

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 540

(Delegate Morgan)

Health and Government Operations

Education, Health, and Environmental Affairs

Interstate Occupational Therapy Licensure Compact

This bill enters Maryland into the Interstate Occupational Therapy Licensure Compact for occupational therapists. The bill establishes (1) specified procedures and requirements for occupational therapists to obtain and maintain a compact privilege to practice occupational therapy in a member state; (2) the composition, powers, and responsibilities of the Occupational Therapy Compact Commission; and (3) requirements related to the oversight, dispute resolution, and enforcement of the compact. The bill is contingent on enactment of similar legislation in nine other states.

Fiscal Summary

State Effect: The State Board of Occupational Therapy Practice can likely handle the bill's requirements with existing resources. Any impact on board special fund revenues is anticipated to be minimal, as discussed below.

Local Effect: None.

Small Business Effect: Potential minimal. Occupational therapists and occupational therapy assistants who currently operate or are employed by small businesses may seek to obtain a license through the compact in order to practice occupational therapy in other member states.

Analysis

Bill Summary: Generally, the purpose of the compact is to facilitate interstate practice of occupational therapy with the goal of improving public access to occupational therapy

services. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

State Participation in the Compact

To participate in the compact, a state must:

- license occupational therapists and occupational therapy assistants;
- participate in the commission's data system;
- have a mechanism in place for receiving and investigating complaints;
- notify the commission of any adverse action or the availability of investigative information regarding a licensee;
- implement or utilize procedures for considering the criminal history of applicants;
- comply with the rules of the commission;
- utilize only a recognized national examination for licensure; and
- have continuing competence/education requirements as a condition for license renewal.

A member state must grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules. A member state *may* charge a fee for granting a compact privilege. Nothing in the compact may affect the requirements established by a member state for the issuance of a single-state license, and individuals not residing in a member state may continue to apply for a single-state license.

Compact Privilege

To exercise the compact privilege, a licensee must, among other requirements (1) hold a license in the home state; (2) have a valid Social Security number or National Practitioner Identification number; (3) have no encumbrance on any state license; (4) be eligible for a compact privilege in any member state; (5) have two years elapse from the point at which all fines and requirements from any adverse action against any license or compact privilege are completed; (6) notify the commission that the licensee is seeking the compact privilege within a remote state(s); (7) pay any applicable fees; (8) complete a criminal background check; (9) meet any jurisprudence requirements established by the remote state(s) in which the licensee is seeking a compact privilege; and (10) report to the commission adverse action taken by any nonmember state within 30 days from the date the action is taken.

The compact privilege is valid until the expiration date of the home license. A licensee providing occupational therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove

a licensee's compact privilege in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. If a home state license is encumbered, the licensee must lose the compact privilege in any remote state until (1) the home state license is no longer encumbered and (2) two years have elapsed from the date of the adverse action. If a licensee's compact privilege in any remote state is removed, the individual may lose the compact privilege in any remote state until (1) the specific period of time for which the compact privilege was removed has ended; (2) all fines have been paid; and (3) two years have elapsed from the date the compact privilege was removed, all fines were paid, and all conditions have been met.

Changing Home State License via Compact Privilege

An occupational therapist or occupational therapy assistant may hold a home state license from only one member state at a time. The bill establishes a process by which a licensee can change their home state when moving between two compact states.

Military Personnel

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 while the service member is on active duty.

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 remote states to investigate and take adverse action against a compact privilege granted by that remote state. The bill creates a process by which member states must share information on adverse actions. Member states may coordinate investigations across states and take adverse action based on the factual findings of another state in the compact. In the event of an adverse action by a licensee's home state, that licensee's compact privilege(s) in any member state must be deactivated until the licensee returns to good standing.

Occupational Therapy Compact Commission

The commission is an instrumentality of the member states. Each member state must have one delegate selected by that member state's licensing board. The delegate must be a current member of the licensing board (an occupational therapist, occupational therapy assistant, public member, or board administrator). The commission must meet at least once each calendar year, and must, among other duties (1) establish a code of ethics; (2) promulgate uniform rules, which have the force and effect of law and must be binding in all member states; and (3) establish an executive committee.

Data System

The commission must provide for the development, maintenance, and utilization of a coordinated database and reporting system containing, but not limited to, licensure, adverse action, and investigative information on all licensed individuals in member states. A member state must submit a specified uniform data set to the data system on all individuals to whom this compact is applicable as required by the rules of the commission.

The commission must promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

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 curing 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 member states.

Implementation, Construction, and Severability

The compact must be liberally construed so as to effectuate the purposes of the compact and the provisions of the compact must be severable.

Current Law: Generally, an individual must be licensed by the State Board of Occupational Therapy Practice to practice occupational therapy or limited occupational therapy in Maryland. An applicant for an occupational therapist or occupational therapy assistant license must have (1) graduated from an appropriate educational program that is recognized by the board and accredited by specified agencies and (2) completed a specified amount of supervised, full-time field work experience at a recognized educational institution or in a training program approved by the educational institution. An applicant must also pass the appropriate examination given by the National Board for Certification in Occupational Therapy or any other national credentialing organization and submit to a criminal history records check. The board may not issue a license if the criminal history record information has not been received.

State Revenues: The board advises that, if Maryland enters the compact, board special fund revenues decrease as a result of an estimated 373 occupational therapists, 224 occupational therapy assistants, and numerous potential new licenses who are (or would be) licensed in Maryland but reside out-of-state elect to become licensed in their home state and work in Maryland under a compact privilege. The board estimates a special fund revenue loss of approximately \$205,000 over a two-year biennial licensure cycle.

The Department of Legislative Services (DLS) notes that any loss in revenues from licensure fees is likely to be minimal as (1) the bill is contingent upon nine other states adopting legislation to enter the compact (only Virginia has yet to enact such legislation, while 12 other states have introduced legislation) and (2) only 1 of those 13 states borders Maryland (Virginia). Additionally, once the compact takes effect (likely in 2024), the bill allows member states to charge a fee for granting a compact privilege, which could offset the lost revenue from licenses if imposed. Under the assumption that a compact privilege fee is imposed, DLS advises that this bill is likely to have a minimal effect on board special fund revenues.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 139 (Senators Carozza and Beidle) - Education, Health, and Environmental Affairs.

Information Source(s): American Occupational Therapy Association; National Board for Certification in Occupational Therapy; Maryland Department of Health; Department of Legislative Services

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