are facing behavioral health challenges and resources are scarce. As students move to other states, maintaining the student's relationship with their counselor is critical to ensure continuity of care. Students in counseling programs are making decisions on where to pursue their degrees based on the Counseling Compact (Compact) membership. Compact states have a recruiting advantage.

Behavioral health services are critical for veterans and members of the military. The suicide rate for veterans is higher than for civilians. Therapeutic courts can work well for veterans who run afoul of the law, but it can be difficult to communicate with these veterans without behavioral health services.

The pandemic has changed the field of counseling. Counselors are mobile and workforce retention is an issue. Reducing stress and barriers to entry will bring people into the profession and help them stay in.

Compacts are the gold standard for practicing across state lines. The Compact is the most exciting option out there and is more efficient and standardized than reciprocity. It utilizes a mutual recognition model where states recognize each other's licenses. It is an additional privilege, not an alternate pathway. It is widely supported by stakeholders. The Compact will improve access, increase choice, preserve state licensing systems, and improve interstate communication.

The educational requirements align with requirements in other states. There are no counseling programs that do not meet these standards. The Compact requires national accreditation, passage of a national examination, and a background check. The Compact helps to ensure client safety. The central database means that counselors practicing unethically will be known. The regulatory authority of the state remains in place. Telehealth is specifically authorized by the Compact.

Compacts are the gold standard for military members and their spouses to transfer licenses. Portability is critical for military spouses. The military is concerned about the mental health of its members and their families. This bill will preserve provider access as military families move from state to state. Without the Compact, qualified military spouses may miss out on employment opportunities. Military members and their spouses are among the best providers. This bill will positively impact all of our communities and improve access and continuity of care.

(Opposed) None.

Persons Testifying: Representative Mari Leavitt, prime sponsor; Tom Davis, Veterans Legislative Coalition; Tammie Perreault, Department of Defense; Alex Davidson, The Associated Students of the University of Washington; Dominique Avery, Washington Mental Health Counselors Association; Nichole Ayres, The Steven A. Cohen Military Family Clinic at Valley Cities; Dominique Marsalek, American Counseling Association of Washington and American Counseling Association National; Maria Gonzalez, Antioch University; and Taryn Collura.

Persons Signed In To Testify But Not Testifying: None.