

PSYCHOLOGY INTERJURISDICTIONAL COMPACT

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House Bill 5488 as introduced
Sponsor: Rep. Bronna Kahle

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5489 as introduced
Sponsor: Rep. Felicia Brabec

Committee: Health Policy
Complete to 11-3-21

SUMMARY:

House Bill 5489 would add section 16190 to the Public Health Code to enter Michigan into the Psychology Interjurisdictional Compact. A compact is essentially an agreement among states that is entered into when multiple states enact into law the same provisions (i.e., the compact). The Psychology Interjurisdictional Compact would allow psychologists to provide psychological services in states where they are not licensed but that are part of the compact by using telecommunication technologies (telepsychology) or, for up to 30 days in a calendar year, engaging in the temporary practice of in-person psychology in the other state.

The bill would also amend the code to authorize a psychologist who, under the compact, has temporary authorization to practice or is authorized to practice telepsychology to engage in the practice of psychology in Michigan and provide that he or she is considered licensed as a psychologist in Michigan.

A description of the Psychology Interjurisdictional Compact follows.

Article 1 – Purpose. The compact declares as its purposes increasing public access to professional psychological services by allowing for the practice of telepsychology across state lines and the temporary provision of in-person psychological services in a state where the psychologist is not licensed to practice; facilitating the exchange of psychologist licensure and disciplinary history information among states that have joined the compact; and giving those states the authority to hold licensed psychologists accountable through mutual recognition of their respective licenses.

Article 2 – Definitions. This article defines 28 terms for purposes of the compact. Of note, the compact defines “states” as including the District of Columbia and US territories and possessions. The compact includes definitions for several types of states:

Compact state means a state that has joined the compact and has not withdrawn or been terminated.

Distant state means a compact state where a psychologist is physically present to provide temporary in-person psychological services.

Home state means a compact state where a psychologist is licensed to practice psychology. If the psychologist is licensed in more than one compact state and is providing telepsychology services, the home state is the one where the psychologist is

physically present when telepsychology services are provided. If the psychologist is licensed in more than one compact state and is practicing in person under temporary authorization, the home state is any compact state where the psychologist is licensed.

Receiving state means a compact state where the client or patient is physically located when telepsychology services are being provided.

Article 3 – Home state licensure. A home state’s license authorizes a psychologist to practice in another state under the compact only if the compact state meets the following:

- Requires the psychologist to hold an active *E.Passport* (for telepsychology services) or an active *interjurisdictional practice certificate* (or IPC, for temporary in-person psychological services).
- Has a mechanism to receive and investigate complaints about licensees.
- Notifies the Psychology Interjurisdictional Compact Commission (“commission”) of any *adverse action* or *significant investigatory information* about a licensee.
- Requires an *identity history summary* of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks that comply with the requirements of the Federal Bureau of Investigation (FBI) or another designee with similar authority no later than 10 years after the compact take effect.
- Complies with the bylaws and rules of the commission.

E.Passport means a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.¹ An E.Passport must be revoked if a psychologist’s license in a compact state is restricted, suspended, or otherwise limited.

Interjurisdictional practice certificate (IPC) means a certificate issued by the ASPPB that grants temporary authority to practice based on notification to the state psychology regulatory authority of intention to practice temporarily, and verification of one’s qualifications for such practice.² An IPC must be revoked if a psychologist’s license in a compact state is restricted, suspended, or otherwise limited.

Identity history summary means a summary of information retained by the FBI or other designee with similar authority in connection with arrests and, in some instances, federal employment, naturalization, or military service.

Adverse action means any action taken by a *state psychology regulatory authority* that finds a violation of a statute or regulation that is identified by the authority as discipline and is a matter of public record.

Significant investigatory information means either of the following:

- Investigative information that a state psychology regulatory authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate more

¹ See https://cdn.ymaws.com/www.asppb.net/resource/resmgr/mobility/e.passport_app_quick_guide_2.pdf

² See https://cdn.ymaws.com/www.asppb.net/resource/resmgr/mobility/ipc_app_quick_guide_2020.pdf

than a violation of state statute or ethics code that would be considered more substantial than a minor infraction.

- Investigative information that indicates that the psychologist represents an immediate threat to public health and safety regardless of whether the psychologist has been notified or had an opportunity to respond.

State psychology regulatory authority means the board, office, or other agency with the legislative mandate to license and regulate the practice of psychology.

Article 4 – Practicing telepsychology under the compact. To practice telepsychology under the compact, a psychologist must hold a graduate degree in psychology that meets specified conditions, be licensed in a compact state, have no criminal history or history of adverse action in violation of commission rules, possess a valid E.Passport, provide certain attestations, and meet other criteria under commission rules. The home state maintains authority over the psychologist’s license, but the psychologist is subject to the receiving state’s scope of practice.

