

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 970

(Delegate Johnson)

Health and Government Operations

Education, Health, and Environmental Affairs

Psychology Interjurisdictional Compact

This emergency bill enters Maryland into the Psychology Interjurisdictional Compact for psychologists. The bill establishes (1) specified procedures and requirements for psychologists to exercise a compact privilege in a “receiving state” or “distant state”; (2) the composition, powers, and responsibilities of the Psychology Interjurisdictional Compact Commission; and (3) requirements related to the oversight, dispute resolution, and enforcement of the compact.

Fiscal Summary

State Effect: The impact to the State Board of Examiners of Psychology is small enough that it can likely be absorbed within existing budgeted resources, as discussed below. Beginning as early as FY 2021, but likely in FY 2022, to the extent that a State licensee residing in another compact state does not obtain or renew a State license, special fund revenues for the board decrease, as discussed below.

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

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Generally, the compact is intended to (1) regulate the practice of telepsychology by psychologists practicing across state boundaries in a “receiving state”; (2) regulate the *temporary* in-person practice of psychology by psychologists in a “distant state” for 30 days within a calendar year; and (3) authorize state psychological regulatory authorities to afford legal recognition to psychologists licensed in another state. The

compact does not apply when a psychologist is licensed in both the home and receiving states.

State Participation in the Compact

The home state must be a compact state where a psychologist is licensed to practice. A psychologist may hold more than one compact state license where the psychologist is physically when services are delivered under the compact.

A home state's license authorizes a psychologist to practice via telepsychology in a receiving state (a compact state where the client/patient is physically located when telepsychology services are delivered) only if the state:

- currently requires the psychologist to hold an active E.Passport;
- has a mechanism in place for receiving and investigating complaints;
- notifies the commission of any adverse action or significant investigatory information regarding a license;
- requires an identity history summary of all applicants at initial licensure, including the use of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation within 10 years of the compact becoming effective; and
- complies with the bylaws and rules of the commission.

A home state's license additionally authorizes a psychologist to *temporarily* practice physically in a distant state (a compact state where a psychologist is physically present to provide temporary in-person psychology services) if the home state also currently requires the psychologist to hold an active interjurisdictional practice certificate (IPC) and meets the other requirements specified above, with the exception of the requirement to hold an active E.Passport.

Compact Privilege

Telepsychology: To exercise the compact privilege, a licensee must, among other requirements (1) hold a graduate degree in psychology from an institute of higher education that meets specified requirements with a psychology program that meets specified criteria; (2) possess a current, full, and unrestricted license to practice psychology in a compact state; (3) have no history of an adverse action that violates commission rules; (4) have no criminal history that violates the commission rules; (5) possess a current and active E.Passport; (6) provide attestations as specified; and (7) meet any other criteria in commission rules.

The home state maintains authority over the license of any psychologist practicing into a receiving state, but the licensee is subject to the receiving state's scope of practice. A receiving state may, in accordance with the state's due process laws, limit or revoke a psychologist's authority to practice interjurisdictional telepsychology in the receiving state and/or take any other necessary actions to protect the health and safety of its citizens. If a psychologist's license is restricted, suspended, or otherwise limited by any home state, compact state, or receiving state, the licensee must lose compact privileges to practice interjurisdictional telepsychology.

Temporary Authorization for In-person Practice: A licensed psychologist may also exercise compact privileges to practice physically in a distant state on a temporary basis, if the psychologist meets all of the requirements for practicing telepsychology under the compact and possesses a current, active IPC. If a psychologist's license is restricted, suspended, or otherwise limited by any home state, compact state, or distant state, the licensee must lose compact privileges for temporary in-person practice.

Adverse Actions

The bill establishes processes for imposing adverse actions, maintains a home state's exclusive power to take adverse action against a license issued by that home state, and allows a distant or receiving state to take an adverse action against a compact privilege granted by the distant or receiving state, respectively. The bill creates a process by which all home states must share information on adverse actions. In the event of an adverse action by a licensee's home state, that licensee's compact privilege(s) must be terminated and a licensee's E.Passport or IPC must be revoked.

Coordinated Licensure Information System

The commission must provide for the development and maintenance of a coordinated licensure information and reporting system. The system must contain licensure and disciplinary action information on all licensees under the compact's authority in all compact states. A compact state must submit a specified uniform data set to the information system on all licenses as required by the commission rules.

The coordinated database administrator must promptly notify all compact states of any adverse action taken against any licensee in a compact state.

Psychology Interjurisdictional Compact Commission

The commission is an instrumentality of the compact states. Each compact state must have one delegate who is selected by a state's psychology regulatory authority and meets specified criteria. The commission must meet at least once each calendar year, and must,

among other duties (1) prescribe bylaws and/or rules to govern the commission's conduct; (2) promulgate a code of ethics; and (3) promulgate uniform rules to facilitate and coordinate implementation and administration of the compact. The commission's elected officers make up the executive board.

