



HOUSE BILL 791: Licensed Counselors Compact/DHHS Contracting.

2021-2022 General Assembly

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| Committee: | Date: | July 26, 2022 |
| Introduced by: | Prepared by: | Jason Moran-Bates Staff Attorney |
| Analysis of: | S.L. 2022-52 | |

OVERVIEW: *S.L. 2022-52 makes North Carolina a member of the Professional Counseling Licensure Compact, an interstate licensure compact for licensed professional counselors, and implements procedures for contract reform within the Department of Health and Human Services. It also changes the process by which the Department of Health and Human Services enters into contracts with nonprofit grantees.*

The Compact provisions will be effective when the tenth member state enacts the Compact. The North Carolina Board of Licensed Clinical Mental Health Counselors must report to the Revisor of Statutes when the tenth member state has enacted the Compact. The contracting provisions became effective July 15, 2022.

BILL ANALYSIS: The portion of the act dealing with the Counseling Compact creates a new Article (24A: Professional Counseling Licensure Compact), which does the following:

- **G.S. 90-349.1. Purpose** sets forth the purpose of the act.
- **G.S. 90-349.2. Definitions** creates definitions for "active duty military," "adverse action," "alternative program," "continuing competence/education," "Counseling Compact Commission or Commission," "current significant investigative information," "data system," "encumbered license," "encumbrance," "executive committee," "home state," "impaired practitioner," "investigative information," "jurisprudence requirement," "licensed professional counselor," "licensee," "licensing board," "member state," "privilege to practice," "remote state," "rule," "single-state license," "state," "telehealth," "and unencumbered license."
- **G.S. 90-349.3. State participation in the Compact** requires member states in the compact to establish education and exam requirements for professional counselors and have a process to investigate complaints. They also have to participate in the Compact Commission's (Commission) data system, notify the Commission of adverse action against licensees, conduct background checks of licensees, and allow counselors licensed in other Compact states to practice in the member state.
- **G.S. 90-349.4 Privilege to practice** requires individuals seeking to practice in remote states to hold a home state license, notify the Commission that they are seeking to practice in remote states, pay fees, meet continuing education requirements, and follow all laws and regulations in all state in which they practice.
- **G.S. 90-349.5. Obtaining a new home state license based on a privilege to practice** allows counselors who moved to obtain a home state license in their new state of residence.

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- **G.S. 90-349.6. Active duty military personnel or their spouses** allows active duty military personnel and their spouses to retain a home state designation while actively serving.
- **G.S. 90-349.7. Compact privilege to practice telehealth** requires a member state to allow counselors licensed in any other member state to practice in that state via telehealth.
- **G.S. 90-349.8. Adverse action** allows remote states to take action against counselors that are licensed in a different state. Home states are required to conduct investigations based on a remote state's report to the same extent they would any other misconduct. A license suspension or revocation in a home state results in the counselor losing the privilege to practice in any other member state.
- **G.S. 90-349.9. Establishment of the Counseling Compact Commission** establishes a commission to administer the Compact. It sets forth the powers and duties, meeting requirements, financing, and executive committee rules for the Commission.
- **G.S. 349.10. Data System** establishes a data system for the Compact. Each member state is required to report identifying information, licensure data, adverse actions, nonconfidential information related to alternative program participation, licensure denials, and investigative information to the system. All reported information is shared among all member states.
- **G.S. 90-349.11 Rulemaking** establishes rulemaking procedures and notice and comment requirements for rules promulgated by the Commission.
- **G.S. 90-349.12. Oversight; dispute resolution; enforcement** requires each member state's government to enforce the provisions of the Compact. If a member state defaulted on its obligations to the Compact and refused to cure the default after written notice, it could be terminated from further participation in the Compact. The Compact must adopt rules to govern dispute resolution between member states and between member and non-member states.
- **G.S. 90-349.13. Date of implementation of Counseling Compact Commission and associated rules; withdrawal; amendment** makes the Compact effective on the date the tenth member state enacts it. Member states can withdraw by repealing the enacting legislation. The compact can be amended by amending legislation being enacted in all member states.
- **G.S. 90-349.14. Construction and severability** construes the Compact liberally and allow any provisions struck down by a court to be severed from the remaining provisions of the Compact.
- **G.S. 90-349.15. Binding effect of Compact and other laws** clarifies that laws of member states which conflict with the Compact are superseded to the extent of that conflict. All laws and rules of the Compact are binding on all member states.

Section 2 of the act changes the process by which DHHS enters into contracts with nonprofit grantees that receive state and federal funds.

- Contracts must be for a minimum of two years if the nonprofit: (i) received funds for each year of a fiscal biennium, (ii) received recurring funding, and (iii) was not prohibited from entering into a multi-year contract. These contracts can be extended for a year if the parties agreed to extend the contract and funding remained available. Contracts can also be extended for up to three months to ensure continuity of services.
- Within 15 days of S.L. 2022-74 becoming law, the Fiscal Research Division must provide to the Division of Budget and Analysis, Department of Health and Human Services, a list of all non-state entities who receive state funds through the Act.

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- For vendors who do not have a federally approved overhead rate, a de minimis cost of 10% shall apply to all contracts.

EFFECTIVE DATE: The Compact provisions will be effective when the tenth member state enacts the Compact. The North Carolina Board of Licensed Clinical Mental Health Counselors must report to the Revisor of Statutes when the tenth member state has enacted the Compact. The contracting provisions became effective July 15, 2022.

BACKGROUND: The model legislation for the Counseling Compact was drafted in December 2020. As of June 28, 2022, 15 states have enacted the Compact.