

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 234

(Senator Middleton)

Education, Health, and Environmental Affairs

Health and Government Operations

Physicians - Licensure - Grounds for Discipline and Interstate Medical Licensure Compact

This bill enters Maryland into the Interstate Medical Licensure Compact for physicians. The bill establishes (1) specified procedures and requirements for physicians to obtain and maintain an expedited license to practice medicine in a member state and (2) the composition, powers, and responsibilities of the Interstate Medical Licensure Compact Commission. **The bill takes effect July 1, 2019, and terminates September 30, 2022.**

Fiscal Summary

State Effect: Special fund revenues and expenditures increase by an indeterminate amount in FY 2020 through 2023, as discussed below.

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: Potential minimal, as discussed below.

Analysis

Bill Summary:

Interstate Medical Licensure Compact

The compact is established among the member states to provide a streamlined process that allows physicians to become licensed in multiple states, enhancing the portability of a medical license. The compact adopts the prevailing standard for licensure and requires the physician to be under the jurisdiction of the state medical board where the patient is located.

State medical boards retain jurisdiction to impose adverse actions against physicians who are licensed through the compact to practice in the respective states. The compact's provisions do not override existing state authority to regulate the practice of medicine.

Failure to fulfill obligations under the compact may result in a state's default from membership. States may also withdraw from the compact through a statutory repeal of the compact, but any such withdrawal cannot take effect until one year after the effective date of the legislation and specified notice requirements have been met. The withdrawing state is responsible for all dues, obligations, and liabilities incurred through the effective date of the withdrawal.

The bill specifies that, subject to the requirements of the compact, the bill's termination date serves as the required notice of withdrawal from the compact.

Interstate Medical Licensure Compact Commission

The commission consists of two voting representatives from each state who serve as commissioners. Commissioners must be allopathic or osteopathic physicians appointed to a member board; executive directors, executive secretaries, or similar executives of a member board; or a member of the public appointed to a member board. The commission must meet at least once each year. All meetings are open to the public, as are the commission's official records.

The commission must oversee and maintain the compact, promulgate rules for the compact's administration, issue advisory opinions (on the request of a member state or board), and enforce compliance with the compact. The commission must also pay for the expenses related to the commission's activities. The commission must annually report to the legislatures and governors of the member states on the commission's activities, including any financial audits and commission recommendations.

The commission may levy and collect an annual assessment from each member state to cover the cost of the operations and activities of the commission and its staff. The commission must be subject to a yearly financial audit.

Expedited License to Practice Medicine in Member State

Under the compact, a "physician" is any person who (1) graduated from a medical school accredited by specified organizations; (2) passed specified licensing examinations; (3) completed specified graduate medical education; (4) possesses a full and unrestricted license to practice medicine issued by a member board; (5) has never been convicted, received, or deferred adjudication of any offense by a court; (6) has never had a license to practice medicine subjected to discipline, excluding actions related to nonpayment of fees;

(7) has never had a controlled substance license or permit suspended or revoked; and (8) is not under active investigation by a licensing agency or law enforcement authority.

A physician must designate a member state of the compact as the state of principal license for purposes of registration for expedited licensure through the compact. To so designate, the physician must possess a full and unrestricted license to practice medicine in that state, and the state must be (1) the primary residence of the physician; (2) the state where at least 25% of the physician's practice of medicine occurs; (3) the location of the physician's employer; or (4) the state designated as the state of residence for federal tax purposes.

To obtain an expedited license to practice medicine in a member state, the physician must submit an application to the state of principal license's medical board. The board must evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification to the commission. In evaluating a physician's eligibility, the board must require the applicant to obtain a criminal background check in accordance with specified requirements. A member board may not disclose to the commission any information received from the Federal Bureau of Investigation (FBI) as part of a background check. A physician may appeal an eligibility decision with the board.

If found eligible, a physician must complete the commission's registration process and pay any applicable fees (as set by the member state in which the physician seeks licensure). On receipt of verification from the commission and the applicable fees, the board of the member state in which the physician seeks licensure must then issue the expedited license. The expedited license must be valid to the same extent as a full and unrestricted license in that state. The expedited license's validity is contingent on the physician maintaining a valid license in the state of principal license. To renew an expedited license, the physician must apply for renewal through the commission and pay any applicable fees, which are collected by the commission and paid to the member state.

The commission must establish a database of all licensees and all applicants for licensure through the compact. Boards of member states must report any public action or complaints, and any disciplinary or investigatory information, concerning a physician who has applied or received an expedited license to the commission. Boards must also share complaint or disciplinary information with other member boards upon request. Boards may report any nonpublic complaints, disciplinary, or investigatory information. All shared information is confidential, filed under seal, and used only for investigatory or disciplinary matters.

Member boards may participate with other member boards in joint investigations of physicians licensed by the member boards. Subpoenas issued by member states are enforceable in other member states. Member states may investigate violations of statutes authorizing the practice of medicine in any other member state in which the physician holds a license. Disciplinary action taken by a member board against a physician licensed

through the compact is considered unprofessional conduct that may subject the physician to discipline by other member boards.

If the state of principal license revokes or suspends the physician's license, or the license is surrendered or relinquished in lieu of discipline, then all licenses issued to the physician by member boards must automatically be placed on the same status. Reinstatement of the physician's license by the state of principal license does not automatically reinstate the other licenses; the respective member boards must take action to reinstate the licenses. If a member board revokes or suspends a physician's expedited license, then all licenses issued to the physician by other member boards are automatically suspended for 90 days. However, the automatic suspension must be waived unless the member board finds that emergency action is needed for public health or safety, in which case the licensee must be given written notice and an opportunity to be heard.

