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S.B. 28
135th General Assembly

Bill Analysis

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Version: As Reported by House Health Provider Services

Primary Sponsor: Sen. Roegner

Meredith Bray, Attorney

SUMMARY

- Enters Ohio into the Physician Assistant Licensure Compact to enhance the portability of physician assistant licenses through a comprehensive process that complements the existing authority of the State Medical Board to license and discipline Ohio-licensed physician assistants.
- As a member of the Compact, requires Ohio to extend the privilege to practice to a physician assistant who is licensed in another state participating in the Compact, subject to Ohio's laws and rules governing physician assistants.
- Requires Ohio to submit data regarding physician assistant licensees to the Physician Assistant Licensure Compact Commission's data system, including information related to identification, examination, licensure, investigations, and adverse action.
- Revises the law governing the practice and certification of medication aides.
- Removes a restriction that obtaining a limited license to practice veterinary medicine is only available to nonresidents.

DETAILED ANALYSIS

Physician Assistant Licensure Compact

The bill enters Ohio as a party to the Physician Assistant Licensure Compact. The Compact is an agreement among participating states to allow physician assistants to provide medical services by mutual recognition of the licensee's qualifying license – which is an unrestricted license to practice as a physician assistant by a participating state – by other participating states. The Compact requires physician assistants that are providing medical services to a patient to be under the jurisdiction of the state licensing board where the patient

is located. State licensing boards that participate in the Compact retain jurisdiction to impose adverse action against a physician assistant that has compact privilege in the state that issued the privilege.[1]

The Compact becomes effective when seven states enact it into law. Each state's enacting statute cannot be materially different from the Model Compact.[2] The Compact has been enacted in 12 states, Colorado, Delaware, Maine, Minnesota, Nebraska, Oklahoma, Tennessee, Utah, Virginia, Washington, West Virginia, and Wisconsin.[3]

State participation in the Compact

To participate in the Compact, a state must:[4]

1. License physician assistants;
2. Participate in the Physician Assistant Licensure Compact Commission's data system (see "**Physician Assistant Licensure Compact Commission**," and "**Data system**," below);
3. Have a mechanism in place for receiving and investigating complaints against licensees and license applicants;
4. Notify the Commission of any adverse action against a licensee or license applicant and the existence of significant investigative information regarding a licensee or license applicant;
5. Fully implement a criminal background check requirement and report to the Commission whether a license applicant has been granted a license;
6. Comply with the rules of the Compact Commission;
7. Utilize passage of a recognized national exam, such as the National Commission on Certification of Physician Assistants (NCCPA) Physician Assistant National Certifying Examination, as a requirement of physician assistant licensure;
8. Grant compact privilege to a holder of a qualifying license in a participating state.

Compact privilege

Compact privilege is authorization granted by a remote state to allow a physician assistant from another participating state to practice as a physician assistant to provide medical services and other licensed activity to a patient located in the remote state under the remote

[1] R.C. 4730.70, Section 1 (unless otherwise noted, subsequent "Section" references in this analysis are to specific sections of the Compact as enacted in R.C. 4730.70).

[2] Section 11.A.

[3] What is the PA licensure compact?, which is also available by selecting "Compact Map" on the PA Compact website: pacompact.org.

[4] Section 3.A.

state's laws and regulations.[5] Compact privilege is valid until the expiration or revocation of the qualifying license or if the license is terminated pursuant to an adverse action.[6] Participating states may charge a fee for granting compact privilege.[7]

Requirements to grant privilege

To exercise the compact privilege, a licensee must:[8]