Article 5 – Temporary authorization to practice under the compact. To engage in the temporary practice of in-person psychology for 30 days within a calendar year in a distant state under the compact, a psychologist must hold a graduate degree in psychology that meets specified conditions, be licensed in a compact state, have no criminal history or history of adverse action in violation of commission rules, possess a valid IPC, provide certain attestations, and meet other criteria under commission rules. A psychologist is subject to the distant state’s scope of practice and its authority and law.

Article 6 – Further conditions of telepsychology practice. A psychologist can practice telepsychology only under the scope of practice assigned by an appropriate state regulatory authority and if the psychologist initiates, via telecommunication technology, a client/patient contact in a home state with a client/patient in a receiving state or complies with other conditions regarding telepsychology as determined by commission rules.

Article 7 – Adverse actions. A home state can impose adverse action against a psychologist’s license issued by that state. A distant state can take adverse action on a psychologist’s temporary authorization to practice there, and a home state can take adverse action based on the distant state’s adverse action. A receiving state can take adverse action on a psychologist’s authority to practice telepsychology there. If a home state takes adverse action against a psychologist’s license, the psychologist’s interjurisdictional authority is revoked. Home states and compact states must report adverse actions in accordance with commission rules. A state can allow a psychologist to participate in an alternative program instead of taking an adverse action.

Article 8 – Psychology regulatory authorities. A compact state’s regulatory agency can issue subpoenas that are enforceable in other compact states and issue injunctions against a psychologist’s authority to practice in another state under the compact. A psychologist under investigation cannot change home state licensure. Investigation conclusions must be reported to the commission. Information shared between the states and the commission is confidential.

Article 9 – Coordinated licensure information system. The commission must provide for a *coordinated licensure information system* and reporting system with licensure and disciplinary action information on all psychologists subject to the compact.

Coordinated licensure information system means an integrated process for collecting, storing, and sharing information on psychologists' licensure and enforcement activities related to psychology licensure laws that is administered by the recognized membership organization composed of state and provincial psychology regulatory authorities (e.g., the ASPPB).

Notwithstanding any provision of state law, a compact state must submit a uniform data set to the information system as required by commission rules, including identifying information, licensure data, significant investigatory information, adverse license actions, an indicator that any authority to practice under the compact is revoked, nonconfidential information related to alternative program participation, any denial of a license application and the reasons for it, and other information that might help administer the compact as determined by commission rules. The system administrator must promptly notify all compact states of any adverse action taken against, or significant investigative information on, any licensee in any compact state. Compact states can designate information that cannot be shared with the public without their express permission. Information submitted to the system that is subsequently required to be expunged under the law of the state reporting it must be removed from the system.

Article 10 – Psychology Interjurisdictional Compact Commission. The article creates a public agency known as the Psychology Interjurisdictional Compact Commission as a body politic and an instrumentality of the compact states. The commission consists of one voting representative (commissioner) from each compact state, appointed by the state's psychology regulatory authority, who is empowered to act on behalf of the compact state. A commissioner can be removed from office, and any vacancy must be filled, under the laws of the appointing state. The commission must meet at least once each year. Meetings must be open to the public, and notice must be given, except that the commission can convene in a closed meeting to discuss personnel or disciplinary matters or other specified sensitive or confidential topics.

The commission must establish bylaws or rules to govern its conduct as appropriate to implement the compact, including those that provide for its officers, meeting procedures, ethics code, procedures for delegating authority, personnel policies, and financial policies. Among other things, the commission can promulgate rules that have the force of law in compact states, hire or contract with personnel, buy insurance or bonds, accept money or items of value, lease or own property, sell or convey property, borrow and spend money, create and appoint committees, share information with law enforcement, and perform any other functions appropriate to implement the compact.

The elected officers of the commission are the Executive Board, which can act on behalf of the commission. The board has six members: five voting members elected from commissioners and one nonvoting member from the recognized membership organization composed of state and provincial psychology regulatory authorities (e.g., the ASPPB). The board must meet annually. Among other things, it can recommend changes to the rules, bylaws, or compact; recommend changes to compact state fees; ensure the provision of administrative services; prepare and recommend the budget; maintain financial records; monitor state compliance; and establish committees.

The commission can levy an annual assessment on each compact state or impose fees on other parties to cover its operational costs. The assessment amount is allocated based on a formula determined by the commission, which then promulgates a rule binding on all compact states.

The commission cannot incur debts before it has the funds to pay them, and it cannot pledge the credit of a compact state except with the authority of the compact state.

The members, officers, executive director, employees, and representatives of the commission are immune from civil liability for any act or omission arising from commission employment or responsibilities, and the commission must defend and indemnify them against those claims, except that this does not apply to damage, loss, or injury caused by the person's intentional or willful or wanton misconduct.

