

The Board is concerned about a potential jurisdictional loophole in House Bill 1483 (“Clinical Professional Counselors – Out of State Providers – Use of Telehealth for Continuity of Care”). Generally, all health occupations boards in Maryland have been working with the existing laws regarding telehealth. The Board has established protocols in place to ensure that out-of-state licensed providers are able to obtain a Maryland license with expediency. Passing this bill creates an exception in the telehealth law that, from our perspective, is wrought with administrative and procedural problems and would be nearly impossible to track to maintain compliance.

Enforcement Gaps

The current version of House Bill 1483 creates a potential loophole that depends on whether the laws of the out-of-state provider’s home state provide jurisdiction to the home state’s licensing board to investigate or enforce that state’s laws when the treatment at issue is provided out-of-state. A home state’s laws concerning scope of practice and professional standards may or may not govern a licensed counselor’s provision of service in another state. The location of treatment is typically considered to be the location of the patient. *E.g.*, Md. Code Ann., Health Occ. (“HO”) § 1-1005. Thus, for example, if a counselor located in State A provides teletherapy to a student physically located in Maryland and a complaint arises, the State A licensing board would not necessarily have jurisdiction to investigate the complaint (or the means to investigate) unless State A’s laws provided for that authority and/or the counselor also broke a law or standard under State A’s laws. Another state’s ability to investigate would also likely depend on Maryland’s (and the patient’s) cooperation and the factual nature of the complaint.

Maryland’s enforcement provisions only apply to individuals who are licensed, certified or otherwise approved to practice in the State. Under current State law, the Board has the duty to investigate and take enforcement or disciplinary actions only against providers licensed (or otherwise regulated) in Maryland or against individuals engaging in the unauthorized practice of counseling. *See* HO § 17-205(c); HO § 17-509; HO § 17-513.¹ Neither category includes out-of-state counselors validly operating under a telehealth exception. Thus, if another state’s laws did not provide authority to its board to investigate or take enforcement actions against a licensed counselor for wrongdoing committed in another state, then there would likely be no way to hold that out-of-state counselor liable.

Licensing standards are not the same.

The standards for Licensed Clinical Professional Counselors (as well as the other counseling professions) vary widely from state to state. The Bill does not address the variance or provide a mechanism whereby the Board can do anything to support the health, safety or welfare of individuals newly arriving in our state. We believe this Bill creates an exception without a

¹ Additionally, please note that HO § 17-301(a) currently forbids individuals from practicing clinical professional counseling in the State unless licensed by the Board or meeting an exception in subsection (b). *See also* COMAR 10.58.16.13A. To avoid any confusion, the General Assembly might want to amend HO § 17-301(b) to include an exception for the limited licensure exception created by HB 1474.

plan or any regard to potential negative outcomes and the severity of the impact on the counseling profession and the community at large.

Good standing status is not enough.

The Bill only requires the clinician to hold a status of good standing in the state where they are currently licensed. The bill does not account for or address any current or past discipline; it does not set forth any consequences for failure to comply with Maryland law. Currently, all out-of-state providers are afforded the option to properly credential in Maryland in order to provide services to individuals located in Maryland. This process provides oversight into the care provided in our State and engages the provider with Maryland resources. The Board strongly believes that this precedence of allowing out-of-state providers who are not licensed in Maryland to practice will lead to confusion amongst providers and members of the public.

Potential Amendments

The Board recognizes that there are many potential ways to close the potential enforcement loophole, and if/how the General Assembly chooses to do it is largely a matter of policy. For example, the General Assembly could specify that individuals practicing under the exception created by the bill (1) are subject to relevant State laws concerning the practice of counseling and the relevant State judicial and licensing authorities, and (2) explicitly give the Board authority to receive and investigate complaints concerning telehealth services provided by out-of-state counselors under this exception and take disciplinary action as necessary pursuant to existing State law disciplinary procedures, *see* HO §§ 17-511 – 17-512. Other states have enacted similar provisions for health care providers providing interstate telehealth services, although usually in the context of a registration requirement, rather than a piecemeal approach.²

² *See, e.g.*, Del. Code Ann. tit. 24, § 6002(d) (requiring interstate telehealth registrant to be subject to Delaware law and regulations regarding the health-care provider’s profession in Delaware, the judicial system of Delaware, all professional conduct rules and standards, and the jurisdiction of the applicable licensing board in Delaware, including the board’s complaint, investigation, and hearing process); Fla. Stat. Ann. § 456.47(a), (i) (requiring out-of-state telehealth providers to register with state board and giving board authority to take disciplinary actions against the registrants in certain circumstances); Me. Rev. Stat. Ann. tit. 32, § 3300-D (requiring physician registering to practice medicine through interstate telehealth to agree to be subject to the laws and judicial system of Maine and board rules with respect to providing medical services to residents); Minn. Stat. Ann. § 147.032(d) (requiring physicians registering to provide interstate telehealth services to state residents to agree “to be subject to state laws, the state judicial system, and the board with respect to providing medical services to state residents”).