State Board of Physicians – Specific Requirements

The bill specifies that the State Board of Physicians (MBP) must set fees for the issuance and renewal of licenses issued under the compact. The fees must be set so as to adequately cover the cost of maintaining the licensure program. Further, any annual assessment that is levied by the commission must be funded through an additional surcharge on each licensed compact physician and physicians who designate Maryland as the physician's state of principal license under the compact.

Within 30 days after receiving a request from MBP, a compact physician must provide verification that the compact physician satisfies the requirements for licensure in Maryland. However, a compact physician's refusal to provide such verification may not serve as a basis for denial of a license under the compact. Additionally, within 30 days after a compact license is renewed, a compact physician must submit specified license renewal information. "Compact physician" means a physician licensed under the compact.

Finally, the bill authorizes MBP to discipline a licensed physician for (1) with the exception of the compact licensure process, violating any provision of the Maryland Medical Practice Act, any rule or regulation adopted by MBP, or any State or federal law pertaining to the practice of medicine or (2) failing to meet the qualifications for licensure in Maryland.

Current Law: In Maryland, an individual must be licensed by MBP to practice medicine. Pursuant to Chapter 34 of 2015, an individual must also submit to a criminal history records check (CHRC) as a qualification for licensure.

A physician licensed by and residing in another jurisdiction is exempt from State licensing requirements if the physician is (1) consulting with a State licensed physician about a particular patient and does not direct patient care or (2) engaged in clinical training with a

licensed physician under specified circumstances. Additionally, a physician who resides in and is authorized to practice medicine by any state adjoining Maryland and whose practice extends into Maryland is exempt from State licensing requirements if (1) the physician does not have an office or other regularly appointed place in Maryland to meet patients and (2) the same privileges are extended to licensed Maryland physicians by the adjoining state. Chapters 217 and 218 of 2017 exempted these individuals from CHRC requirements.

Pursuant to Chapter 94 of 2016, a physician who is licensed by and resides in another jurisdiction and who is designated as a team physician by an athletic or sports team based outside the State is exempt from State licensing requirements, including the requirement to submit to a CHRC, under specified circumstances.

Background: In 2013, the Federation of State Medical Boards (FSMB) organized a team of state medical board representatives and experts from the Council on State Governments to develop and draft a framework for an Interstate Medical Licensure Compact – a new licensing option under which qualified physicians could seek to practice in multiple states through expedited licensure. The bill adopts this model legislation.

According to FSMB, under the compact, participating state medical boards retain their licensing and disciplinary authority but agree to share information and processes that are essential to the licensing and regulation of physicians who practice across state borders. Participation in the compact is voluntary for both states and physicians. The goal of the compact is to significantly reduce barriers to licensure in multiple states at a time when telemedicine is growing.

As of March 2018, 22 states have enacted the compact. Additionally, 7 states (including Maryland) and the District of Columbia have introduced legislation in 2018 to consider the compact. Of the 22 states that have enacted the compact, 2 states (West Virginia and Pennsylvania) border Maryland. West Virginia enacted the compact in 2015. Pennsylvania enacted the compact in 2016, but implementation has been delayed due to FBI concerns about sharing CHRC information with the commission. Specific language is included in the bill prohibiting sharing of information obtained from the FBI with the commission.

The commission has adopted bylaws, rules, and policies relating to implementation of the compact, including fee structures, which can be found on the commission's [website](#). For example, according to recently adopted rules, applicants seeking expedited licensure through the compact must pay a service fee of \$700 for a "letter of qualification" at the time the application is submitted to the commission. Of this fee, \$300 is remitted to the applicant's state of principal license and the rest is remitted to the commission's general fund. Member states set their own fees for expedited licenses that they issue through the

compact; the commission must remit 100% of these fees to the member states at least once every 30 days. According to the commission's website, licensure fees range from \$75 (Wisconsin and Alabama) to \$750 (Nevada).

State Revenues: The bill takes effect July 1, 2019, and terminates September 30, 2022. Therefore, special fund revenues increase in fiscal 2020 through 2023, to the extent out-of-state physicians seek to obtain an expedited license, and subsequently to renew an expedited license, to practice medicine in the State. However, the number of out-of-state physicians that may seek licensure in the State through the compact (and, conversely, the number of State physicians seeking expedited licensure elsewhere) is likely dependent on which states ultimately enact the compact. Interest may be highest for states that border Maryland; however, to date only 2 of the 22 states that have enacted the compact (and only 1 of the 7 other jurisdictions that have introduced compact legislation in 2018) border Maryland.

State Expenditures: MBP advises that there may be fiscal and operational costs for the board to issue and process licenses through the compact. However, the board advises that the extent of this fiscal and operational impact cannot be reliably estimated at this time, as it is unknown how many individuals may seek licensure through the compact.

The Department of Legislative Services advises that special fund expenditures increase in fiscal 2020 through 2023 to pay any annual assessment levied by the commission. The amount of any such assessment cannot be reliably estimated at this time. Other activities associated with participation, including any potential modifications of the board's information technology system and processing of additional CHRCs, further increase expenditures. However, these expenditures are likely offset by service and licensure fees, as set by the commission and the board, respectively.

Small Business Effect: State physicians who currently operate small businesses, or who are employed by small businesses, may seek to obtain an expedited license through the compact in order to practice medicine in other member states; however, the validity of the expedited license is contingent on physicians' maintaining a valid State license as well.

Additional Information

Prior Introductions: Substantially similar legislation, SB 446 of 2016 and SB 252 of 2015, both received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but were withdrawn.

Cross File: HB 596 (Delegate Hill, *et al.*) - Health and Government Operations.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Pennsylvania Medical Society; Federation of State Medical Boards; Interstate Medical Licensure Compact Commission; Department of Legislative Services

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