Article 11 – Rulemaking. Commission rules and amendments are binding on the date specified. If a majority of compact state legislatures reject a rule, it is void. Before adopting a final rule, and at least 60 days before the rule will be considered and voted on, the commission must post notice and provide a comment period. If requested by 25 people, a government agency, or an association with at least 25 members, the commission must hold a public hearing. At the end of the comment and consideration process, the commission can, by majority vote of all members, take final action on the rule and determine its effective date.

Upon determining that an emergency exists, the commission can consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, as long as the usual rulemaking procedures are retroactively applied as soon as reasonably possible, and never later than 90 days after the rule takes effect. An emergency rule is one that must be adopted immediately to meet an imminent threat to public health, safety, or welfare; protect public health and safety; meet a deadline imposed by federal law or rule; or prevent a loss of commission or compact state funds.

Article 12 – Oversight, dispute resolution, and enforcement. The state government in each compact state must enforce the compact and take all actions necessary to effectuate its purposes. The compact and commission rules have standing as statutory law. All courts must take judicial notice of the compact and commission rules in any judicial or administrative proceeding in a compact state that may affect the powers, responsibilities, or actions of the commission. The commission is entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission will render a judgment or order void as to the commission, the compact, or commission rules.

If the commission determines that a compact state has defaulted in its obligations under the compact or commission rules, the commission must provide written notice to the compact states of the default, the proposed remedy, or any other action to be taken and provide remedial training and specific technical assistance regarding the default. If the state fails to remedy the default, it may be terminated from the compact by vote of a majority of the compact states. Termination of compact membership must be imposed only after all other means of securing compliance have been exhausted. A compact state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond that date. The defaulting state can appeal the action of the commission by petitioning the US District Court for the State of Georgia or the federal district where the compact has its principal offices.

Upon request by a compact state, the commission must attempt to resolve disputes related to the compact that arise among compact states and between compact and noncompact states. The

commission must promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the commission.

The commission, in the reasonable exercise of its discretion, must enforce the provisions of the compact and commission rules. By majority vote, the commission can initiate legal action in the US District Court for the State of Georgia or the federal district where the compact has its principal offices against a compact state in default to enforce compliance with the compact and commission rules and seek injunctive relief and/or damages.

The above remedies are not the exclusive remedies of the commission. The commission can pursue any other remedies available under federal or state law.

Article 13 – Implementation date, withdrawal, amendments. This article provides that the compact takes effect when enacted into law by the seventh compact state—but initially only the provisions allowing the commission to meet and make rules to fully implement and administer the compact. Rules in effect when a state joins the compact have the force of law in that state on the date the compact does. A state can withdraw from the compact by repealing it, but the withdrawal cannot take effect for another six months. During that time, the state’s regulatory authority must still comply with the reporting requirements of the compact. Compact states can enter into licensure agreements or other cooperative arrangements with noncompact states as long as they do not conflict with the compact. Compact states can amend the compact, but an amendment must be enacted into law by all the compact states before it has effect in any compact state.

Article 14 – Construction and severability. The article requires the compact to be liberally construed to effect its purposes. If the compact were found to violate the state constitution of a compact state, it would still remain in full force and effect in the other states.

Proposed MCL 333.16190

House Bill 5488 would incorporate the proposed compact into Part 182 (Psychology) of the Public Health Code.

The bill would add to the definition of a psychologist that it could be an individual *authorized* to engage in the practice of psychology (instead of being limited to those who are *licensed*, as now).

It would also provide that a psychologist who has temporary authorization or who is authorized to practice interjurisdictional telepsychology under the compact is authorized to practice psychology under the code.

Additionally, such an individual would be considered a psychologist licensed under Part 182 for the purposes of Article 15 (Occupations) of the code (which includes Part 182).

MCL 333.18201

The bills are tie-barred together, which means that neither could take effect unless both were enacted.

BACKGROUND:

House Bill 5489 is a reintroduction of Senate Bill 758 (H-2) of the 2019-20 legislative session, with minimal changes. SB 758 was passed by the House and Senate, but was vetoed by the governor on December 30, 2020. In her veto message,³ the governor stated that, while she values interstate cooperation, the bill would have required Michigan to “cede its sovereign interest in regulating health professions to an outside body.”

FISCAL IMPACT:

House Bills 5488 and 5489 would likely have a significant fiscal impact on the Department of Licensing and Regulatory Affairs, due to costs that would likely be incurred for the state’s participation in the compact, although the precise net fiscal impact is presently indeterminate. The department would have additional regulatory responsibilities under the compact, including the potential for increased volumes of investigations, hearings, and other enforcement actions. Additional costs may also be incurred for information technology, to ensure that the state’s current systems are compatible with the requirements of the bill. Under HB 5489, the Psychology Interjurisdictional Compact Commission would have the authority to levy and collect annual assessments from compact states, although the magnitude of this liability for Michigan is presently indeterminate.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

³ Governor Whitmer’s veto letter for Senate Bill 758 of 2019-20:
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