1. Have graduated from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant, Inc. or other programs authorized by Commission rule;
2. Hold current NCCPA certification;
3. Have no felony or misdemeanor convictions;
4. Have never had a controlled substance license, permit, or registration suspended or revoked by a state or by the United States Drug Enforcement Administration;
5. Have a unique identifier as determined by Commission rule;
6. Hold a qualifying license;
7. Have had no revocation of a license or limitation or restriction on any license currently held due to an adverse action;
8. If a licensee has had a limitation or restriction on a license or compact privilege due to an adverse action, two years must have elapsed from the date on which the license or compact privilege is no longer limited or restricted due to the adverse action;
9. If compact privilege has been revoked or is limited or restricted in a participating state for conduct that would not be a basis for disciplinary action in a participating state in which the licensee is practicing or applying to practice under compact privilege, that participating state must have the discretion not to consider such action as an adverse action requiring the denial or removal of compact privilege in that state;
10. Notify the Compact Commission that the licensee is seeking the compact privilege in a remote state;
11. Meet any jurisprudence requirement of a remote state in which the licensee is seeking to practice under the compact privilege and pay any fees applicable to satisfying the jurisprudence requirement (a jurisprudence requirement is an assessment of an individual's knowledge of the laws and rules governing physician assistant practice in a state);

[5] Section 2.B.

[6] Section 4.B.

[7] Section 3.B.

[8] Section 4.A.

12. Report to the Commission any adverse action taken by a nonparticipating state within 30 days after the action is taken.

Adverse actions

The Compact provides that a participating state in which the physician assistant is licensed has the exclusive power to impose adverse action against the qualifying license that is issued by that participating state. Adverse actions are any administrative, civil, equitable, or criminal action permitted by a state's laws that is imposed by a licensing board or other authority against a physician assistant license or license application or compact privilege such as license denial, censure, revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee's practice.[9]

If a participating state takes adverse action against a qualifying license, the licensee loses the compact privilege in any remote state in which the licensee has a compact privilege until the qualifying license is no longer restricted or limited and two years have passed since the date that the license is no longer limited or restricted from the adverse action.[10]

The participating state that granted the qualifying license may take adverse action based on factual findings of a remote state, so long as it follows its own procedures. Joint investigations between participating states are also permissible.[11]

Remote states are authorized to take adverse action against a physician assistant's compact privilege within that state, and to take actions to protect the health and safety of citizens in accordance with that state's law. A remote state also may issue subpoenas for hearings and investigations.[12]

Prescribing controlled substances

If a physician assistant seeks authority to prescribe controlled substances, the Compact requires the physician assistant to satisfy all requirements imposed by a remote state in granting or renewing the authority to prescribe controlled substances, for each remote state where the physician assistant will prescribe controlled substances.[13]

Physician Assistant Licensure Compact Commission

The Compact provides for the creation the Physician Assistant Licensure Compact Commission, which is an instrumentality of the Compact states acting jointly.[14]

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[9] Sections 6.A. and 2.A.

[10] Section 4.B.

[11] Section 6.E. and F.

[12] Section 6.B.2.

[13] Section 4.D.

[14] Section 7.A.

Membership

Each participating state is to have one delegate selected by the participating state's licensing board. The delegate must be a current physician assistant, physician, a public member of a licensing board or physician assistant council or committee, or an administrator of a licensing board. The participating state's licensing board is required to fill vacancies in the Commission within 60 days. Each delegate is entitled to one vote on all matters voted on by the Commission. Any delegate may be removed or suspended from the Commission as provided by the laws from the state from which the delegate is appointed.[15]

Regarding Ohio's delegate, the bill requires the State Medical Board to select the delegate within 60 days of the Compact being entered into. Any future vacancies must be filled within 60 days.[16]

Powers and duties

The Compact specifies numerous powers and duties of the Commission, some of which include establishing bylaws, maintaining financial records, promulgating rules, prosecuting legal proceedings, purchasing and maintaining insurance and bonds, hiring employees and taking related actions, borrowing money, and performing other functions as necessary and appropriate to achieve the purposes of the Compact.[17]

Commission meetings

The Commission is required to meet at least once during the calendar year. Any other meetings will be held as set forth in the Compact and the bylaws. Commission meetings generally are required to be open to the public, and public notice of the meetings generally must be provided 30 days in advance. Minutes must be kept.[18]

Closed, nonpublic Commission meetings may occur in order to receive legal advice or to discuss limited topics, such as participating state noncompliance; employment, compensation, and discipline of specific employees; litigation; contract negotiation; criminal accusations; and trade secrets and confidential information. The chair of a closed meeting is required to certify that the meeting may be closed and must reference each relevant exempting provision.[19]

Commission finances

The Commission is required to pay for reasonable expenses of its establishment, organization, and ongoing activities. The Commission may collect an annual assessment from participating states. The Commission cannot incur obligations without first securing funds to

[15] Section 7.B.

