

PHYSICAL THERAPY LICENSURE COMPACT

Phone: (517) 373-8080
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House Bill 4504 as introduced
Sponsor: Rep. John Fitzgerald

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4505 as introduced
Sponsor: Rep. Dale W. Zorn

Committee: Health Policy
Complete to 10-4-23

SUMMARY:

House Bills 4504 and 4505 would amend the Public Health Code to enter Michigan into the Physical Therapy Licensure Compact (PTLC), which allows physical therapists to practice physical therapy in states that are parties to the compact without having to be licensed in each individual state.¹ (A compact is like a contract between states that states enter into by enacting its provisions as law.) House Bill 4504 would make Michigan a party to the PTLC, and House Bill 4505 would make related changes to the code's physical therapy licensure provisions.

House Bill 4504 would add section 16188 to the Public Health Code to enter Michigan into the PTLC, which is included in full in the bill and described briefly below.

Article 1: Purpose

The PTLC states that its purpose is to facilitate interstate practice of physical therapy with a goal of improving access, while preserving the regulatory authority of states to protect health and safety through their current systems of licensure.

Article 2: Definitions

This article defines 22 terms that pertain to the execution of the duties outlined in the PTLC. Notably, *compact privilege* is defined as the authorization (equivalent to a license) granted by a state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the *remote state* under its laws and rules. The practice of physical therapy is considered to occur in the member state where the patient or client is located at the time of the encounter.

Article 3: State participation in the compact

To participate in the PTLC, a state must do all of the following:

- Comply with the rules of the Physical Therapy Compact Commission.
- Use a recognized national examination as a requirement for licensure.
- Have continuing competence requirements as a condition of license renewal.
- Participate fully in the commission's data system, including using the commission's unique identifier. (The data system is described below.)
- Have a mechanism in place for receiving and investigating complaints about licensees.

¹ <https://ptcompact.org/>

- Notify the commission, as provided in the PTLC and rules, of any adverse action or the availability of investigative information regarding a licensee.
- Fully implement a criminal background check requirement by receiving the results of the FBI criminal background check and using the results to make licensure decisions.

Additionally, upon adoption of the bill, Michigan would have the authority to obtain biometric-based information from physical therapy licensure applicants and submit this information to the Federal Bureau of Investigation (FBI) for a criminal background check.

A member state must grant the compact privilege to an individual who holds a valid unencumbered licenses in another member state and may charge a fee for granting it.

Article 4: Compact privilege

To exercise the compact privilege under the PTLC, a licensee must do all of the following:

- Hold a license in the *home state*.
- Have no encumbrance on any state license.
- Be eligible for compact privilege in any member state.
- Have not had any adverse action against any license or compact privilege within the previous two years.
- Notify the commission that the licensee is seeking the compact privilege in a remote state.
- Pay any applicable fees, including any state fee, for the compact privilege.
- Meet any jurisprudence requirements established by the remote state in which the licensee is seeking a compact privilege.
- Report to the commission adverse action taken by any non-member state within 30 days after that action.

To maintain the compact privilege, a licensee must comply with the requirements above. The compact privilege is valid until the expiration date of the home license.

The licensee must function within the laws and regulations of the remote state and is subject to that state's regulatory authority. The remote state may remove a licensee's compact privilege, impose fines, or take any other necessary actions to protect its citizens.

If a licensee's *home* state license is encumbered, the licensee *must* lose the compact privilege in remote states until the home state license is no longer encumbered and two years have passed from the date of the adverse action. Then, the licensee must meet the requirements listed above for obtaining the compact privilege in any remote state.

If a licensee's compact privilege in any *remote* state is removed, the licensee *must* lose privilege in remote states until the time for removal has passed, all fines are paid, and two years have passed from the date of the adverse action. Then, the licensee must meet the requirements listed above for obtaining the compact privilege in any remote state.

Article 5: Active duty military personnel or their spouses

An active duty military licensee or their spouse could designate the home of record, permanent change of station (PCS), or state of current residence as the home state.

Article 6: Adverse actions

Under the compact, a home state has the exclusive power to impose adverse actions against a physical therapy license issued by the home state and may also take adverse actions based on the investigative information of a remote state, using its own procedures. A member state may still participate in an alternative program in lieu of adverse action. A remote state may take adverse actions against a licensee's compact privilege in the state and issue subpoenas. A party state must enforce subpoenas issued by a physical therapy licensing board for attendance and testimony of witnesses or production of evidence from another party state.

Member states may participate in joint investigations against a licensee and must share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation under the compact.

Article 7: Physical Therapy Compact Commission

The compact creates a commission composed of one delegate from each member state, each of whom is a current member of that state's licensing board as well as a physical therapist, physical therapist assistant, public member, or the board administrator. According to rules specified in the compact, the commission must meet at least annually and establish bylaws and uniform rules, maintain financial records, take actions to further the compact and bylaws, and prosecute legal actions (without affecting the standing of individual state physical therapy licensing boards to sue or be sued), in addition to other responsibilities.

