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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_

**SPONSOR** Mathews/Thomson/Armstrong **ORIGINAL DATE** 2/14/2023

**BILL**

**SHORT TITLE** Psychology Interjurisdictional Compact **NUMBER** House Bill 249

**ANALYST** Hanika-Ortiz

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
RLD	No fiscal impact	Indeterminate likely moderate	Indeterminate likely moderate	Indeterminate likely moderate	Recurring	Board of Psychologist Examiners/OSF from Fees
NMAG	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	NMAG operating/ General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 247

### Sources of Information

LFC Files

#### Responses Received From

Regulation and Licensing Department (RLD)

New Mexico Attorney General (NMAG)

Department of Health (DOH)

## SUMMARY

### Synopsis of House Bill 249

House Bill 249 (HB249) enters New Mexico into the Psychology Interjurisdictional Compact.

More specifically,

Article 1 outlines the purpose and intent of the Compact which is to regulate the day-to-day practice of telepsychology across state boundaries and the temporary in-person, face-to-face practice of psychology by psychologists across state boundaries for 30 days.

Article 2 defines terms used in the Compact including “adverse action”, “authority to practice interjurisdictional telepsychology”, and “telepsychology.”

Article 3 outlines and defines the privileges of holding a “home state license” as temporary authorization to practice in another state if the individual meets the criteria under the Compact.

Article 4 outlines the requirements an individual must meet to practice telepsychology in a Compact state that include holding a graduate degree in psychology, possessing an unrestricted license to practice psychology in a home state, and no adverse actions or criminal history.

Article 5 authorizes the temporary practice of psychology in another Compact state where the psychologist is not licensed. It outlines the requirements the psychologist must have including educational background, license to practice psychology in their home state, and no adverse actions.

Article 6 outlines the conditions to practice telepsychology under two conditions: 1) the psychologist must initiate patient contact in a home state via telecommunication technology with the patient in a distant state, or 2) as permitted by rules set by the regulatory commission.

Article 7 provides that a home state and a distant state have the authority to impose discipline or adverse action on a psychologist.

Article 8 provides a Compact state with the regulatory authority to issue subpoenas, and cease and desist or injunctive orders. This section also provides that a home state may conduct and complete any investigation of a psychologist and to take any adverse action as may be necessary.

Article 9 provides for a coordinated licensure information and reporting system which contains licensure and disciplinary action information on psychologists licensed under the Compact.

Article 10 includes the Psychology Interjurisdictional Compact Commission (Commission), and its composition, meeting requirements, voting authority and other such functions.

Article 11 provides that the Commission may exercise rulemaking authority under requirements that, according to the NMAG, are similar to the State Rules Act and the Open Meetings Act which include providing notices to the public and providing opportunities for public comment.

Article 12 details oversight, dispute resolution, and enforcement of the Compact. NMAG notes this serves as a conflict of law provision and enforcement mechanism for states to give full weight to the Compact. It also addresses states that do not comply with the terms of the Compact.

Article 13 provides details on when the Compact becomes effective and also outlines the process for states to withdraw from the Compact.

Article 14 includes a severability clause for situations where the Compact is held to be contrary to the Constitution of any state member, if so, the Compact shall remain in full force and effect.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## **FISCAL IMPLICATIONS**

NMAG provides legal counsel to the Board of Psychologist Examiners (Board) and indicated

more resources would be needed for advising on the legal effects of the Compact, and for promulgating regulations through rulemaking. Also, challenges to Board actions could also require resources.

It is unclear if revenue from licensing fees will be sufficient to cover costs related to licensure and the sharing of licensee information and adverse actions with the Compact's coordinated database.

## **SIGNIFICANT ISSUES**

HB249 enacts an Interjurisdictional Compact for the practice of psychology; allowing for telepsychological practice across state lines and in-person, face-to-face services in a state in which the psychologist is not licensed to practice. The bill provides for exchange of information regarding licensure, adverse actions and criminal history, and invests Compact states with the authority to hold psychologists accountable through the mutual recognition of Compact state licenses.

Under the Compact, state governments in each state that have entered the Compact shall enforce the Compact and take all actions necessary to effectuate the Compact's purpose and intent. The Compact spells out the process by which determinations that a member state has defaulted in the performance of its obligations under the Compact or the promulgated rules, are to be handled.

According to the NMAG:

HB249 only adds the Compact to the Professional Psychologist Act, NMSA 1978, Sections 61-9-1 to -19, and does not amend any sections of the Act. As a result, the Compact may conflict with other sections of the Act and may be duplicative of the changes made under the Professional Psychologist Act and the Uniform Licensing Act for expedited and temporary licensure. Moreover, the Compact establishes a practice of telepsychology that is not provided for under the Professional Psychologist Act in its current language or under the rules promulgated by the Board of Psychologist Examiners. The Compact should be read together with the existing Professional Psychologist Act and include necessary amendments to the current Act to avoid any duplicative measures and to ensure that statutory requirements and procedures are consistent and fluid. This was done with the first adoption of the Nursing Compact in 2003, with SB186 which included introduction of the Compact language but also amendments to the Nursing Practice Act that helped ensure a harmonious transition with updates to terms and processes affected by the adoption of the Compact.

## **PERFORMANCE IMPLICATIONS**

The "Psychology Interjurisdictional Compact Commission" described in the bill is the national administrative body. The Compact Commission consists of one delegate from each member state (appointed by the state's psychology regulatory authority), with a six member executive board.

If New Mexico joins the Compact, RLD said licensed psychologists can then apply for one or more of the certificates required to participate in the Compact: the E.Passport to practice telepsychology and the Interjurisdictional Practice Certificate for temporary in-person, face-to-face practices.

The Compact currently operates with 33 active jurisdictions, including Arizona, Nevada, Utah, Colorado, Oklahoma, Texas, Nebraska, Missouri and Illinois. New Mexico is among several other states including Florida, Hawaii, Iowa, New York, and North Dakota with pending legislation.

## **ADMINISTRATIVE IMPLICATIONS**

RLD reports that enactment of this bill would require the NM State Board of Psychologist Examiners to adopt administrative rules in accordance with the requirements, procedures and by-laws of the Compact. Administrative staff would develop and document procedures for reporting and obtaining licensing and disciplinary action information to the coordinated database, which is the coordinated licensure information system developed and maintained by the Commission.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Senate Bill 247 (SB247) is a companion bill which amends the New Mexico Uniform Licensing Act (ULA), Section 0-1-1 NMSA 1978 *et seq*, with new provisions applicable to professional and occupational licensing compacts. The additions to the ULA serve to ensure the sovereign authority of the State of New Mexico to protect health and safety, while facilitating the ability of professional licensing Compacts to attract additional practitioners, and the critical services they provide.

## **TECHNICAL ISSUES**

An emergency clause may be warranted given the limited access to providers.

## **OTHER SUBSTANTIVE ISSUES**

NMDOH noted Mexicans experience significant barriers in accessing behavioral health services due to substantial shortages in mental/behavioral health providers. Every county in New Mexico is a Federal Health Resources and Services Administration (HRSA) designated mental health professional shortage area ([Map of Health Professional Shortage Areas: Mental Health, by County, 2022 - Rural Health Information Hub](#)). This shortage is compounded by decreased number of providers accepting Medicaid (Physician Acceptance of Medicaid Patients ([macpac.gov](#))).

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Individual state licensure will continue to be a barrier for access to psychological services.

## **QUESTIONS**

Are Compact states allowed to impose their own fees on licensees separate from Compact fees?

How do providers with Compact licenses bill Medicaid if seeing patients in a distant state?

AHO/al/ne