[16] R.C. 4730.71.

[17] Section 7.C.

[18] Section 7.B.6. and D.

[19] Section 7.D.3.

meet the obligation, and cannot pledge the credit of participating states without their authority. The Commission must keep accurate accounts of receipts and disbursements, which are subject to audit.[20]

Executive Committee

The Compact provides that the Executive Committee has the power to act on behalf of the Commission. The Executive Committee, which must meet annually, is comprised of the following nine members:

1. Seven voting members elected by the Commission from its current membership;
2. One ex-officio, nonvoting member from a recognized national physician assistant professional association;
3. One ex-officio, nonvoting member from a recognized national physician assistant certification organization.

Duties and responsibilities of the Executive Committee include:

- Recommending changes to rules, bylaws, Compact legislation, and fees paid by participating states and licensees;
- Ensuring Compact administration services are appropriately provided;
- Preparing and recommending the budget;
- Maintaining financial records;
- Monitoring Compact compliance of participating states and providing compliance reports;
- Establishing additional committees;
- Any other duties provided in the Commission rules or bylaws.[21]

Qualified immunity, defense, and indemnification

The Compact provides that the members, officers, executive director, employees, and representatives of the Commission are immune from suit and liability for damages caused by or arising out of acts or omissions occurring within the scope of Commission employment, duties, or responsibilities, so long as the loss is not caused by intentional or willful or wanton misconduct. The Commission is required to defend individuals entitled to the immunity, but individuals also may retain their own counsel at their own expense.

The Commission is required to indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of a settlement or judgment obtained against the individual arising out of acts or omissions

[20] Section 7.E.

[21] Section 7.F.

occurring within the scope of Commission employment, duties, or responsibilities, except in the case of intentional or willful or wanton misconduct.[22]

Data system

The Commission must develop and operate a coordinated database and reporting system containing licensure, adverse action, and investigative information reporting on all individuals licensed by participating states.[23] Each member state must submit a uniform data set to the data system for each licensee, including:[24]

1. Identifying information;
2. Licensure data;
3. Adverse actions;
4. License application denial information;
5. Significant investigative information;
6. Other information as specified in Commission rules.

The Commission must promptly notify all participating states of adverse action against a licensee or license applicant. Adverse action information and investigative information is available to other participating states. Participating states may designate information provided to the data system as not to be shared with the public.[25]

Rulemaking

The Commission has the power to adopt rules pursuant to the criteria and process set forth in the Compact, including requirements related to public notice, comments, and hearings. Emergency rules may be adopted in limited circumstances. If a majority of state legislatures of participating states reject a rule by enacting a statute or resolution within four years of the date the rule was adopted, the rule is to have no further force or effect.

Regarding Commission rules that establish medical services a physician assistant may perform in a participating state, if a court of competent jurisdiction finds a conflict with the laws of a participating state regarding the medical services a physician assistant may perform, the Commission rules are ineffective in that state, to the extent of the conflict.[26]

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[22] Section 7.G.

[23] Section 8.A.

[24] Section 8.B.

[25] Section 8.

[26] Section 9.

