



# SENATE BILL 361: Health Care Expansion Act of 2019.

2019-2020 General Assembly

<b>Committee:</b>	Senate Health Care. If favorable, re-refer to Appropriations/Base Budget. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	April 9, 2019
<b>Introduced by:</b>	Sens. Krawiec, Bishop, Hise	<b>Prepared by:</b>	Jessica Boney Theresa Matula Jason Moran-Bates Committee Staff
<b>Analysis of:</b>	First Edition		

**OVERVIEW:** Senate Bill 361 would increase innovation waiver slots, including an appropriation; repeal Certificate of Need (CON) Laws; enact the Psychology Interjurisdictional Licensure Compact (PSYPACT); allow marriage and family therapist to conduct the first-level exam for involuntary commitment; make changes to the Program for All-Inclusive Care for the Elderly (PACE) Program; and eliminate redundancy in adult care home inspections.

**BILL ANALYSIS:** Senate Bill 361 would make the changes outlined below.

**PART I. INCREASE INNOVATION WAIVER SLOTS** would increase innovation waiver slots by a maximum of 1,000 slots available on January 1, 2020 and a maximum of 1,000 slots available January 1, 2021. It would appropriate from the General Fund \$10,250,000 in recurring funds for the 2019-2020 fiscal year and \$30,750,000 in recurring funds for the 2020-2021 fiscal year to fund these additional slots.

**PART II. REPEAL CERTIFICATE OF NEED LAWS** would repeal North Carolina's Certificate of Need laws, which are found in Article 9 of Chapter 131E. It would also make changes to statutes in Chapters 6, 58, 113A, 122C, 130A, 131E, 143B, 148, and 150B to conform them to Certificate of Need repeal.

**PART III. PSYCHOLOGY INTERJURISDICTIONAL LICENSURE COMPACT (PSYPACT)**

**Section 3(a)** would recodify the current Psychology Practice Act, Article 18A of Chapter 90 of the General Statutes, as Article 18H of Chapter 90 of the General Statutes. **Section 3(b)** of the bill would enact the PSYPACT.

G.S. 90-270.160 would set forth the purpose of the PSYPACT.

G.S. 90-270.161 would establish definitions for the PSYPACT.

G.S. 90-270.162 would:

- Establish a psychologist's home state as the state in which the psychologist is licensed or physically present when practicing.
- Allow a psychologist to provide services, via telepsychology, to clients in other compact states, if those states:
  - Require the psychologist to hold an E.Passport.

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- Investigate complaints against psychologists.
- Notify the PSYPACT Commission about adverse actions taken against psychologists.
- Comply with the by-laws of the Commission.
- Perform criminal background checks on psychologists.
- Allow a psychologist to provide face-to-face services in a compact state if that state:
  - Requires psychologists to hold a current Interjurisdictional Practice Certificate (IPC).
  - Investigates complaints against psychologists.
  - Notifies the PSYPACT Commission about adverse actions taken against psychologists.
  - Complies with the by-laws of the Commission.
  - Performs criminal background checks on psychologists.

G.S. 90-270.163 would allow a psychologist to practice telepsychology with clients in other compact states, provided that the psychologist has a graduate degree in psychology, is licensed in a compact state, has no criminal record, holds a valid E.Passport, and makes certain attestations.

Psychologists practicing under G.S. 90-270.163 would be subject to their home state's licensing authorities, and be subject to the compact state's rules regarding scope of practice.

G.S. 90-270.164 would allow a psychologist to practice psychology face-to-face with clients in compact states, provided the psychologist has a graduate degree in psychology, is licensed in a compact state, has no criminal record, holds a valid IPC, and makes certain attestations.

Psychologists practicing under G.S. 90-270.164 would be subject to the authority, law, and scope of practice of the compact state in which they are practicing.

G.S. 90-270.165 would allow a psychologist to practice telepsychology with patients in other compact states only when the psychologist initiates the session from the home state in which the psychologist is licensed.

G.S. 90-270.166 would allow home states, compact states in which a psychologist treats patients face-to-face, and states in which a psychologist practices via telepsychiatry to take adverse actions against the psychologist's license.

G.S. 90-270.167 would allow the regulatory authority in the compact states the power to:

- Issue subpoenas.
- Issue cease-and-desist orders.
- Prevent psychologists under investigation from changing their home state licensures.

G.S. 90-270.168 would allow the Commission to maintain a database containing the following data on licensed psychologists, which must be submitted by each compact state:

- Identifying information.
- Licensure data.
- Significant investigatory information.
- Information on adverse actions taken by the regulatory authority.

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G.S. 90-270.169 would create the Psychology Interjurisdictional Compact Commission. Membership in the Commission would consist of one voting member from each compact state. All meetings of the Commission must be public unless employment, discipline, litigation, contract negotiation, or adverse action investigation are being discussed. The Commission would have all the powers necessary to administer and carry out the business of the PSYPACT.

The Commission may be financed by accepting gifts and levying assessments on member states.

Commission members would be immune from suit for their official actions.

G.S. 90-270.170 would give the Commission power to make rules for the compact. These rules would not affect the rules of practice established by the regulatory authorities of the member states. Rules may be approved by a majority vote of Commission members, and any rule rejected by the legislatures of a majority of member states would no longer have any effect.

G.S. 90-270.171 would establish oversight, default, and conflict resolution provisions for the PSYPACT.

- All branches of government of all member states must enforce the PSYPACT's purpose and intent.
- If a state is in default under the terms of the PSYPACT and refuses to cure that default, the Commission may terminate the state's membership in the PSYPACT.
- By a majority vote of members, the Commission may initiate legal action to enforce compliance with the rules of the PSYPACT.
- The Commission will attempt to resolve any dispute between member and non-member states.

