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FISCAL IMPACT REPORT

SPONSOR <u>Matthews/Armstrong/Jaramillo/Thomson/ Figueroa</u>	LAST UPDATED <u>2/24/2023</u>
SHORT TITLE <u>Occupational Therapy Licensure Compact</u>	ORIGINAL DATE <u>2/20/2023</u>
	BILL NUMBER <u>House Bill 392/aHHHC</u>
	ANALYST <u>Hanika-Ortiz</u>

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 but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	Board of Examiners for Occupational Therapy Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From
Regulation and Licensing Department (RLD)
New Mexico Medical Board (NMMB)

SUMMARY

Synopsis of HHSC Amendment to House Bill 392.

The House Health and Human Services Committee Amendment to House Bill 392 requires: 1) continuing education to include evidence of participation ~~or~~ and completion; 2) requires a member state to *require*, as oppose to *fully implement*, a criminal background check, and within a time frame established by the Commission, as opposed to by rule, and explains this is for applicants for Compact privileges whose primary state of residence is that member state; and lastly, 3) requires a member state to use a unique identifier when submitting data to the Compact.

Synopsis of Original House Bill 392

House Bill 392 (HB392) enters New Mexico into the Occupational Therapy Licensure Interstate Compact (Compact) to facilitate the interstate practice of occupational therapy.

More specifically,

Section 1 and 2 cite the act and purpose which includes increasing access to occupational

therapy, enhancing the exchange of licensure and disciplinary information among member states, and facilitating the use of telehealth technology to increase access to occupational therapy services.

Section 3 defines many terms, among them “Compact privilege” which is the authorization granted by a remote state to an occupational therapist, or an occupational therapy assistant, to practice under that state’s laws and rules; and the practice of occupational therapy occurs in the member state where the patient encounter occurred. “Telehealth” is the application of telecommunication technology to deliver occupational therapy services for assessment, intervention, and consultation.

Section 4 lays out requirements for state participation in the Compact that include: using the Commission’s data system, notifying the Commission of adverse actions regarding a licensee, having procedures in place to obtain biometric-based background information, using a recognized national exam for initial licensure, and having a continuing education requirement for renewal; and agreeing that the Compact will not affect a state’s requirements for issuing a single-state license.

Section 5 includes requirements for licensees seeking to obtain Compact privileges that include agreeing to a background check and paying all state fees and Compact privilege fees. This section also requires an “occupational therapy assistant” that is practicing in a remote state to be supervised by an occupational therapist that is licensed or holding a Compact privilege in that remote state.

Section 6 explains that home state licenses, which allow for Compact privileges in members states, may be held in only one member state at a time, and provides guidance for moving between states.

Section 7 requires active-duty military personnel to designate a home state where the individual holds a current license in good standing and provides guidance for changing one’s home state.

Section 8 sets out the criteria and authority upon which a remote state may impose adverse actions.

Section 9 establishes the Occupational Therapy Compact Commission, allows one delegate from each state to serve on the Commission, and outlines the duties of the Commission.

Section 10 addresses qualified immunity, defense and indemnification of the Commission members, officers, executive director, employees, and representatives.

The remaining sections of the bill address requirements for a data system provided by the Commission (Section 11), rulemaking requirements of the Commission (Section 12), oversight and dispute resolution and enforcement related to disagreements amongst member states (Section 13), procedures for withdrawing from the Compact (Section 14), construction and severability of the language in the Compact (Section 15), and the binding effect of the Compact (Section 16).

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

States may charge a fee for allowing a licensee with Compact privileges to practice in their state. Costs that the Board of Examiners for Occupational Therapy may incur include any fee assessments that may be determined later by the Commission, travel expenses for the delegate from New Mexico to attend meetings, and costs to interface with the Commission's data system.

SIGNIFICANT ISSUES

The Commission will consist of one delegate from each member state which is granted authority to: promulgate uniform rules to facilitate the Compact (which may be rejected by a majority of Legislatures of member states, by enactment of a statute or resolution in the same manner as was used to adopt the Compact); bring legal proceedings; impose assessments from each member state or fees on other parties to cover costs; conduct all necessary business; and elect an executive board.

The nine-member executive board handles the business of the Commission and monitors and reports compliance. Procedures for meetings of the Commission and board are provided in the bill. The Commission grants qualified immunity to the Commission, executive board, and employees. Provides procedures for default, technical assistance, and termination relating to member states.

PERFORMANCE IMPLICATIONS

The Board will be required to adopt rules in accordance with the requirements, procedures and bylaws of the Compact.

ADMINISTRATIVE IMPLICATIONS

The Compact allows a remote state to impose adverse action against a licensee in a member state, and grants exclusive power to a home state to take adverse action against a license issued by it.

The Commission is directed to maintain a coordinated database and reporting system that participating states will use to access data on licensees to whom the Compact is applicable.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 247 specifies provisions the state shall enforce regardless of whether there is an interstate Compact related to any interstate professional or occupational licensure.

TECHNICAL ISSUES

It is not clear how occupational therapy assistants working remotely will be adequately supervised. Also not clear is the impact, if any, for physicians that are supervising a patient's plan of care when complaints arise.

OTHER SUBSTANTIVE ISSUES

RLD said the Board of Examiners for Occupational Therapy was consulted regarding this bill and is in favor of its enactment, as is the New Mexico Occupational Therapy Association.

According to RLD, 22 states have enacted this Compact including Arizona, Colorado, Utah, Nebraska, and Wyoming; and 13 states having pending legislation including Texas, Montana, Oregon, Arkansas, and New Mexico.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Licensure for occupational therapists and their assistants will continue to require applicants to comply with New Mexico's application process, which RLD notes may be seen as a hindrance to licensure and result in a barrier for access to occupational therapy services across New Mexico.

AHO/al/ne