Commission oversight, dispute resolution, and enforcement

The Compact provides that the executive and judicial branches of government for each state must enforce the Compact and take necessary actions to implement it.[27]

If the Commission determines that a participating state has defaulted under the Compact, the Commission is required to provide written notice to that state and all participating states, as well as provide remedial training and assistance. If a defaulting state fails to cure the default, that state may be terminated from the Compact by a majority vote of all participating states. The Compact contains additional details regarding the termination process as well as a right to appeal.[28]

Withdrawal

The Compact permits participating states to withdraw from the Compact by enacting a statute repealing the Compact. Such a withdrawal is effective 180 days after the repeal.[29]

Construction and severability

The Compact provides that it is to be liberally construed and its provisions are severable.[30]

Binding effect of Compact on other laws

The Compact does not prevent the enforcement of any other law of a participating state that does not conflict with the Compact. The Compact provides that any laws in a participating state in conflict with the Compact are superseded to the extent of the conflict. All other agreements between the Compact and the participating states are considered binding in accordance to their terms.[31]

Medication aides

The bill revises the law governing the practice and certification of medication aides in several ways, including authorization to practice in residential care facilities, certification and renewal process, and training programs.

Practice in residential care facilities

The bill specifies which drugs a medication aide practicing in a residential care facility (commonly referred to as an assisted living facility) is authorized to administer. It permits a medication aide to administer insulin by injection if using an insulin pen device that contains a dosage indicator, as long as the aide satisfies the Board of Nursing's training and competency

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[27] Section 10.

[28] Section 10.B.

[29] Section 11.C.

[30] Section 12.

[31] Section 13.

requirement. The bill also authorizes a medication aide to administer oral or topical medications containing schedule II controlled substances in residential facilities to residents of the facility. It further authorizes a medication aide to administer medication prescribed for administration on an as-needed basis, regardless of whether the nurse who delegated to the aide responsibility for administering the medication is present at the facility.[32] A nurse also may delegate to a medication aide responsibility for administering initial doses of prescription medications.[33]

Certification

The bill also makes changes to the medication aide certification process. It eliminates the requirement that an applicant for a medication aide certificate who will practice in a residential care facility must either be a nurse aide or have one year of direct care experience in such a facility.[34] A medication aide certificate issued to an individual who will practice in a residential care facility is valid for use only in such a facility; however, the Board of Nursing is required to issue an updated certificate authorizing the individual to practice at a residential care facility or ICF/IID after the individual has one year of direct experience in a residential care facility.[35]

Certification renewal process

The bill requires the Board of Nursing to provide each certificate holder access to a renewal application. As a condition of renewal, a certificate holder must complete 15 hours of continuing education, verify that completion, and pay a renewal fee of $50 (if applying before March 1 of an even-numbered year) or $100 (if applying after March 1 but before May 1 of an even-numbered year).[36]

Training programs

The bill maintains the current 70-hour training requirement of instruction in medication administration required for practice in a residential care facility (of which 15 hours are supervised clinical practice) and specifies that ten hours must include instruction on insulin pen devices that contain dosage indicators, administering the initial dose of each new medication, and administering schedule II controlled substances.[37] It maintains the 70-hour training requirement (with 20 of those hours being supervised clinical practice) for practice in a nursing home or ICF/IID.[38]

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[32] R.C. 4723.671.

[33] R.C. 4723.671(B)(3).

[34] R.C. 4723.651.

[35] R.C. 4723.651(B).

[36] R.C. 4723.651.

[37] R.C. 4723.66(B)(2).

[38] R.C. 4723.66(B)(1).

For supervised clinical practice components of training programs provided in residential care facilities, if the Department of Health (ODH) notifies a facility of real and present danger related to administration of medications or provision of skilled nursing care, the bill requires the Board to prohibit the facility from commencing further supervised clinical practice components until either a plan of correction is approved or the facility resolves the danger.[39]

Finally, the Board is required, if it establishes a rule regarding the minimum or maximum number of days for participating in or completing a training program, to base that number on calendar days rather than business days.[40]

Limited license to practice veterinary medicine

The bill reverses a provision of S.B. 131 of the 134th General Assembly that restricted a limited license to practice veterinary medicine to nonresidents. The change allows Ohio residents or nonresidents to obtain a limited license on or after the effective date of the bill.[41]

HISTORY

Action	Date
Introduced	01-23-23
Reported, S. Health	06-14-23
Passed Senate (30-0)	06-21-23
Reported, H. Health Provider Services	06-12-24

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[39] R.C. 4723.69(C)(1).

[40] R.C. 4723.69(C)(2).

[41] R.C. 4741.13.