G.S. 90-270.172 would:

- Make the PSYPACT effective on the date the seventh member state enacts it.
- Allow member states to leave the PSYPACT by repealing the act enacting it.
- Prevent the Commission from prohibiting any other licensure agreements between member states, so any reciprocity agreements between member states would still remain in effect.
- Allow member states to amend the PSYPACT; however, amendments would not take effect until the legislatures of all the member states enacted them.

G.S. 90-270.173 would require the PSYPACT to be construed liberally, and if any portions of the PSYPACT are struck down by a court, the remaining provisions would remain in effect.

**PART IV. ALLOW LICENSED MARRIAGE AND FAMILY THERAPISTS TO CONDUCT FIRST-LEVEL EXAM FOR INVOLUNTARY COMMITMENT** would amend G.S. 122C-263.1 to permit licensed marriage and family therapists to conduct first examinations in involuntary commitment proceedings.

**PART V. PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE) REGULATORY CHANGES** would amend statutes pertaining to adult care homes, assisted living facilities, multiunit assisted housing with services (MAHS), and adult day care. **Section 5(a)** amends the licensure requirements for a home care agency to exempt an entity from licensure if they are providing home care services to a PACE program participant if the organization has a valid PACE agreement with the Centers for Medicare and Medicaid Services and the Division of Health Benefits, Department of Health and Human Services.

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**Section 5(b)** amends the definitions of an adult care home, assisted living residence, and multiunit assisted housing with services (MAHS), to allow services from a PACE organization with a valid program agreement with the Centers for Medicare and Medicaid Services and the Division of Health Benefits, Department of Health and Human Services. **Sections 5(c) – (e)** make conforming changes to adult care home statutes to allow the incorporation of PACE. **Section 5(f)** amends the statutes that pertain to the certification of adult day care programs to exempt adult day care programs with PACE program participants from certification if the organization has a valid PACE agreement with the Centers for Medicare and Medicaid Services and the Division of Health Benefits, Department of Health and Human Services.

**PART VI. ELIMINATE REDUNDANCY IN ADULT CARE HOME INSPECTIONS** would amend the statute pertaining to inspections, monitoring, and review of adult care homes. The amendment would provide that if the annual inspection of an adult care home is conducted separately from the physical plant and life-safety requirements inspection required every two years, the Division of Health Service Regulation, DHHS, is prohibited from citing a violation of law that overlaps with a physical plant and life-safety inspection area in the annual inspection unless failure to address poses a risk to resident health or safety.

**PART VII** contains a severability clause.

**EFFECTIVE DATE:** Except as provided below, the bill would become effective when it becomes law:

- PART II would be effective January 1, 2020. Subsection (a) of Part II would be apply to contested cases arising on or after January 1, 2020.
- PART III would be effective when at least seven states have enacted the PSYPACT set forth in Part III.
- PART IV would be effective October 1, 2019.
- PART V pertaining to changes associated with the PACE program would become effective October 1, 2019.

## **BACKGROUND:**

**PART II:** Any new institutional health service, as defined in G.S. 131A-176(16), must undergo Certificate of Need review before it is offered. The process requires an application to the department of Health and Human Services, Division of Health Service Regulation. After the application is submitted, there is a public comment and hearing process before the Division approves or disapproves the application. In making a determination, the Division considers the needs identified in the State Medical Facilities Plan.

**PART III:** The PSYPACT is a multi-jurisdictional psychology compact. As of April 9, 2019, it has been enacted by seven states (Arizona, Nevada, Utah, Colorado, Nebraska, Missouri and Illinois). Though Illinois has enacted PSYPACT legislation, it does not become effective until January 1<sup>st</sup>, 2020, and therefore does not count as the seventh state needed to make PSYPACT operational. PSYPACT legislation is currently being considered in District of Columbia, Georgia, New Hampshire, Oklahoma, Pennsylvania, Rhode Island and Texas. It has been endorsed by the psychology licensing boards in seven states (New Mexico, Texas, Georgia, Ohio, Wisconsin, Virginia and Rhode Island). PSYPACT was recommended by the Joint Legislative Oversight Committee on Health and Human Services to the 2018 Session of the 2017 General Assembly of North Carolina.

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PART IV: G.S. 122C-263(c) requires that a commitment examiner conduct an examination of a respondent within 24 hours of the respondent being presented for involuntary commitment. This examination can be conducted in person or by using telemedicine procedures. After examining the respondent, the commitment examiner can recommend outpatient treatment, treatment at a 24-hour facility prior to a court hearing on commitment, or a termination of the commitment proceedings.

PART V: Medicaid and Health Choice Clinical Coverage Policy 3B provides the following description of PACE: "The Program of All-Inclusive Care for the Elderly (PACE) is a unique model of managed care service delivery for the frail elderly living in the community. Most PACE participants are dually eligible for Medicare and Medicaid benefits, and all are certified eligible for nursing facility level of care according to the standards established by the state Medicaid agency. The PACE program uses monthly capitated payments from Medicare and NC Medicaid (Medicaid) to provide an integrated and comprehensive medical and social service delivery system for elderly individuals who choose to receive services in the least restrictive community-based setting of care. PACE uses an interdisciplinary team to provide services at the PACE Center and to case manage the services, and supports provided to PACE participants by providers in the PACE network. The PACE program is located in the community and contains a certified adult day health program. Services are provided on site and supplemented by in-home and referral to other services according to each participant's needs."