A nine-member executive board, composed of seven elected members of the commission, a member of a national physical therapy professional association, and a member from the recognized membership organization of the physical therapy licensing boards, can act on behalf of the commission.

The compact provides that all commission meetings must be open to the public, with public notice of the meetings. However, the commission or executive board may convene in closed nonpublic meetings if they must discuss noncompliance of a member state; employment, compensation, or discipline related to specific employees; current or prospective litigation; or other specified sensitive topics.

Further, the compact prescribes the allowable payments of expenses, receipt of money, and assessments levied on member states. The commission must keep accurate accounts of all receipts and disbursements, which are subject to an annual audit.

The compact also specifies the individual and collective liability of members of the commission.

Article 8: Data system

The commission must develop, maintain, and use a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensees in member states. Member states must submit the identifying information, licensure data, adverse actions taken, and other information regarding all licensees. The compact must specify the sharing of this information, including adverse actions.

Article 9: Rulemaking

The commission must exercise its rulemaking powers, with rules or amendments to the rules adopted at regular or special meetings and notice given at least 30 days before consideration of the rule. A public hearing must be convened before adopting a rule or amendment if that hearing is requested by at least 25 individuals, a state or federal governmental subdivision or agency, or an association that has at least 25 members. The commission then takes final action on the proposed rule by a majority vote of all members.

If a majority of the legislatures of the member states reject a rule (by enactment of a statute or resolution in the same manner used to adopt the compact) within four years of the rule's adoption, the rule has no further force and effect.

Article 10: Oversight, dispute resolution, and enforcement

State officials must enforce the compact and take necessary actions to effectuate its purposes and intent. The compact and the rules promulgated under it have standing as statutory law.

If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact, it must provide notice of the default and any actions to be taken to all member states. A defaulting state may be terminated from the compact as a last resort upon a majority vote of the member states. The defaulting state may then appeal that action by petitioning the U.S. District Court for Washington, D.C., or the applicable federal district. The commission also must promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

Article 11: Implementation date, withdrawal, and amendment

The compact comes into effect once it is enacted into law in the tenth member state, and the compact provisions take effect at that time. Any state that joins the compact subsequently is subject to the rules as they exist on the date the compact becomes law in that state.

A member state may withdraw from the compact by enacting a statute to repeal it, with the withdrawal taking effect six months after the repealing statute.

The compact can be amended by the member states, and no amendment to the compact is effective and binding on any member state until enacted into the laws of all member states.

Article 12: Construction and severability

The compact provisions are severable, and if any part of it is held invalid, the remainder of the compact and its applicability is not affected.

The bill would take effect 90 days after being enacted.

Proposed MCL 333.16188

House Bill 4505 would amend the physical therapy provisions of the Public Health Code to allow individuals authorized under the PTLC to engage in the practice of physical therapy or to practice as a physical therapist assistant. Currently, only individuals licensed in Michigan may do so. The bill would provide that, for purposes of Article 15 (Occupations) of the code, including the obligations of licensure, an individual who holds a compact privilege under the PTLC to practice as a physical therapist or a physical therapist assistant is considered a physical

therapist or a physical therapist assistant, as applicable, who is licensed under Part 178 (Physical Therapy) of the code.

MCL 333.17801 and proposed MCL 333.17820a and 333.17820b

Neither bill can take effect unless both bills are enacted.

BACKGROUND:

Taken together, the bills are substantively identical to Senate Bill 18 of the 2021-22 legislative session, which was passed by the Senate and reported from the House Committee on Health Policy.

FISCAL IMPACT:

House Bills 4504 and 4505 could have a significant fiscal impact on the Department of Licensing and Regulatory Affairs (LARA), although a precise estimate of the magnitude of the impact is currently unavailable. LARA would incur costs under the bill for investigating complaints against licensees and for the general administration and implementation of the compact's requirements; such costs would include any incurred expenses for integrating Michigan's current data system with the compact commission's data system. The Physical Therapy Compact Commission could also levy an annual assessment on Michigan (such an assessment is levied on all compact members) in order to cover the costs of the commission's activities and operations. The magnitude of the costs is presently unknown, as LARA indicated that the cost would be dependent on the volume of compact licensees that practice within Michigan. The state would also face liabilities in the event that it defaulted on the compact.

The bill would allow LARA to recover some of its costs, namely via fines on licensees related to adverse disciplinary action and cost recovery related to investigations and dispositions of adverse action cases. It is unclear how revenues under the bill would compare to the costs that LARA and the state would incur. The department indicated that additional legislative action would need to be taken in order to allow LARA to assess fees for granting compact privilege. Furthermore, LARA indicated that traditional licensure revenues in the state would likely decline, as out-of-state licensees would be able to practice via the compact, instead of securing licensure through the state.

Legislative Analyst: Rick Yuille
Fiscal Analyst: Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.