Oversight, Dispute Resolution, and Enforcement

The Executive, Legislative, and Judicial branches of state government in each member state must enforce the compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent.

If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact, the commission must (1) provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of remedying the default, and/or any other action to be taken by the commission and (2) provide remedial training and specific technical assistance regarding the default. If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compact states.

Implementation, Construction, and Severability

The bill is contingent on enactment of similar legislation in six other states. As this contingency has been met, the bill, an emergency measure, takes effect on the date it is enacted. Any state that joins the compact after the commission's initial adoption of the rules is subject to those rules when the interjurisdictional compact becomes effective in that state. The compact must be liberally construed so as to effectuate the purpose of the compact, and the provision of the compact must be severable.

Current Law: Generally, an individual must be licensed by the State Board of Examiners of Psychology in order to practice psychology in the State. Applicants for licensure must (1) be of good moral character; (2) be at least age 18; (3) submit to a criminal history records check; (4) have a doctoral degree in psychology with at least two years of supervised professional experience; (5) pass a national examination in the practice of psychology; and (6) pass the State law examination. The board also provides for the registration of psychology associates to practice psychology in the State under the supervision of a licensed psychologist. To qualify as a registered psychology associate, an applicant must meet specified educational requirements (a minimum of a master's degree in specified fields of study), successfully pass the State law examination, and submit to a criminal history records check.

Chapter 16 of 2020 authorizes a health care practitioner (an individual licensed, certified, or otherwise authorized by law to provide health care services under the Health

Occupations Article, including psychologists) to establish a practitioner-patient relationship through a telehealth interaction under specified circumstances. A health care practitioner providing telehealth services must (1) be held to the same standards of practice applicable to in-person health care settings; (2) provide or refer a patient to in-person health care services or another type of telehealth service, if clinically appropriate; (3) perform a clinical evaluation before providing treatment or issuing a prescription through telehealth; (4) document in a patient's medical record the health care services provided through telehealth; and (5) be licensed, certified, or otherwise authorized by law to provide health care services in the State if the health care services are being provided to a patient located in the State.

Board regulations (Code of Maryland Regulations 10.36.10.05) include a provision regarding client evaluations and require a psychologist or psychology associate to perform a client evaluation at an initial in-person session before engaging in the practice of telepsychology, unless the psychologist or psychology associate documents in the record the reason for not meeting in person.

The Psychology Interjurisdictional Compact (PSYPACT) became operational on April 9, 2019. Since its inception, PSYPACT has promulgated several rules regarding practice in a receiving state, adverse actions, the PSYPACT commission, the coordinated licensure information system, oversight dispute resolution, and enforcement. PSYPACT's governance documents, including bylaws and rules, can be found [here](#).

State Revenues: The board charges a \$300 licensure application fee and a \$400 licensure renewal fee every two years. To the extent that licensed psychologists residing in other compact states choose to practice in Maryland under the compact privilege and not to obtain or renew a Maryland license, board revenues decrease. Virginia is a compact state and the board advises that it currently has 141 licensees with a Virginia address. *For illustrative purposes only*, assuming half of all State licensees living in Virginia are due for renewal in fiscal 2022 (and half in fiscal 2023) and none of the licensees choose to renew, board special fund revenues decline by \$28,200 in both fiscal 2022 and 2023.

State Expenditures: The board advises that it needs to hire one administrative specialist to handle the additional workload of tracking licensees who participate in the compact and psychologists not licensed in the State who provide services in the State under the compact. The Department of Legislative Services disagrees and advises that PSYPACT has created a directory to assist states in tracking and managing participation in the compact. Board staff in any compact state are able to log into the PSYPACT directory, reducing board resources necessary to track licensees. Thus, the board can likely absorb such operational changes within existing budgeted resources.

PSYPACT requires participating compact states to contribute an annual assessment fee currently set at \$10 per home state licensee who practices under the compact privilege with a \$6,000 cap. Thus, board special fund expenditures increase to the extent that State licensees chose to practice under the compact privilege by up to \$6,000 annually. This expense is likely small enough to be absorbed within the board's existing budget. The board's closing fund balance for fiscal 2019 was \$833,802.

Small Business Effect: Psychologists practicing as part of a small business may be able to expand their patient base into other states via telepsychology. To the extent that a psychologist does choose to practice under the compact privilege, the psychologist will incur additional fees to the commission.

Additional Comments: As of March 2021, 15 states (Arizona, Colorado, Delaware, Georgia, Illinois, Missouri, Nebraska, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, Texas, Utah, and Virginia) and the District of Columbia are participating in PSYPACT.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 500 (Senators Lam and Hettleman) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2021
rh/jc Third Reader - March 19, 2021
Revised - Amendment(s) - March 19, 2021
Revised - Updated Information - March 19, 2021

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